**From:** (b)(6), (b)(7)(c)
**To:** (b)(6), (b)(7)(c)
**Subject:** RE: INA § 235(b)(2)(C)
**Date:** Thursday, June 26, 2014 12:29:00 PM
**Attachments:** Unified Expedited Removal Training 3.ppt
Inspectors FM chap on expedited removal Dec05.doc

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All,

In my archives, I found a Training on ER from November 2007 and the chapter on ER from the 2005 Inspectors' FM. (b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5) Likewise, I could nothing in Sharepoint discussing 235(b)(2)(C).

(b)(6), (b)(7)(c)
Appellate & Protection Law Section
Office of the Principal Legal Advisor - Immigration Law and Practice Division
U.S. Immigration & Customs Enforcement
(305) 534(b)(6), (b)(7)(c)



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**From:** (b)(6), (b)(7)(c)
**Sent:** Thursday, June 26, 2014 10:33 AM
**To** (b)(6), (b)(7)(c)
**Subject:** FW: INA § 235(b)(2)(C)

(b)(6), (b)(7)(c) can you look into this, please?

-----Original Message-----
**From:** Davis, Mike P
**Sent:** Thursday, June 26, 2014 09:43 AM Eastern Standard Time
**To:** (b)(6), (b)(7)(c)

**Cc** (b)(6), (b)(7)(c)
**Subject:** FW: INA § 235(b)(2)(C)

(b)(5)

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Mike P. Davis
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
202-732-(b)(6), (b)(7)(c) (O) | 202-904-(b)(6), (b)(7)(c) (M)

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**From:** (b)(6), (b)(7)(c)
**Sent:** Thursday, June 26, 2014 9:41 AM
**To:** Davis, Mike P; (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
**Cc:** (b)(6), (b)(7)(c)
**Subject:** INA § 235(b)(2)(C)
**Importance:** High

Good morning, all (b)(5)

(b)(5)

Thanks,

(b)(6), (b)(7)(c)

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(b)(6), (b)(7)(c)
Assistant General Counsel for Immigration Benefits
Immigration Law Division
Office of the General Counsel
U.S. Department of Homeland Security
(202) 282-(b)(6), (b)(7)(c)
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Excerpt from the Inspector's Field Manual as taken from December 2005 I-link disc

17.15 Expedited Removal.

(a) Inadmissibility. Section 302 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amended section 235(b) of the Immigration and Nationality Act (Act) to authorize the Attorney General (now the Secretary of the Department of Homeland Security (DHS)) to remove without a hearing before an immigration judge aliens arriving in the United States who are inadmissible under section 212(a)(6)(C) or 212(a)(7) of the Act. Under these expedited removal provisions, aliens who indicate an intention to apply for asylum or who assert a fear of persecution or torture are referred to an asylum officer for a credible fear interview. Those who are found to have a credible fear by the asylum officer are referred to an immigration judge for a full removal hearing on the merits of their claim or claims.

The expedited removal provisions became effective April 1, 1997. Under section 235(b)(1) of the Act, expedited removal proceedings may be applied to two categories of aliens.

First, section 235(b)(1)(A)(i) of the Act permits expedited removal proceedings for aliens who are arriving in the United States. 8 CFR 1.1(q) defines the term "arriving alien." Refer to section (a)(1) of this chapter for the meaning of "arriving alien." Pursuant to section 235(b)(1)(F) of the Act, Cuban nationals who arrive at U.S. ports-of-entry (POEs) by aircraft are exempt from expedited removal proceedings.

Second, section 235(b)(1)(A)(iii) of the Act provides the Attorney General (now the Secretary of DHS) the discretion to designate certain other aliens to whom the expedited removal proceedings may be applied, even though they are not arriving in the United States. This provision permits application of the expedited removal proceedings to any or all aliens who have not been admitted or paroled into the United States and who have not been physically present in the United States continuously for the two-year period prior to a determination of inadmissibility by an immigration officer. The Attorney General delegated this authority to designate classes of aliens to the Commissioner of the Immigration and Naturalization Service, and this has since been delegated to the Commissioner of CBP and the Under Secretary of Immigration and Customs Enforcement (ICE). Pursuant to 8 CFR 235.3(b)(1)(ii), the designation may become effective upon publication of a notice in the Federal Register.

On November 13, 2002, the INS published in the Federal Register a notice designating an additional class of aliens who may be placed in expedited removal proceedings - aliens who arrive in the United States by sea, who are not admitted or paroled, and who have not been physically present in the United States continuously for the two-year period immediately preceding the determination of inadmissibility. Aliens falling within this newly designated class will be detained at the discretion of the government during the course of immigration proceedings. This newly designated class does not include Cuban nationals, crewmen, or stowaways.

(1) Arriving Aliens. For an alien to be subject to the expedited removal provisions at a POE, the alien must first meet the definition of "arriving alien." The term "arriving alien" as defined in 8 CFR 1.1(q) means an applicant for admission coming or attempting to come into the United States at a POE, or an alien seeking transit through the United States at a POE, or an alien interdicted in international or U.S. waters and brought into the United States by any means, whether or not to a designated POE, and regardless of the means of transportation. An arriving alien remains such even if paroled pursuant to section 212(d)(5) of the Act, except that an alien who was paroled before April 1, 1999, or an alien granted parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States shall not be considered an arriving alien for purposes of section 235(b)(1)(A)(i) the Act.

Aliens who entered the United States without inspection; aliens apprehended in the United States without legal status; and aliens who have departed the United States, are refused admission into another country and are thereafter returned back to the United States do not fall within the definition of arriving aliens. Alien stowaways on arriving vessels, lawful permanent resident aliens of the United States, or applicants under the Visa Waiver Program may be considered arriving aliens for other purposes under the Act, but are not subject to the expedited removal provisions.

It is the responsibility of the officer to determine whether the alien is an arriving alien subject to being placed in expedited removal proceedings. Also see Chapter 17.11 for processing alien applicants for admission who claim asylum at ports-of-entry.

(2) Applicability. In general, arriving aliens who are inadmissible under section 212(a)(6)(C) and/or (7) are subject to expedited removal under section 235(b)(1) of the Act. Officers should only charge those grounds of inadmissibility that can be fully supported by the evidence and that will withstand any further scrutiny. Officers may, but need not, charge more than one ground of inadmissibility. If 212(a)(6)(C) and/or 212(a)(7) are the only charges lodged, the alien must be processed under expedited removal and may not be referred for an immigration hearing under section 240. If additional charges are lodged, the alien may be referred for a section 240 hearing, but this should only occur in extraordinary circumstances. Generally speaking, if an alien is inadmissible under 212(a)(6)(C) and/or (7), additional charges should not be brought and the alien should be placed in expedited removal. There will be very few instances where it will be advantageous to the government to lodge additional charges and institute section 240 removal proceedings if a solid expedited removal proceeding can be concluded. Even in criminal cases, an expedited removal proceeding will normally be the preferred option.

If the alien appears to be inadmissible under the provisions of section 235(c) of the Act as a terrorist or other special interest case, refer to Chapter 17.7 or, in appropriate circumstances, detain the alien for removal proceedings conducted by the Alien Terrorist Removal Court under Title V of the Act.

DHS retains the discretion to permit withdrawal of application for admission in lieu of issuing an expedited removal order (see Chapter 17.2). Provisions for withdrawal are contained in both statute and regulation, with specific guidance in the IFM, and should be followed by all officers

with authority to permit withdrawals. As an example, in cases where a lack of proper documents is the result of inadvertent error, misinformation, or where no fraud was intended (e.g. an expired nonimmigrant visa), officers may consider, on a case-by-case basis and at the discretion of the government, any appropriate waivers, withdrawal of application for admission, or deferred inspection to resolve the ground of inadmissibility rather than issue an expedited removal order.

The authority to formally order an alien removed from the United States without a hearing or review, carries with it the responsibility to accurately and properly apply the grounds of inadmissibility.

(3) Grounds of Inadmissibility. All officers should be aware of precedent decisions and policies relating to the relevant grounds of inadmissibility. Section 212(a)(6)(C) is an especially difficult charge to sustain unless the case involves obviously fraudulent or counterfeit documents. Misrepresentation is even more difficult to determine. Also keep in mind that an alien who is determined to be inadmissible for fraud or misrepresentation is barred forever from the United States, with few waivers available. Any one or several of the following points should be considered in determining if an alien has committed fraud or misrepresentation.

· To support a charge of having procured a document by fraud or misrepresentation, the procuring must have been done from a government official, not from a counterfeiter, and any misrepresentation must have been practiced on a U.S. Government official.

· The procurement by fraud must relate to a person who has done so to obtain his or her own admission, not someone else's.

· The fraud or misrepresentation must be material, i.e., the alien is inadmissible on the true facts, or the misrepresentation tends to shut off a relevant line of inquiry that might have resulted in a determination of inadmissibility.

· In general, an alien should not be charged with misrepresentation if he or she makes a timely retraction of the misrepresentation, in most cases at the first opportunity.

· Silence or failure to volunteer information does not in itself constitute a misrepresentation.

· Aliens who are determined to be mentally incompetent and small children judged to be incapable of independently forming an intent to defraud should not be ordered removed using section 212(a)(6)(C)(i) as the inadmissibility charge. The preferred charge in such cases would be section 212(a)(7)(A).

Section 344 of IIRIRA did not create any waiver for immigrants found inadmissible under section 212(a)(6)(C)(ii) relating to false claims to U.S. citizenship. Therefore, immigrants found inadmissible under section 212(a)(6)(C)(ii) are permanently barred from the United States.

(4) Supervisory approval of removal orders. All expedited removal orders require supervisory approval before service upon the alien. By regulation, this approval authority is not to be

delegated below the level of a second-line supervisor. Each field office may determine at what level (second-line supervisor or above) this review authority should be delegated.

The expedited removal provisions are not applicable in pre-clearance or pre-inspection operations. If DHS wishes to proceed with expedited removal of an alien inspected during an en route inspection of a vessel, action on the case will be deferred until the vessel has arrived in the United States. The alien may then be processed as an expedited removal case.

Port directors are responsible for ensuring that all officers conducting expedited removal proceedings, and supervisors approving expedited removal orders, are properly trained in the expedited removal provisions.

See Appendix 17-3 for a flow chart mapping the entire expedited removal process.

(Paragraph (a) amended 8/21/97; IN97-05)

(5) Aliens seeking asylum at land border ports of entry. Section 235(b) of the INA does not provide for an affirmative asylum application process at a port of entry. Therefore, an officer should consider an alien who arrives at a land border port-of-entry and seeks asylum to be an applicant for admission by operation of law. The alien will most likely be inadmissible under section 212(a)(7)(A)(i) of the INA as an intending immigrant without proper documentation or under section 212(a)(6)(C) of the INA as an immigration violator with fraudulent documents. As a result, he or she will be subject to expedited removal proceedings.

Except as noted below, the alien, if otherwise subject, should be placed in expedited removal proceedings, referred for a credible fear interview, and detained pending a final determination of a credible fear of persecution or torture. See INA § 235(b)(1)(B)(iii)(IV); 8 CFR § 235.3(b)(4)(ii). Once it has been determined that an alien has a credible fear of persecution or torture, DHS may continue to detain the alien or parole the alien from custody, as appropriate. (Paragraph (a)(5) added 11-1-05; CBP 12-06)

(6) Cuban asylum seekers at land border ports-of-entry. Natives or citizens of Cuba arriving at land border ports of entry, whose immediate removal from the United States is highly unlikely, should be placed directly into section 240 proceedings in lieu of expedited removal, without lodging additional charges. These aliens may be paroled directly from the port of entry while awaiting removal proceedings if identity is firmly established, all available background checks are conducted, and the alien does not pose any terrorist or criminal threat. Pursuant to section 235(b)(2)(C) of the INA, they may also be returned to contiguous territory pending removal proceedings under section 240 of the INA. This option should only be considered if the alien is not eligible for the exercise of parole discretion, the alien has valid status in Canada or Mexico, Canadian or Mexican border officials are willing to accept the alien back, and the claim of fear of persecution is unrelated to Canada or Mexico.

An officer should not parole a native or citizen of Cuba from a land border port of entry for the sole purpose of allowing the alien to apply for adjustment under the Cuban Adjustment Act of

1966, Pub. L. 89-732, 80 Stat. 1161 (1966), without initiating section 240 proceedings. The Cuban Adjustment Act (CAA) provides that any native or citizen of Cuba who has been admitted or paroled into the United States, and who is otherwise admissible as an immigrant, may adjust status to that of a lawful permanent resident after being physically present in the United States for at least one year. It does not, however, require an officer to parole a native or citizen of Cuba at a port of entry without regard to public safety. Therefore, an officer should grant parole to a native or citizen of Cuba only if the alien does not pose a criminal or terrorist threat to the United States.
(Paragraph (a)(6) added 11-1-05; CBP 12-06)

(b) Preparing a case. The expedited removal proceedings give officers a great deal of authority over removal of aliens and will remain subject to serious scrutiny by the public, advocate groups, and Congress. All officers should be especially careful to exercise objectivity and professionalism when processing aliens under this provision. Because of the sensitivity of the program and the potential consequences of a summary removal, you must take special care to ensure that the basic rights of all aliens are preserved, and that aliens who fear removal from the United States are given every opportunity to express any concerns at any point during the process. This includes conducting interviews in an area that affords sufficient privacy, whenever feasible. Since a removal order under this process is subject to very limited review, you must be absolutely certain that all required procedures have been adhered to and that the alien has understood the proceedings against him or her.

The steps to be taken in the expedited removal proceedings differ somewhat from those in which an alien is referred for a removal hearing before an immigration judge. It is important that a complete, accurate record of removal be created, and that any expedited removal be justifiable and non-arbitrary. The following steps must be taken in each case in which an order of expedited removal is contemplated or entered against an alien:

(1) Use of Form I-867A&B. Clearly explain to the alien, in a language he or she understands, the serious nature and impact of the expedited removal process, as noted on the Form I-867A&B. Officers must use an interpreter, when needed, to assist in the expedited removal process. Refer to Chapter 17.18 for Guidance on the Use of Interpreters and Interpreter Services.

Read the statement of rights and consequences contained on the first page of Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, to the alien. Explain that you will be taking a statement from him or her, and that any information given or discovered will be used in making a decision on the case and may result in his or her prompt removal. Advise the alien that if he or she is found to be inadmissible and a decision is made to order the alien removed, he or she will be immediately removed from the United States. Explain that there is no appeal to this decision and explain that this will be his or her only opportunity to provide any information or state any fear of return or removal that he or she may have.

In every expedited removal case, you must use the Form I-867A&B to take a complete sworn statement from the alien concerning all pertinent facts. If the case did not initially appear to involve inadmissibility and removal under the expedited removal proceedings, and the sworn statement was begun using other forms, you must immediately advise the alien of the rights and

warnings on Form I-867A once you determine that the expedited removal proceedings will apply. The officer shall note either on the Forms I-867A&B or in a memorandum, explaining why those other forms are included.

The sworn statement will be done in question and answer format. Form I-831, Continuation Sheet, or a blank page may be used for the body of the statement. The sworn statement must cover several general areas of inquiry:

· Identity - include true name, aliases, date and place of birth and other biographical data.

· Alienage - determine citizenship, nationality, and residence. Cover any possible claim to U.S. citizenship through parents.

· Inadmissibility - questions should cover the alien's reason for coming to the United States, information about the specific facts of the case and the specific suspected grounds of inadmissibility.

· Fear of persecution or torture - if the alien indicates in any fashion or at any time during the inspections process, that he or she has a fear of persecution, or that he or she has suffered or may suffer torture, you are required to refer the alien to an asylum officer for a credible fear determination. One of the significant differences between expedited removal proceedings and regular removal proceedings is that the inspecting officer has a responsibility to ensure that anyone who indicates a fear of persecution or intent to apply for asylum in the United States is referred to an asylum officer for a credible fear determination. Inspectors should consider verbal as well as non-verbal cues given by the alien. The obligatory questions on the Form I-867B are designed to help in determining whether the alien has such fear. Ask the questions as they appear on the Form I-867B at the end of the sworn statement. If the alien indicates an intention to apply for asylum or a fear of harm or concern about returning home, or makes any such statements or comments at any time during the inspections process, the inspector may ask a few additional follow-up questions to ascertain the general nature of the fear or concern. Any comments of concern made by the applicant must be recorded in the sworn statement, including any indications made by the alien prior to the secondary interview.

Do not ask detailed questions on the nature of the alien's fear of persecution or torture: leave that for the asylum officer. In determining whether to refer the alien, inspectors should not make eligibility determinations or weigh the strength of the claims, nor should they make credibility determinations concerning the alien's statements. The inspector should err on the side of caution, apply the criteria generously, and refer to the asylum officer any questionable cases, including cases that might raise a question about whether the alien faces persecution or torture. Do not make any evaluation as to the merits of such fear; that is the responsibility of the asylum officer. Officers processing aliens for expedited removal may contact the Asylum office point(s) of contact when necessary to obtain guidance on whether to refer questionable cases involving an expression of fear or a potential asylum claim. See paragraph (d) of this chapter for more detailed information regarding credible fear referrals.

· Impact of decision - once you have gathered all the facts, you will decide, in consultation with a supervisor, the best course of action. Depending on the circumstances, you may admit the alien, allow the alien to apply for any applicable waivers, defer the inspection or otherwise parole the alien, permit the alien to withdraw his or her application for admission, issue an expedited removal order, or refer the alien for a credible fear determination. Whatever decision is made, clearly advise the alien of the impact and consequences of the determination and record this in the sworn statement.

You must use the Form I-867B as the final page of the sworn statement and jurat. Be sure to obtain responses from the alien regarding the mandatory closing questions contained on the form. If the alien in any way indicates a fear of removal or return, follow the procedures in paragraph (d) of this section. Collect any additional evidence relevant to the case that is discovered during the inspections process.

After the sworn statement is completed, have the alien read the statement, or have it read to him or her in a language the alien understands. Use an interpreter if necessary. Make any necessary corrections or additions. Have the alien initial each page and each correction. Provide a copy of the completed statement, upon signature, to the alien. Retain a copy for the A file and a copy for the port file, if one is created

If at any time you feel that an amendment to the initial sworn statement is needed, you may complete a second sworn statement during the inspections process. An incident may also take place after you have completed the initial sworn statement, but before the alien is removed from the United States, where a second sworn statement may be helpful. Ask the alien enough questions under oath to address all concerns that may have arisen during the process.

The statement must be signed by the alien and by the officer taking the statement, as well as by a witness. An alien cannot avoid expedited removal by refusing to sign the statement or answer the questions. If the alien will not sign, write "Subject refused to sign" on the signature line. If the alien will not answer any questions, take a skeleton sworn statement, listing all pertinent questions, and writing after each "Subject refused to answer". An expedited removal order may still be issued, provided the removal is otherwise substantiated (e.g., if the alien presented a fraudulent document), and is not dependent solely on the alien's statements.

(2) Form I-860, Notice and Order of Expedited Removal. Prepare three copies of Form I-860. Check the appropriate ground(s) of inadmissibility under which the alien is being charged (e.g. 212(a)(6)(C)(i)), and insert a narrative description of each charge and the violation committed. Read and explain the charges to the alien in the alien's native language or in a language the alien can understand. An interpreter may be required to ensure that the alien understands the allegations and the removal order. Interpreters may not be used if they are employees of the government of the alien's home country, such as an employee of a government-owned airline, except for the most routine questioning. Never use an employee of a foreign government if there is any possibility of sensitive areas (e.g., persecution or torture) being discussed. The alien should be given an opportunity to respond to the charges, and any response must be recorded in either the sworn statement or an addendum to the statement. Expedited removal forms exist in

other languages. If a form in the alien's native language or in a language the alien understands is used, place only the English version in the file and give the translated version to the alien.

After all statements are taken and other paperwork is complete, present it through your chain of command to the appropriate supervisor (not to be delegated below the second-line supervisor) or a person officially acting in that capacity for review and approval. If the appropriate supervisor is not present at the port, the supervisory review and approval may be obtained telephonically, by fax, or by other means. The approving authority must be properly advised of all facts in the case in order to make an informed decision. Print the name and title of the supervisor approving the order, and check the box on the form indicating that concurrence was obtained telephonically or by other means. The Form I-860 must be signed legibly by the preparing officer.

(3) Photographing and fingerprinting. Enroll the alien in the inspection module of ENFORCE/IDENT. Take the alien's photograph and fingerprint the alien on FD-249 fingerprint cards (three sets—see chapter 18.9(c) for distribution), or electronically, if IDENT/IAFIS 10-print fingerprint scanners are available at the port. Be sure to complete the entire form and properly code the fingerprint cards with the proper U.S. Code citation, since the FBI will not clear cards without such codes. Following are examples of codes that may be used:

| | | |
|---|---|---|
| · | 18 U.S.C. 1544 | Photo substitutions |
| · | 18 U.S.C. 1546 | Counterfeit immigrant visa |
| · | 8 U.S.C. 1306 | Counterfeit immigration documents, such as alien registration |
| · | 18 U.S.C. 911 | False claims to U.S. citizenship (imposters, photo substitution of U.S. passport) |
| · | 18 U.S.C. 1001 | Other (fraudulent documents, false statements, imposter, etc.) |

(4) Forensic Document Lab (FDL) analysis. Obtain forensic analysis, if appropriate. In cases involving fraudulent documents, if the sworn statement includes an admission of the fraud, no forensic analysis may be required. For the expedited removal proceedings, actual forensic examination of the document by the FDL may not be feasible. This does not mean that it is permissible to "rush to judgement", or that it is permissible to expeditiously remove an alien based on incomplete evidence. If forensic analysis is required to establish that the alien is inadmissible, such analysis must be obtained before the Form I-860 is executed. If necessary, the alien should be detained until the analysis is performed, and then the Form I-860 can be executed. (On the other hand, if the alien's inadmissibility under section 212(a)(7) has been established, there is little or no reason to delay the expedited removal process in order to also establish the 212(a)(6)(C) charge.) Offices with electronic devices for transmitting quality images should use those technologies whenever possible or necessary. [See Chapter 32 for details on using FDL services and for contributing documents or intelligence information concerning the fraud.]

(5) Tracking of ER cases. Unless an A number already exists for an alien placed into expedited removal, an A number must be assigned to every expedited removal case at the POE in order to ensure proper tracking of the case from the onset.

Codes have been created for entry of expedited removal cases into the Central Index System (CIS). Those codes are:

· ERF Expedited Removal case has been initiated under section 235(b)(1) of the INA and a final decision is pending a credible Fear determination by an asylum officer or immigration judge.

· ERP Expedited Removal case has been initiated under section 235(b)(1) INA and a final decision is Pending for reasons other than referral for credible fear interview before an asylum officer.

· ERR Expedited Removal case has been initiated and alien has been Removed from the United States under that program.

Entry of cases into CIS should be accomplished as quickly as possible in accordance with local policy. To ensure prompt data entry, A files for expedited removal cases should be separated from other files and flagged as expedited removal cases.

Codes have also being created to designate expedited removal cases in the National Automated Immigration Lookout System (NAILS) and the Interagency Border Inspection System (IBIS).

Search for existing records in CIS and other appropriate automated systems. If an A file exists, create a temporary file and request the permanent file. After the file is received, update it with all relevant documents completed or collected during the expedited removal process, and forward it to the proper files control office. If no previous file exists, create a new A file relating to the alien.

(6) Consular notification of alien detention. Consult 8 CFR 236.1(e) to ensure that, if required, the appropriate consular official is immediately notified of the alien's detention, even if the alien requests that this not be done. Notify the alien that he or she may communicate with a consular official. These steps normally will only be necessary when removal of the alien cannot be accomplished immediately and the alien must be placed in detention for longer than 24 hours. When you contact a consular official, never mention any asylum claim which may have been filed, or give any indication that the alien has expressed a fear of persecution or torture.

(7) Criminal prosecution. Aliens arriving at the POEs who are subject to the expedited removal provisions may also be subject to criminal prosecution. If criminal prosecution of the alien is contemplated in addition to expedited removal, the criminal action must be completed before the alien is ordered removed. [See Chapter 18 for procedures for criminal prosecution]. Officers must give the alien his/her Miranda warning and once the warning of rights has been given to the alien, questioning of the alien can only occur with the alien's consent. If the alien refuses to provide a sworn statement, or if the U.S. Attorney's Office prohibits the officer from taking any

sworn statements or completing removal processing prior to the completion of the criminal proceedings, the administrative process must be completed after the alien's criminal proceeding is concluded.

If the alien permits questioning and the U.S. Attorney's Office does not prohibit questioning and processing of the alien, complete the sworn statement and the Form I-860. Do not serve the Form I-860 on the alien, but place it in the A file pending the criminal processing. If the alien is to be turned over to another law enforcement agency, serve a Form I-247, Immigration Detainer - Notice of Action, on the other agency. Once the alien is returned to DHS custody, the Form I-860 may be served and the alien removed under the expedited removal order.

(8) Service of the Form I-860. Serve the original Form I-860 on the alien, unless the alien is to be deferred to an onward office, in which case the service is accomplished by the onward office. If the alien is being prosecuted criminally, the Form I-860 will be served after the criminal conviction. Place a copy of the Form I-860 in the A file. The third copy may be retained at the port.

(9) Form I-296, Notice to Alien Ordered Removed/Departure Verification. Check the appropriate box to indicate the period during which the alien must obtain permission to reenter: 5 years for the first removal; 20 years in the case of a second or subsequent removal; at any time if the alien has been convicted of an aggravated felony (even though the alien is not being charged as an aggravated felon in this proceeding). Do not check the 10-year box; that is for aliens removed under other provisions of the Act. At the time of actual removal, a photograph and a pressed print of the alien's right index finger should be placed on a copy of the Form I-296, the alien should sign the form, and the particulars of the departure should be entered on the form for retention in the file. Serve the alien with a copy of the Form I-296 before removal. The original form should remain in the A file.

(10) Form I-275, Consular Notification. Cancel the alien's visa or border crossing card, if appropriate. Complete and distribute the Form I-275 as described in Chapter 17.2. Check all the boxes that apply, with a brief description of the denial and removal of the alien. Note the passport with the file number and action taken, for example: "Ordered Removed 6/1/04 NYC/Section 212(a)(6)(C)(i)". Forward a copy of the Form I-860 with the Form I-275 to the Department of State.

(11) Form I-94, Arrival/Departure Document. Prepare a new Form I-94. If the alien applied for admission at a land border, annotate the Form I-94 to read: "Form I-860 Removal Order issued pursuant to section 235(b)(1) of the Act. (Date), (Place), (Officer)". If the alien applied for admission at an airport or seaport, use the parole stamp and endorse the I-94 to read: "For removal from the United States by (carrier name). Form I-860 Removal Order issued pursuant to section 235(b)(1) of the Act. (Date), (Place), (Officer)".

(12) Detention. Detain the alien as appropriate. Follow local procedures to obtain detention authorization and arrange for detention. Aliens placed into expedited removal proceedings must be detained until removed from the United States. Parole may be permitted only if there is a medical emergency or if it is necessary for legitimate law enforcement purposes, such as for

criminal prosecution or to testify in court. Refer to Chapter 17.8 for the CBP policy on the detention of aliens at POEs. Aliens subject to expedited removal who claim a fear of persecution or torture must be detained pending a credible fear determination. Once an alien has established a credible fear of persecution or is otherwise referred (as provided by regulation) for a full removal proceeding under section 240, release of the alien may be considered under normal parole criteria. Aliens who make false claims to U.S. citizenship, or unverified claims to lawful permanent resident, asylee, or refugee status, must be detained pending review of the removal order by the immigration judge. Aliens arriving at a land border port-of-entry who do not claim lawful status in the United States or a fear of persecution should normally be processed immediately and either returned to Canada or Mexico or detained until removed.

(13) Credible fear interview referral. See paragraph (d) of this chapter for detailed information on credible fear referrals. Credible fear interviews will normally take place at DHS or contract detention facilities. Each POE and detention facility will be provided with a point or points of contact at the Asylum office having responsibility for that geographical area. It is the responsibility of the referring (Inspections) officer to provide the alien being referred for a credible fear interview with both a Form M-444, Information about Credible Fear Interview, and a list of free legal services, as provided in 8 CFR part 292. It is generally the responsibility of the detention and removal personnel to notify the appropriate Asylum office point of contact when an alien subject to the expedited removal process is being detained in DHS custody pending this interview. That officer should also provide any additional information or concerns of the alien, such as whether the alien requires an interpreter or other special requests and considerations. However, in locations where the credible fear interview requires travel by the asylum officer, the referring officer should notify the Asylum office when referring the alien in order to provide as much advance notice as possible. When aliens are detained in non-DHS facilities or at remote locations, the referring officer must notify the appropriate Asylum office. If the alien is subsequently transferred to another detention site, the detention or deportation officer must ensure that the appropriate Asylum office has been notified.

Normally the credible fear interview will not take place sooner than 48 hours after the alien arrives at the detention facility. If the alien requests that the interview be conducted sooner, the referring officer, or any other officer to whom the alien makes the request, should immediately convey that information to the appropriate Asylum office.

(14) Removal from the United States. Most aliens removed under the expedited removal provisions will be promptly removed; however, some aliens, such as those who claim asylum or LPR status, may be detained pending a decision on their claim. At the land border, ensure the alien's departure to the contiguous foreign territory. At air and seaports, serve the carrier of arrival with the Form I-259, Notice to Detain, Remove, or Present Aliens, and check the appropriate boxes to order the carrier to remove the alien when the removal process is finished. If the case cannot be timely completed, advise the carrier of potential liability.

(15) Database entries. The expedited removal process continues to be the subject of extensive inquiry and requires appropriate tracking of specific case data. Expedited removal cases will normally be processed through ENFORCE. In addition, every case in which an expedited removal order is issued must be entered into the Deportable Alien Control System (DACS) until

that system is replaced with the new ENFORCE removals module. Entry of data for those aliens detained by DHS will be handled by the Detention and Removal personnel responsible for the detention facility. Entry of data for aliens who do not require detention and are removed directly from the POEs is the responsibility of CBP. Cases initiated at the POEs and referred for removal proceedings under section 240 will continue to be entered into DACS by Detention and Removal. Complete appropriate closeouts in TECS/IBIS.

(16) Form G-22.1, Inspections Summary Report. Consult G-23 Report of Field Operations Procedures for reporting guidelines.

(c) Withdrawal of application for admission in lieu of an expedited removal order.
DHS has the discretion to allow an inadmissible alien to voluntarily withdraw his or her application for admission and to depart the United States in accordance with section 235(a)(4) of the INA. This discretion applies to aliens subject to expedited removal, and should be applied carefully and consistently, since an officer's decision to allow withdrawal or issue a removal order is final. Officers should keep in mind that an order of expedited removal carries with it all the penalties of an order of removal issued by an immigration judge (including a bar to reentry of at least 5 years following removal pursuant to section 212(a)(9)(A)(i).

Follow the guidelines contained in Chapter 17.2 to determine whether an alien's withdrawal of an application for admission or asylum claim best serves the interest of justice. An officer's decision to permit withdrawal of an application for admission must be properly documented by means of a Form I-275, Withdrawal of Application for Admission/Consular Notification, to include the facts surrounding the voluntary withdrawal and the withdrawal of the asylum claim. In addition, an officer should prepare a new sworn statement, or an addendum to the original sworn statement on Form I-867A&B, covering the facts pertaining to the alien's withdrawal of the asylum claim.

An alien may not be pressured into withdrawing his or her application for admission or asylum claim under any circumstances. An officer must provide adequate interpretation to ensure that the alien understands the expedited removal process and the effects of withdrawing an application for admission or an asylum claim. Furthermore, an asylum officer must be consulted before an alien who has expressed a fear of return to his or her home country may be permitted to withdraw an asylum claim.

If an officer permits an alien to withdraw his or her application for admission and elects to return the alien to Canada or Mexico, the Form I-275 should indicate the alien's status in Canada or Mexico and the basis for determination of that status. This determination may be based on contacts with Canadian or Mexican authorities, stamps in the alien's passport, or other available documentation. The narrative on Form I-275 should also indicate that the alien has not expressed concern about returning to Canada or Mexico.

If the alien expresses any concern or reluctance about returning to Canada or Mexico and wishes to pursue the asylum claim in the United States, the officer should advise the alien that he or she will be placed in the expedited removal process, unless subject to section 240 proceedings by statute, regulation, or policy, and will be detained pending the credible fear determination. The

alien should not be given the Form I-589, Application for Asylum and for Withholding of Removal, nor should an affirmative asylum interview be scheduled at the port of entry. (Paragraph (c) revised 11-1-05; CBP 12-06)

until an asylum officer has interviewed the alien to determine whether the alien has a credible fear of persecution or torture and warrants a full asylum hearing before an immigration judge.

When questioning or taking a sworn statement from any alien subject to the expedited removal provisions, you need not directly solicit an asylum claim. However, to ensure that an alien who may have a genuine fear of return to his or her country is not summarily ordered removed without the opportunity to express his or her concerns, you should determine, in each case, whether the alien has any concern about being returned to his or her country. Further, you should explore any statement or indications, verbal or non-verbal, that the alien actually may have a fear of persecution or torture or return to his or her country. You must fully advise the alien of the process, as indicated on the Form I-867A, and of the opportunity to express any fears.

Keep in mind that the alien need not use the specific terms “asylum” or “persecution” to qualify for referral to an asylum officer, nor does the fear of return have to relate specifically to one of the five grounds contained within the definition of refugee. The United States is bound by both the Protocol on Refugees and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and, except under extraordinary circumstances, may not return an alien to a country where he or she may face torture or persecution.

The alien may convey a fear of violence or harm, a need for protection, an indication of harm to, or disappearance of, relatives or associates, or dangerous conditions in his or her country. Even disputes of a personal nature sometimes may relate to asylum, such as domestic violence, sexual or child abuse, child custody problems, coercive marriage or family planning practices, or forced female genital mutilation. All officers should recognize that sometimes unusual cases have been found eligible for asylum that may not have initially appeared to relate to the five grounds contained in the definition of refugee, such as AIDS victims who face government persecution, land or money disputes with wealthy persons or persons in power, whistle blowers, witnesses to crimes and even organized crime connections. Harm sufficient for a credible fear referral can include threats, discrimination, desecration of cemeteries or destruction of religious buildings, attempts to prevent the applicant from obtaining work or practicing a profession, imprisonment, attacks by gangs or members of organized crime rings, and destruction of villages or crops, as well as more severe physical violence, such as beatings, rapes, shootings, torture and murders.

Do not make judgement decisions concerning any fear of persecution, torture, or return. Any alien who by any means indicates a fear of persecution or return may not be removed from the United States unless the alien has been interviewed and a credible fear determination been made by an asylum officer. An alien who does not indicate a fear of return but responds to one of the protection-related questions by stating that he or she has applied for refugee or asylum status in the United States or elsewhere in the past, or mentions a relative, friend or associate who has done so (even if such claims are still pending or were denied), should be asked further questions to determine whether or not the alien is expressing a fear of return or an intention to apply for asylum indirectly. If, on more detailed questioning, the alien states that he or she has no fear of

return and no interest in applying for asylum, the case need not be referred for a credible fear interview.

If the alien answers affirmatively to one the protection-related questions or requests asylum, and later changes the answer or asks to be sent home, the officer should consult with the local Asylum office or refer the case. If an attorney, friend, or relative notifies any officer that an individual in the expedited removal process is planning to apply for asylum or has a fear of return, that officer should notify the port of entry. The officer responsible for the case should either consult with an asylum supervisor or refer the alien for a credible fear interview, even if the alien does not express a fear directly. In the expedited removal process, an attorney, friend, or relative who acts as a consultant to the alien need not file a Form G-28.

Any alien who exhibits any non-verbal cues – such as crying, hysteria, trembling, unusual behavior, incoherent or difficult speech patterns – that alert the office to possible fear of harm should be referred. If an officer notices signs of serious physical trauma, such as cuts or bruises that might indicate a beating, the officer should consult an asylum supervisor, or the applicant should be referred. Non-verbal cues should be noted in parentheses or brackets in the sworn statement or memo to file.

Survivors of persecution or torture may appear uncooperative or evasive. Notice behavior associated with the trauma of persecution. People who are survivors of torture or other traumatic experiences may behave in a number of different ways. For example, they might avoid discussing certain events or revealing certain information. They may have difficulty remembering events, show a loss of composure, or display emotional detachment when recalling some events. They also may respond to your questions in unexpected or unpredictable ways. Trauma may make it difficult to respond. For survivors of torture, being questioned by uniformed government officials may trigger painful memories of trauma they experienced during a government or police interrogation in their home countries. Questioning may trigger any one of a range of emotional, psychosomatic, behavioral, or mental symptoms. These symptoms might include detachment, aggressive behavior, or flashbacks. It is important to be aware of these possible reactions. Do not dismiss them automatically as signs of uncooperative behavior.

Some aliens will respond to the question "Why did you leave your home country or country of last residence," by saying either that they were looking or work in the United States or could not find work in their home countries. Such responses normally should not trigger a referral. However, if the alien also answers "yes" to either of the subsequent protection-related questions, even if no additional information is offered, the alien should be referred. In addition, if the alien mentions any discrimination, harassment, or threats that made if difficult to find work or work in the alien's chosen profession, or mentions discrimination, harassment, or threats as the reason he or she quit a job or was fired, the alien should be referred.

Considerations that should NOT affect the officer's decision to refer an alien for a credible fear interview include:

· Credibility: Even if there are glaring inconsistencies in the alien's story or documents, the alien should be referred if he or she expresses a fear. The asylum officer will review the

sworn statement and documents and ask the alien about any inconsistencies and discrepancies. Only an asylum officer can make a credibility determination for purposes of deciding whether the alien has a credible fear of persecution.

· Identity of the persecutor: The alien should be referred even if the harm feared appears to be purely personal, purely criminal, or punishment for a crime the alien may have committed. Some cases involving domestic violence, child abuse, land disputes, gang violence, official arrests and trials and seemingly improbable conspiracies are areas involving sometimes novel legal grounds.

· Size of the group at risk: Aliens should be referred, for example, if they claim that the majority of people in their country are at risk (including cases involving civil strife), or if for example, that they claim that only they or their immediate families are at risk.

· Country of origin: No country should be considered safe – or dangerous- for all residents. However, knowledge of conditions in the alien's home country may help alert an officer to non-verbal cues or confused or vague expressions of fear.

· Whether harm is on account of the alien's race, religion, political opinion, nationality or social group: Officers should not make a determination on whether the harm feared is on account of the alien's race, religion, nationality, membership in a particular social group or political opinion. Asylum law, and particularly the definition of a "social group" is evolving – cases involving domestic violence, spousal abuse, sexual abuse of children, female genital mutilation, coercive family planning practices, organized crime, whistleblowers on government corruption, homosexuality, and AIDS, and other unresolved legal areas should be referred. An alien may also be offered protection from return under Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, when it is more likely than not that the alien would be tortured, even if the motivation for the torture is not on account of the applicant's race, religion, nationality, social group or political opinion.

· Mandatory Bars: The presence of a mandatory bar to asylum should not prevent referral. Referrals should occur even in cases where, for example, the alien appears to be firmly resettled in a third country, transited through a third country, or when there is information that appears to indicate that the alien is a criminal or a danger to national security.

· Stated Preference to Apply for Asylum Elsewhere: If an alien expresses a fear of return, but states that he or she does not want to apply for asylum in the United States because he or she plans to apply for asylum elsewhere, the alien should be referred. Some applicants may not be aware that certain countries will not accept an asylum application from them if they have transited through the United States.

The International Religious Freedom Act of 1998 (IRFA) was passed by Congress out of a growing concern about violations of religious freedom in countries around the world. IRFA requires training for certain government employees on the nature of religious persecution abroad. Violations of religious freedom can include prohibitions on, restrictions of, or punishment for:

· Assembling for peaceful religious activities
· Speaking freely about religious beliefs
· Changing religious beliefs or affiliation
· Possessing and distributing religious literature
· Raising children in the religious practices and teachings of one's choice.

Any of the following acts are violations of religious freedom if committed on account of an individual's religious belief or practice:

- Detention
- Interrogation
- Imposition of onerous financial penalties
- Forced labor
- Forced mass resettlement
- Imprisonment
- Forced religious conversion
- Beating, torture, mutilation, rape, murder, enslavement, and execution

IRFA defines "particularly severe violations of religious freedom" as systematic, ongoing, egregious violations of religious freedom, including violations such as:

- Torture or cruel, inhuman, or degrading treatment or punishment;
- Prolonged detention without charges;
- Causing the disappearance of persons by the abduction or clandestine detention of those persons; or
- Other flagrant denial of the right to a person's life, liberty, or security.

Applicants who are questioned by officers in expedited removal proceedings may not understand that religious persecution is an issue they should reveal in their interview. Sometimes an applicant will not indicate any past incidents of religious persecution, but you might become aware of it incidentally. Perhaps you learn that the applicant is a Jehovah's Witness and realize he or she is from a country in which Jehovah's Witnesses are persecuted.

You might also come across customs and behavior that are new to you, for example, the wearing of scarves for religious reasons. In talking with that person, you might learn that there is a fear of return, but the person did not realize that religion was a protected ground for asylum at the time of inspection. Therefore, it is important to adhere to the procedural safeguards built into the expedited removal process.

IRFA requires that the State Department annually publish a report on the condition of religious freedom in the world. Specifically, the report describes the status of religious freedom in every foreign country. It also cites any violations of religious freedom or trends toward improvement or deterioration in the respect and protection of religious freedom. There is an Executive Summary at the beginning of the report, which highlights the report's findings. Each Asylum Office has bound copies of the report for reference. The report is also posted every year on the State Department's web site.

IRFA does not change the legal standard for determining refugee or asylum eligibility. It also does not give preference to religious persecution. It does require refugee and asylum officers to receive specialized training concerning religious persecution. When religious issues are involved, adjudicators must become informed about conditions in the applicant's home country by referring to the annual report on religious freedom published by the Department of State.

However, a claim cannot be denied solely because an officer cannot find information in the report. As with every case, officers should consult a variety of current and reliable sources for an accurate representation of country conditions. In certain unconventional cases, determining whether an applicant's unique set of beliefs is a religion may require careful consideration and research, and when appropriate, consultation with proper DHS personnel.

While IRFA mandates that certain new processes be implemented, it does not change the basic job requirements.

· IRFA does not authorize individuals housed in DHS facilities to do anything they wish under the guise of religious practice.
· IRFA does not require officers to determine what a religion is or what constitutes religious persecution.
· And while IRFA emphasizes issues of religious persecution, it does not imply that other types of persecution are any less important.

All officers must disregard their own religious convictions and beliefs evaluating an asylum or refugee claim. For example, you may be a Muslim officer interviewing a non-Muslim asylum applicant who claims to be persecuted by Muslims on account of his religion. Upon hearing such claims, you may be surprised, offended, disbelieving, or have other adverse personal reactions because of your own religious convictions and opinions. While it may be difficult, you must evaluate such claims objectively and without personal bias.

If the alien indicates an intention to apply for asylum or asserts a fear of persecution or torture, and is being referred for a credible fear interview with an asylum officer:

(1) Create an A file, if one does not already exist.

(2) Fully process the alien as an expedited removal case. Establishing inadmissibility cannot be left to the asylum officer. Record a description of the particulars of the interview and the alien's initial claim to asylum or fear of return by means of a sworn statement using Form I-867A&B. Follow the instructions in paragraph (b)(1) above to ensure that the alien understands the proceedings. Although you should not pursue the asylum claim in detail, enough information should be obtained to inform the asylum officer of the alien's initial claim to asylum or fear of persecution or return. If the alien answers the closing questions on Form I-867B in the affirmative, several other questions may be necessary to determine the general nature of the fear or concern.

(3) Complete the Determination of Inadmissibility portion of the Form I-860, including sufficient information to support the charges of inadmissibility should the asylum officer find that alien does not have a credible fear of persecution. Sign only the Determination portion of the form. The removal part of the order will be signed by the asylum officer only after it is determined that the alien does not have a credible fear of persecution. Refer also to Chapter 43.3 for documenting any potential fines issues.

(4) Advise the alien of the purpose of the referral and that the alien may consult with a person or persons of his or her choosing, at no expense to the government and without delaying the process, prior to the interview. The Form M-444, Information about Credible Fear Interview, must be given to the alien and explained in a language the alien understands. The alien should sign two copies, acknowledging receipt of the information. One copy should be placed in the A file, and the other retained by the alien. Give the alien a current list of organizations and programs prescribed in 8 CFR 292 which provides free legal services.

(5) Arrange for detention of the alien according to local procedures. Although it is normally the responsibility of the detention and removal personnel officer to notify the Asylum office, in some circumstances, you must advise the appropriate Asylum office that an alien being detained requires a credible fear interview. The Asylum office should also be advised whether the alien requires an interpreter and of any other special considerations. It may be helpful for the officer to provide the asylum officer with information on the alien's gender, the language(s) the alien speaks, whether the alien is traveling with a spouse or children, and any special medical needs or unusual behavior. Forward the A file to the location where the credible fear interview will take place. Prepare Form I-259 and serve it on the affected carrier. Complete Form I-94 for NIIS entry notated "Detained at _____ pending credible fear interview pursuant to section 235(b)(1)(B) of the Act. (Date), (Place), (Officer)".

An asylum officer will conduct an interview to determine if the alien has a credible fear of persecution, either at the detention facility or at a location arranged through the Asylum office having jurisdiction over the place of apprehension, depending on location. If the alien is determined to have a credible fear of persecution or torture, the asylum officer will refer the alien before an immigration judge for full consideration of the asylum and withholding of removal claim in proceedings under section 240 of the Act. If the alien is found not to have a credible fear of persecution or torture, following review by a supervisory asylum officer, the asylum officer will order the alien removed pursuant to section 235(b)(1), unless the alien requests that the determination of no credible fear be reviewed by an immigration judge. If the alien makes such a request, the asylum officer will use Form I-863, Notice of Referral to Immigration Judge, checking box #1, to refer the alien to the immigration judge for review of the credible fear determination. If the immigration judge determines that the alien does not have a credible fear of persecution, DHS will present the alien for removal to the carrier on which he or she arrived. There may be some situations where the actual carrier of arrival and port of embarkation cannot be ascertained. Such cases may require additional processing, including detention, in order to arrange for travel documents and transportation at government expense (User Fee).

If an alien claims a fear or concern about possible harm, and later asks to be sent home, the officer should review the sworn statement carefully with the alien to determine if there was a misunderstanding. If there was no misunderstanding, the officer should prepare a second Form I-867A&B and note that the alien has changed his or her mind. The officer must consult with an asylum supervisor before executing the decision. If the asylum supervisor concurs that it is appropriate to remove the applicant without a credible fear interview, the name of the supervisor, and the date and time of concurrence should be noted in the A file. Both the original and final Form I-867A&B must remain in the file.

If the alien maintains throughout the sworn statement that he or she has no fear of return and later claims a fear or a desire to apply for asylum, the applicant should be referred for a credible fear interview. The officer should reinterview the alien and complete an addendum to the statement, re-asking the fear questions. The officer should void the original Form I-860 and complete an new Determination of Inadmissibility. The Form I-296 should be voided if the verification of removal section has already been completed, and the officer should complete a memo to file, explaining the circumstances of the case.

(e) Claim to lawful permanent resident, asylee, or refugee status, or U.S. citizenship.

(1) An expedited removal case involving an alien who claims to be a U.S. citizen, to have been lawfully admitted for permanent residence, to have been admitted as a refugee under section 207, or to have been granted asylum under section 208, should be handled very cautiously to ensure that the rights of the individual are fully protected. The expedited removal authority provided by IIRIRA is a powerful tool and there are grave consequences involved in incorrectly processing a bona fide citizen, LPR, refugee or asylee for removal. You should be extremely aware of those consequences when you are using this tool. Although the statute and regulations provide certain procedural protections to minimize the risk of such consequences, you should never process a case for expedited removal which you would not feel satisfied processing for a hearing before an immigration judge.

If the alien falsely (or apparently falsely) claims to be a U.S. citizen, LPR, refugee, or asylee, and is not in possession of documents to prove the claim, make every effort to verify the alien's claim prior to proceeding with the case. This can be accomplished through a thorough check of the data systems, manual request to the Records Division, careful questioning of the alien, or prudent examination of documents presented. Use whatever means at your disposal to verify or refute a claim to U.S. citizenship, including verification of birth records with state authorities, etc.

(2) Verifiable claim. When inspecting an alien whose claim to LPR status has been verified, determine whether the alien is considered to be making an application for admission within the meaning of section 101(a)(13)(C). [See discussion in Chapter 13.4.] Although the LPR may not be considered to be seeking admission, he or she is nonetheless required to present proper documents to establish his or her status as an LPR. If the claim is verified and the alien appears to be admissible except for lack of the required documents, consider a waiver under section 211(b) for an LPR. When inspecting an alien who had previously been admitted as a refugee or granted asylum status and who had departed the United States without having applied for a refugee travel document, consider accepting an application for a refugee travel document in accordance with 8 CFR 223.2(b)(2)(ii) for a refugee or asylee. Refer to Chapters 13.2 and 17.5 for a discussion of this and other options for admitting returning residents.

If the claim is verified, but a waiver is not available or is not clearly warranted, such as when fraud was committed in obtaining status or upon entry, or in cases where the alien appears to have abandoned his or her residence, you may initiate removal proceedings under section 240 of the Act. Procedures for preparing for removal hearings and processing inadmissible LPRs are discussed in Chapters 17.6 and 17.10. Although the charging document, Form I-862, Notice to

Appear, is the same for both inadmissible and deportable aliens, immigration officers performing inspections at a POE are authorized to issue a Notice to Appear only to arriving aliens, as defined in 8 CFR 1.1(q). If an LPR is not considered to be seeking admission, he or she is not an arriving alien. If a Notice to Appear is to be issued charging the returning resident as a deportable alien, the Notice to Appear must be issued by one of the authorizing officers listed in 8 CFR 239.1, including port directors.

(3) Unverifiable Claim. If no record of the alien's lawful admission for permanent residence, grant of refugee status, admission as an asylee, or citizenship can be found after a reasonably diligent search, advise the alien that you are placing him or her under oath, or take a declaration as permitted in 28 U.S.C. 1746, and warn the alien of the penalties for perjury. Section 1746 of the Title 28 U.S. Code reads as follows:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him as true under penalty of perjury, and dated, in substantially the following form:

· If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

· If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

The penalties for perjury contained in 18 U.S.C. 1621 (perjury generally) provide for fine and imprisonment of not more than 5 years, or both. The penalties for perjury contained in 18 U.S.C. 1546 (fraud and misuse of visas, permits, and other documents) provide for fine and imprisonment of not more than 10 years, or both.

If the alien declares under oath, pursuant to the advice above, that he or she is a citizen, LPR, refugee, or asylee, order the alien removed under section 235(b)(1)(A) and refer to the immigration judge for review of the order. Complete Form I-860 after completing all procedures in this chapter. Serve the Form I-860 on the alien. Serve Form I-259 on the affected carrier, if appropriate. Use Form I-863, checking Box #4, to refer the removal order to the immigration judge for review. The alien should be detained pending review of the order by the immigration judge. In the event an alien who has made a verbal claim to citizenship or to LPR, refugee, or asylee status declines to make a sworn statement, conclude the expedited removal process in the same manner as any other nonimmigrant in the same situation.

If the immigration judge determines that the individual is not a citizen or is an alien who has never been admitted as an LPR, refugee, or asylee, the expedited removal order will be affirmed and the alien removed. There is no appeal from the decision of the immigration judge. If the judge determines that the individual is a citizen, the process is terminated and the citizen is released. If the judge determines that the alien was once admitted as an LPR, refugee, or asylee, and that status has not been terminated, the judge will vacate the expedited removal order and the government may initiate removal proceedings under section 240.

(f) Special Treatment of Unaccompanied minors. When a minor (a person under the age of eighteen) who is unaccompanied and appears to be inadmissible under section 212(a)(6)(C) or (7) of the Act, officers should first try to resolve the case under existing guidelines. Existing guidelines permit granting a waiver, deferring the inspection, or employing other discretionary means, if applicable, including withdrawal of an application for admission.

(1) Withdrawal of application for admission by minors. Whenever appropriate, officers should permit unaccompanied minors to withdraw their application for admission rather than placing them in formal removal proceedings. In deciding whether to permit an unaccompanied minor to withdraw his or her application for admission, every precaution should be taken to ensure the minor's safety and well-being. Factors to be considered include the seriousness of the offense in seeking admission, previous findings of inadmissibility against the minor, and any intent by the minor to knowingly violate the law.

Before permitting a minor to withdraw his or her application for admission, the officer must be satisfied either that the minor is capable of understanding the withdrawal process, or that a responsible adult (relative, guardian, or in cases where a relative or guardian is not available, a consular officer) is aware of the actions taken and the minor's impending return. Officers must attempt to contact a relative or guardian either in the United States or in another country regarding the minor's inadmissibility whenever possible. A minor brought to the United States by a smuggler is to be considered an unaccompanied minor, unless the smuggler is an adult relative (parent, brother, sister, aunt, uncle, or grandparent) or legal guardian. If the smuggler is not a relative or guardian, he or she should not be consulted concerning the disposition of the minor's case.

The true nationality of the minor must be ascertained before permitting the minor to withdraw. Another factor to consider is whether the port of embarkation to which the minor will be returned is the country of citizenship of the minor. A minor may not be returned to or be required to transit through a country which may not be willing or obligated to accept him or her. If the minor is being returned to a third country through a transit point, officers must ensure that an immediate and continuous transit will be permitted.

When deciding whether to permit the minor to withdraw his or her application for admission, officers must also make every effort to determine whether the minor has a fear of persecution or return to his or her country. If the minor indicates a fear of persecution or intention to apply for asylum, or if there is any doubt, especially in the case of countries with known human rights abuses or where turmoil exists, the minor should be placed in removal proceedings under section 240 of the Act. If there is no possibility of a fear of persecution or return and the INS permits the

minor to withdraw his or her application for admission, the consular or diplomatic officials of the country to which the minor is being returned must be notified. Safe passage can then be arranged, and after all notifications to family members and government officials have been made, the minor may be permitted to withdraw.

(2) Minors referred for section 240 proceedings. Except as noted below, if a decision is made to pursue formal removal charges against the unaccompanied minor, the minor will normally be placed in removal proceedings under section 240 of the Act rather than expedited removal. The unaccompanied minor will be charged under both section 212(a)(7)(A)(i)(I) of the Act as an alien not in possession of proper entry documents and section 212(a)(4) of the Act as an alien likely to become a public charge. This additional charge renders the minor subject to removal proceedings under section 240 of the Act. Other charges may also be lodged, as appropriate. As a general rule, minors should not be charged with section 212(a)(6)(C) of the Act, unless circumstances indicate that the alien clearly understood that he or she was committing fraud or that the minor is knowingly involved in criminal activity relating to fraud.

Minors who are placed in section 240 proceedings and who are not in expedited removal may either be released in accordance with the parole provisions, or placed in a DHS-approved juvenile facility, shelter, or foster care in accordance with existing juvenile detention policies and the Flores v. Reno settlement. At all stages of the inspections and removal process, officers should take every precaution to ensure that the minor's rights are protected and that he or she is treated with respect and concern. [See Appendix 17-4, policy memorandum discussing the Flores settlement.]

(3) Expedited removal of minors. Under limited circumstances, an unaccompanied minor may be placed in expedited removal proceedings. The minor may be removed under the expedited removal provisions only if the minor:

· has, in the presence of a DHS officer, engaged in criminal activity that would qualify as an aggravated felony if committed by an adult; or

· has been convicted or adjudicated delinquent of an aggravated felony within the United States or another country, and the inspecting officer has confirmation of that order; or

· has previously been formally removed, excluded, or deported from the United States.

If an unaccompanied minor is placed in expedited removal proceedings, the removal order must be reviewed and approved by the director of field operations, or person officially acting in that capacity, before the minor is removed from the United States. This is in addition to the normal supervisory approval required of all expedited removal cases.

(4) Treatment of Minors during Processing. Officers should treat all minors with dignity and sensitivity to their age and vulnerability. Processing of minors should be accomplished as quickly as possible. Like all persons being detained at POEs, officers must provide the minors access to toilets, sinks, drinking water, food, and medical assistance if needed. Minors may not be placed in short-term hold rooms, nor may they be restrained, unless they have shown or

threatened violent behavior, they have a history of criminal activity, or there is a likelihood the juvenile may attempt to escape. Unaccompanied minors should not be held with unrelated adults. Any detention following processing at the POE must be in accordance with the Flores v. Reno settlement.

(Paragraph (f) added 8/21/97; IN97-05)

(g) Minors accompanied by relatives or guardians. If formal proceedings are initiated against an accompanying adult relative or legal guardian, the minor should be placed in the same type of proceeding (i.e. expedited removal or 240 proceedings) as the adult. However, withdrawal of application for admission by the minor should be considered whenever appropriate, even though the relative or guardian may remain subject to formal removal proceedings.

(h) United Nations High Commissioner for Refugees monitoring guidelines. The United States has signed various international agreements accepting an obligation to protect refugees and asylum-seekers from return to persecution or torture, and to follow certain international standards in processing those needing protection. The organization that monitors compliance with these agreements and provides guidance on their implementation is the United Nations High Commissioner for Refugees (UNHCR). As such, the United States has a responsibility to cooperate with UNHCR's requests for access to processes involving those needing protection. Therefore, DHS believes it is appropriate for the UNHCR to observe, to the extent within the resources available to the UNHCR, the expedited removal process to make a fair and impartial assessment of the process.

For these reasons, full cooperation with visiting UNHCR delegations is essential. Below are general guidelines and procedures to follow regarding a visit from the UNHCR. While the guidelines concentrate on the limits of the UNHCR's access and potential problem areas, in our experience the UNHCR has approached site visits professionally and responsibly, providing us with positive comments and useful feedback, and problems are unlikely to arise during its site visits.

(1) UNHCR requests. The UNHCR has agreed to make all requests to observe the expedited removal process at POEs or the credible fear interview at detention facilities in writing to the Office of Field Operations. If any field office receives a request for access to the expedited removal process from a representative of the UNHCR, the field office should advise the representative to make the request to the Office of Field Operations.

Written requests from UNHCR to conduct a site visit must be received a minimum of two weeks in advance. CBP will consider written requests submitted less than two weeks in advance for only exceptional circumstances. The request will include the purpose and site(s) of the visit, the duration of the visit, the complete list of names of the UNHCR staff on the delegation, the title and official responsibilities of everyone on the delegation, the information about the person leading the delegation, and any special needs or requests. The Office of Field Operations will evaluate the request in consultation with the field and make a decision as quickly as possible.

Should there be a need to clarify or confirm the identities of visiting team members, local CBP staff will call the Office of Field Operations.

(2) Scope of UNHCR's access to secondary inspection processing. The UNHCR has agreed to maintain the confidentiality of any information to which it has access such as training materials and procedures manuals. Therefore, it can be given full access to tour the primary and secondary inspection areas, holding cells, food storage facilities, and other areas related to processing of expedited removal cases. While at the port, UNHCR representatives should be accompanied by a CBP officer, unless CBP has arranged for the representatives to talk confidentially with an alien. For safety reasons, the representatives will not be allowed to participate or be used as witnesses in baggage and personal effects search or body-pat-down search. Viewing of the baggage search may be allowed if there is no safety concern or threat to the representatives. The representatives should not be given access to computer databases or programs containing sensitive law enforcement information, but may be given a demonstration of certain programs in relation to the expedited removal process. The representatives may ask questions about the process, so long as their movements and the timing of their questions do not impede the processing of cases.

The port will designate a supervisor on the shift to whom the UNHCR team may direct questions about the processing. As time permits, the supervisor may arrange for the representatives to talk directly with line officers. During a secondary inspection, when possible, the representatives should be allowed to view the secondary inspection from an area (seated or standing) that would enable them to hear and see all participants.

The port will designate one or more secondary and primary officers on the shift to whom the UNHCR representatives may direct questions. Designation of these officers should be initially on a voluntary basis.

(3) Interactions between UNHCR and aliens in secondary inspection. If UNHCR representatives ask to sit in on interviews of either specific aliens or a random sample of aliens in secondary, the CBP officer should explain to the alien that the UNHCR representatives do not work for the U.S. Government, but work for the United Nations, and have asked to observe some interviews to understand the U.S. process. No more than two representatives may be present during the interview, and business cards will be provided to the alien after the interview is completed. The officer should explain that it is the alien's decision whether the UNHCR representatives are allowed to observe the interview or not, and that CBP will ask the same questions and follow the same procedures either way. If the alien does not want the UNHCR representatives to sit in on the interview, his or her wish should be respected. If the applicant requests to talk briefly and confidentially with the UNHCR representatives, he or she may do so after the officer finishes the secondary interview and process.

If the alien indicates that he or she does not want the presence of the representatives, and the representatives appear to be questioning that decision, a supervisor should be notified immediately and should support the alien's decision to be interviewed without UNHCR observers with no further discussion. The CBP supervisor will provide an explanation to the UNHCR delegation lead official that the interview will not continue with their participation. Additionally, the supervisor reserves the right to terminate the entire site visit, any part of an

interview, or a particular portion of the site visit. A reason must be provided to the lead UNHCR official at the time of the termination. Prior to a decision to terminate the entire site visit, the supervisor must immediately advise the Headquarters Field Operations point-of-contact through appropriate channels. The alien's agreement or refusal to have a UNHCR presence at the interview should not be factored into the officer's decision to refer a case for a credible fear interview.

If an alien agrees to be interviewed with the UNHCR representatives present, the UNHCR representatives may observe the interview, and will be given a few minutes at the end of the interview to communicate directly with the applicant. In general, the UNHCR representatives should not ask questions or make comments during the interview. The CBP officer may, however, at his or her discretion, allow the representatives to make a comment or ask a question if the officer believes that it is facilitating the progress of the interview. Any interruptions of the interview will be recorded in the sworn statement.

CBP is not responsible for interpreting the interview verbatim or locating an interpreter to provide a verbatim interpretation in such circumstances. If the CBP officer and the alien are communicating in a language other than English without the assistance of an interpreter, and the representatives do not understand the language, the officer should explain what is being stated or asked.

When the interview is concluded, the UNHCR representatives should be invited to communicate briefly with the applicant. Any questions or statements asked by the representatives or the applicant, and any responses, will be recorded in the sworn statement.

If the UNHCR team or the alien requests a brief private discussion, the request should be accommodated within the constraints of the facility. Normally the issues aliens bring up with the UNHCR are the same like those they bring up during secondary inspections, e.g.: when can they call a relative, how long does the process take, and so forth. This request should be noted on the sworn statement. Generally, the meeting should take place out of hearing, but not out of sight, of CBP staff. If the UNHCR team requires translation and is not able to locate its own telephonic interpreter quickly, an interpreter should be provided when feasible. The local Asylum office will have been notified that the UNHCR is conducting a site visit and can cover the cost of interpretation using a commercial interpreter service if necessary. However, if an interpreter cannot be located quickly and there are time constraints (such as finishing in time to put an applicant on a scheduled plane), the officer should consult with his or her supervisor to decide whether there are compelling reasons for delaying the process to provide the representatives time to obtain an interpreter.

If the UNHCR team reports back to the CBP officer, after a private conference, that the alien alleged abusive treatment, either by CBP, an airline employee, or a smuggler, a supervisor should be notified immediately and the alien should be asked further questions in the representatives' presence. If the UNHCR team indicates that the alien has expressed a fear during the private conference which was not expressed during the interview with the CBP officer, the officer should ask the alien, in the representatives' presence, whether the alien is afraid of or concerned about return and would like to discuss his or her situation privately with

an asylum officer. The alien's answer to the above questions should be recorded in the sworn statement or in a memo to file.

If the alien appears unwilling to discuss the alleged claim of fear with the CBP officer, states that the UNHCR representatives misunderstood, or does not want to be detained for a credible fear interview, the officer should call the local Asylum office for guidance on whether to refer the alien for a credible fear interview.

(4) Follow-up. If serious problems or misunderstandings arise during the UNHCR site visit, a CBP supervisor should immediately contact the Headquarters Field Operations representative who set up the meeting. After the UNHCR visit is completed, the field office will provide the Office of Field Operations feedback on how the visit went and alert it to any issues which the UNHCR representative(s) might raise.

(Added IN 00-22.)

(h) Non-governmental organizations secondary inspection access guidelines.
Since the implementation of expedited removal, many non-governmental organizations (NGOs) have requested access to observe and monitor this process at POEs. It is the DHS policy to promote a fair and open process by granting such requests for access to the extent that the visits do not compromise fundamental law enforcement interests and confidentiality as well as privacy rights. The aim of this policy is to achieve a reasonable balance between providing access to government information and protecting fundamental law enforcement obligations and the individual interests of arriving aliens. The following guidelines provide the procedures and practices to be followed by field offices and POEs receiving requests for visits or tours of CBP inspection facilities and operations by NGOs. An NGO may be generally defined as a group of individuals outside of the public and for-profit sectors, usually established to serve the interests of their communities, of a particular target group, or the common good. This definition should be interpreted broadly, and may include local and international organizations, business and professional associations, chambers of commerce, and policy development and research institutes. It is not intended to include the media or persons or organizations whose intent is to provide legal representation to individuals during secondary inspection processing at the time of their visit.

(1) Requests for visits.

· Any request to visit an inspection facility or observe secondary immigration inspection processing must be made in writing to the director of field operations having jurisdiction over the POE to be visited. The request must be made sufficiently in advance of the proposed visit, normally at least two weeks, to allow coordination with all affected parties, including facility operators and other agencies as appropriate. Special tours by visiting dignitaries or other special interest groups may be arranged at the discretion of the director of field operations, or at the request of headquarters offices.

· The request will include the proposed purpose and site(s) of the visit, the duration of the visit, the full names of the organization and the proposed visitors, whether they will have any special needs or requests, and point of contact. The field office receiving the request, in consultation with the site to be visited, will make a prompt decision and notify the interested party either in writing or telephonically of that decision. Whenever possible, visitors should be provided with a copy of these guidelines prior to their arrival at the POE.

· The size of the group and the number and duration of visits permitted are to be determined by the director of field operations, based on operational and resource considerations. If the director of field operations, port director, or other official determines that the visit will have an adverse effect on port operations, staffing resources, or the confidentiality or integrity of the inspection process, the request may be denied, the visit postponed, or the terms of the visit limited in a way appropriate to the potential adverse effects. If the director of field operations feels that an excessive number of requests would have an adverse impact on operations, he or she may ask the NGOs to consolidate their requests for visits. The director of field operations may also deny, limit, or terminate a visit based on particular law enforcement or security concerns, but should not deny such requests as a routine matter.

· If the director of field operations denies the request, the requesting party will be notified, in writing, of the specific reasons for the denial.

· The field office will retain a record of all POE visit requests. The record will include, at a minimum, the number of requests made, the disposition of each request, the name of the organization and the number of participants in each visit, and the date on which each visit occurred. Field offices may include comments on significant incidents, impact on operations, or other relevant information.

(2) Scope of access.

· Visitors will be escorted through the facility at all times. They may be present only in parts of the inspection area that are authorized by the official escorting them. For safety concerns, they will not be allowed to participate in baggage searches or be used as witnesses in baggage or body searches. They may be permitted to view a baggage search, with the consent of the alien, unless the officer determines there may be a safety concern or threat.

· Visitors may be permitted to observe the overall immigration inspections process, both primary and secondary, in such a way that it does not interfere with port operations. The port director may designate a supervisor or officer to whom the visitor may direct questions about the processing. As time and circumstances permit, the port official may arrange for visitors to talk directly to officers.

· Visitors may observe individual immigration secondary inspections of applicants for admission only with the consent of the applicant and the port officials. The port official will explain to the alien who the visitor is and what he or she wishes to observe. The alien's consent must be entirely voluntary, and should be noted in the sworn statement, if taken, or otherwise in the file. Visitors may not interfere with or interrupt the inspection or question applicants for

admission. They may ask the inspector questions about the case being processed only when the alien is not present. Inspectors must not divulge any information about any secondary case that may compromise law enforcement confidentiality or the privacy of any alien. Visitors may not speak confidentially to an alien during the inspection process or while the alien is in CBP custody at the POE.

· CBP is not responsible for interpreting the interview verbatim for visitors or locating an interpreter to provide a verbatim interpretation in cases where the CBP officer and the alien are communicating without the assistance of an interpreter in a language other than English.

· Visitors may not have access to computer databases or programs containing sensitive law enforcement nature of the information, but may be given a demonstration of programs that are not law enforcement sensitive. They may not observe video display monitor outputs of systems data on screen or in print relating to specific applicants for admission.

· Visitors may not film, photograph, videotape, or audiotape POE operations, inspectors, or applicants for admission.

· CBP reserves the right to terminate the entire site visit, a particular portion of the site visit, or access to any part of an interview, if it determines that the visit has become disruptive to port operations or may in any way compromise the integrity of the inspection process. For safety reasons, port officials may remove visitors from the inspection area or terminate the visit if any visitor or applicant for admission becomes unruly or violent, or if any other safety hazard becomes apparent.

· Any violations of this policy by visitors to POEs will be documented in writing, and any significant incidents or interruptions will be reported to Headquarters Office of Field Operations through the chain of command.

# Expedited Removal Training

Developed by the Office of the Principal Legal Advisor

November 2007

U.S. Immigration and Customs Enforcement

(b)(6), (b)(7)(c)

# Introduction

- This short presentation will introduce the law, policy and procedures associated with Expedited Removal (ER).
- It is imperative that ICE officers approach ER carefully, bearing in mind the numerous exceptions to its application. ER is a discretionary practice and thus there is no policy requiring the officer to forego standard removal proceedings in place of ER.
- Any questions or concerns about ER should be brought immediately to the attention of local chief counsel or ICE OPLA headquarters.

# What is Expedited Removal?

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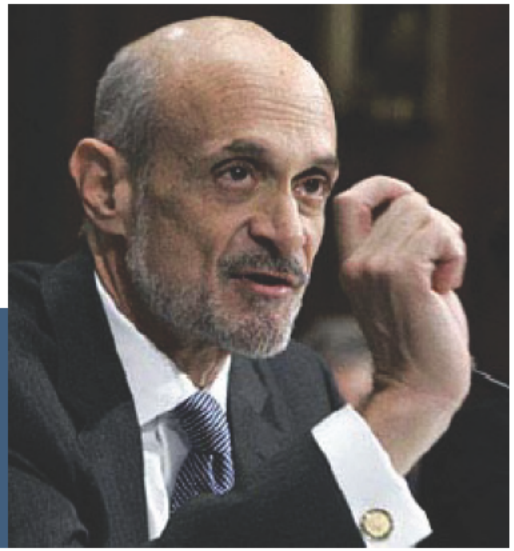
*Homeland Security Secretary*

*Michael Chertoff*

*September 14, 2005*



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# Current policy behind ER

# Benefits of ER

Expanded use of ER gives ICE a valuable tool to meet the DHS mission and will free-up resources that can be used to:

- enhance our ability to oversee the borders;
- focus on threats to public safety and national security;
- reduce injury/death of aliens attempting to enter U.S.;
- decrease property crimes in border areas.

# Understanding ER

- Expedited removal procedures provide that an alien applying for admission to the United States, whether at a port of entry or not, without a valid, unexpired entry document or with fraudulent documents can be removed expeditiously.

# Course Road Map

- This course will take students through the intricacies of identifying the proper cases for expedited removal, processing such removals, and understanding the limits of the law.

- Segment 1: The law and policy behind ER
- Segment 2: Proper application of ER in the field
- Segment 3: Key exceptions to the use of ER
- Segment 4: Processing Aliens for ER
- Segment 5: Case studies

Segment 1

# The Law & Policy of Expedited Removal

Law & Policy

# Legal Background


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# Who is an alien applying for admission?

- Expedited removal only applies to "applicants for admission". INA § 235(a)(1). Any alien that is present in the U.S. and has not been admitted is considered an applicant for admission for purposes of ER. "Applicants for admission" are broadly interpreted to include:
  - An alien seeking admission at a port of entry;
  - An alien being brought into the U.S. by any means regardless of presence at a POE;
  - An alien paroled into the U.S. under INA § 212(d)(5), which allows the Secretary of DHS to parole aliens for humanitarian or significant public benefit reasons;
    - Note that this final category excludes aliens granted parole prior to April 1, 1997 as well as aliens granted "advance parole" obtained in the U.S. prior to a trip abroad. 63 Fed. Reg. 19382 (Apr. 20, 1998).

*Cont…*

# Who is an applicant for admission?

*…cont.*

- An alien that arrives by sea other than through a POE and that have been physically present in the U.S. for less than two years (67 Fed. Reg. 68924 (Nov. 13, 2002));
- An alien that is encountered by an immigration officer within 100 miles of a land border and that has not been admitted or paroled nor present for at least fourteen days (69 Fed. Reg. 48877, 48880 (Aug. 11, 2004)). Note that as a matter of DHS policy, this last category is only applicable to Mexican or Canadian immigrants with criminal records or prior immigration violations and third-country nationals (not from Mexico or Canada).

# Interior ER Legal Note

- Once an alien, legal or illegal, admitted or not, is in the U.S., certain Constitutional protections begin to apply. (b)(5)

(b)(5)

- (b)(5)

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# What gives you the authority?

INA § 235(b)(1):

If an Immigration determines that an alien arriving in the U.S. is inadmissible under:

- § 212(a)(6)(C) or
- § 212(a)(7)

the officer will order the alien removed without further hearing or review, unless the alien indicates an intention to apply for asylum, or expresses a fear of persecution, a fear of torture, or a fear of return to his or her country.

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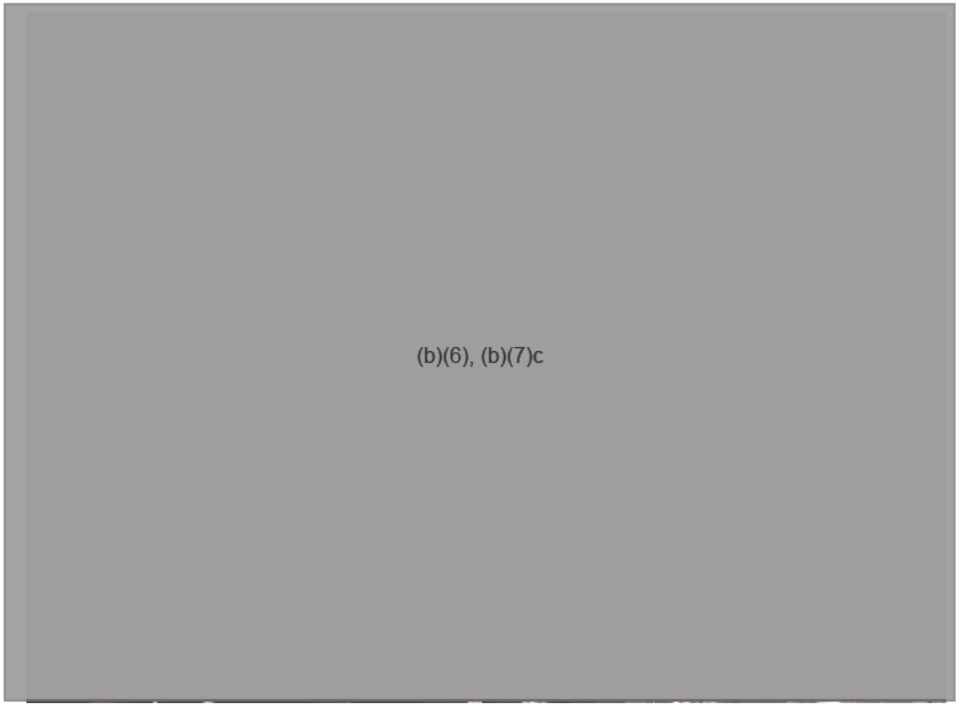
# Section235(b)(1)(A)(iii)(II)




Allows application of ER to certain aliens who enter the U.S. without being admitted at a port of entry.

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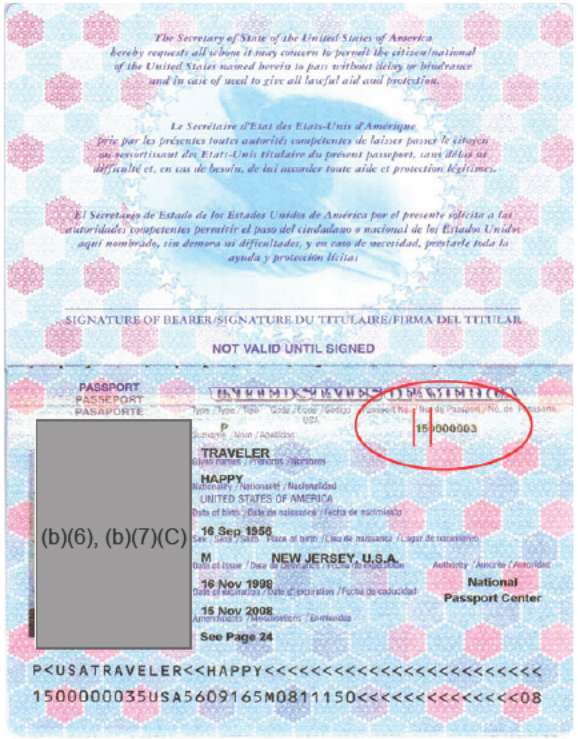


Applies to aliens that:

Use fraud or willful misrepresentation of a material fact to procure a visa, other documentation, or admission into the U.S. or other benefit provided under the Act, or

Make a false claim to U.S. citizenship for any purpose or benefit under the INA or any other federal or state law

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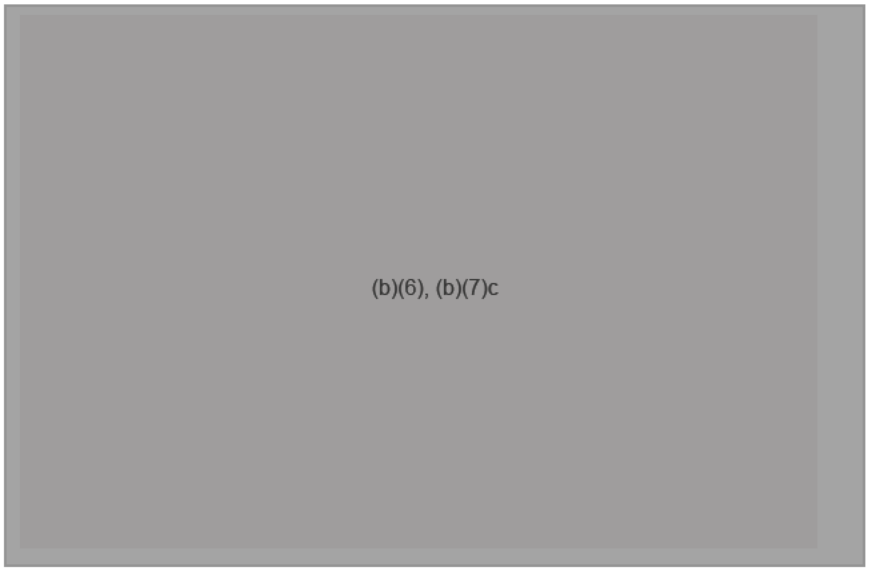


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Segment 2

# Proper Application of ER in the Field

# Understanding ER

- Now expanded to include aliens found within 100 miles of the border within 14 days of illegal entry.
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Step 1 :

Will we seek a formal removal of the individual in question?

If **yes:** proceed to Step 2

If **no** VR per local procedure

Step 2:

Does the individual have a prior order of removal that can be reinstated?

If **no:** proceed to Step 3

If **yes** reinstate previous order per local procedure

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Step 3 :

Does the subject have a conviction for a charge that qualifies as an aggravated felony as per the INA?

- Does the subject qualify for administrative removal based on those charge(s)?

If **no:** proceed to Step 4

If **yes:** process for administrative removal as per local procedure

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Step 4 :

Is the subject amenable to removal under 1 of the 4 subsections of the INA?

§ 212(a)(7)(A)(i)(I);
§ 212(a)(7)(B);
§ 212(a)(6)(C)(i); or
§ 212(a)(6)(C)(ii)

If **no:** process for removal hearing via WA/NTA per local procedure.

If **yes:** ensure 4 other points are met before proceeding with ER processing.

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# Credible Fear and Asylum

- If an alien subject to ER indicates an intention to apply for asylum, or expresses a fear of persecution, a fear of torture, or a fear of return to his or her country refer the individual for a credible fear interview by an asylum officer.
- These aliens will be detained pending a final determination of credible fear by an Asylum Officer.

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# Referral to an Asylum Officer

- If an alien asserts a credible fear of persecution in their home country, they should be referred to an AO.
- If an AO determines that the alien has a credible fear of persecution or torture, an NTA will be issued and the alien referred to the IJ.
- See 8 C.F.R. § 1235.6(a)(1)(ii).
- More detail in the Key Exceptions segment of this presentation.

# Processing an Expedited Removal

## Issuance of I-863, Notice of Referral to IJ, for Aliens in ER Proceedings

- If an AO determines and issues an ER order pursuant to INA § 235(b)(1)(B)(iii), the alien can request review of the AO's determination at which time his/her case must be referred to the IJ. See 8 C.F.R. § 1235.6(a)(2)(i).
- Note: If an IJ determines there is a credible fear, and vacates the ER order issued by the AO, an NTA must be issued.

# Parole under Expedited Removal

- 
  - 
    under § 212(d)(5).
  - Parole is permitted only if DHS determines, in the exercise of discretion, that parole is required due to a medical emergency or is necessary for legitimate law enforcement objectives.

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1. Was the subject apprehended within 100 air miles of the US international border? And,

2. Was the subject encountered and subsequently arrested within 14 days of the most recent entry? And,

3. Is the subject an adult or a juvenile accompanied by an adult who will also be processed for ER? And,

4. Is the subject not a stowaway or crewman? And,

5. Is the subject

If no: process for removal hearing via WA/NTA per local procedure.

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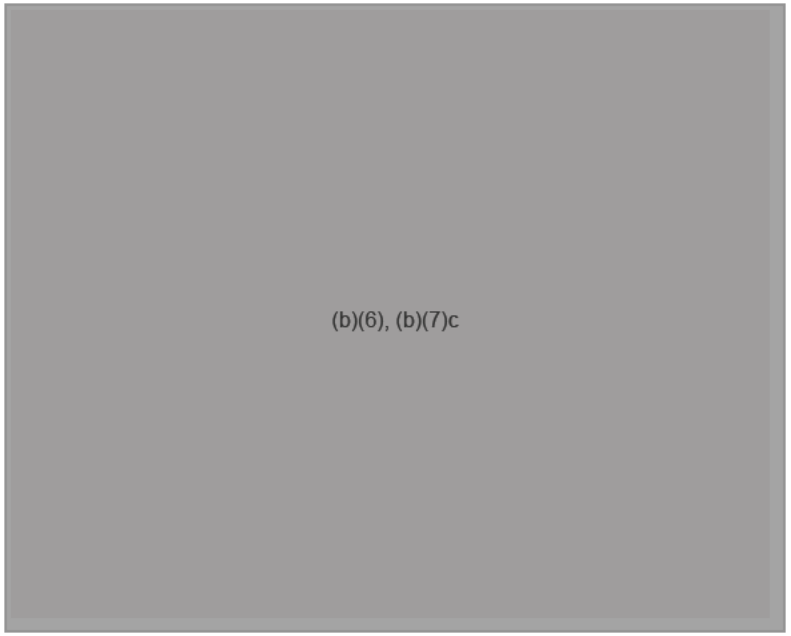
Segment 3

# Key Exceptions to the use of ER

# What are the Exceptions?

-- Aliens with a credible fear
-- Asylees, refugees and LPRs
-- Cuban aliens
-- Salvadoran aliens
-- Unaccompanied children
-- Stowaways

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# Exception: Credible fear/ Asylum applicant

- If an alien subject to ER indicates an intention to apply for asylum, or expresses a fear of persecution, a fear of torture, or a fear of return to his or her country refer the individual for a credible fear interview by an asylum officer.
- These aliens will be detained pending a final determination of credible fear.


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# What is “credible fear of persecution”?

§

- The term *credible fear of torture* is defined as:
  - A significant possibility that an alien is eligible for withholding of removal or deferral of removal under the Convention Against Torture. 8 C.F.R. § 208.30(e)(2).

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(b)(6), (b)(7)(c)

# What are not considerations in referring cases for CF interviews?

Processing agents should not:

- Make eligibility determinations
- Weigh the strength of the claims
- Make credibility determinations concerning alien's statements

# Criteria Indicating Credible Fear

Refer an alien for a credible fear interview if the alien:

- Expresses fear of harm or return
- Indicates an intention to apply for asylum (or third party informs you of alien's intent to apply)
- Answers questions on I-867B affirmatively
- Non-verbally exhibits fear of harm

- *NOTE: If an alien asserts a fear or concern that appears unrelated to an intention to seek asylum or a fear of persecution, the agent should consult with a supervisory asylum officer to determine whether to refer the alien.*

- Past persecution or a well founded fear of future persecution because of:
  - Race
  - Religion
  - Nationality
  - Membership in a particular social group
  - Political opinion

# Remember:

- An alien who indicates an intent to apply for asylum, has a fear of persecution or torture, or a fear of return to his or her country must be referred to an asylum officer.
- Such alien cannot be removed pursuant to ER unless an asylum officer finds no credible fear and, if IJ review is requested, the IJ upholds that determination. However, if the IJ finds credible fear, the ER order is vacated and removal processes under § 240 are initiated.

# Exception: Nationals or Citizens of Cuba

- If a subject arrives at a POE by aircraft and they are a national or citizen of a country in the Western Hemisphere that does not have full diplomatic relations with the U.S., ER cannot be used to remove them. INA § 235(a)(5)(F).
- Cuba is the only country in the Western Hemisphere that the U.S. does not have full diplomatic relations with.
- Because the U.S. does not have diplomatic relations with Cuba, the ER statute does not apply to nationals or citizens of Cuba. Cuban aliens should be processed using standard removal proceedings. INA § 235(a)(5)(F).

# Exception: Nationals or Citizens of El Salvador

- Until recently, because of the permanent injunction issued by the judge in Orantes-Hernandez v. Meese, ER could not be applied to nationals or citizens of El Salvador. However, a modification to this order now permits application of ER as long as no NTA has been issued (e.g., based on a credible fear determination). 685 F.Supp 1488, 1491 (C.D. Cal. 1988), aff'd 919 F.2d 549 (9th Cir. 1990).

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(b)(6), (b)(7)(c)

# Exception: Stowaways

- Stowaways are not considered applicants for admission. They may not be admitted and shall be removed upon inspection by the immigration officer. § 235(a)(2).
- However, stowaways may still apply for asylum if they are found to have a credible fear of persecution.

U.S. Immigration and Customs Enforcement

(b)(6), (b)(7)(c)

# Exception: Refugees, LPRs and Asylees

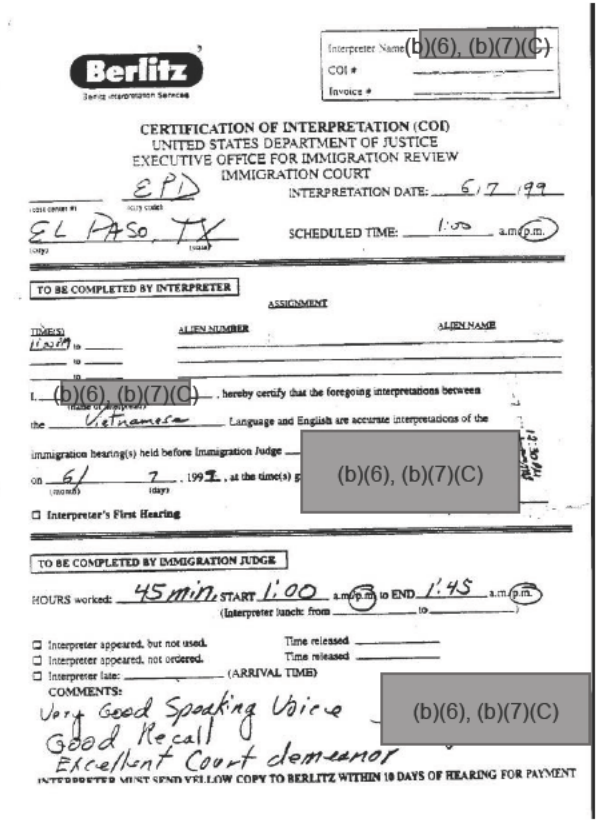
- If a subject asserts that they are a lawful permanent resident, a refugee admitted under INA § 207, or an asylee under INA § 208, under penalty of perjury, their order of removal may be administratively reviewed by an immigration judge. INA § 235(a)(5)(C).

Segment 4

# Processing Aliens for ER


(b)(6), (b)(7)(c)

# Should you use an interpreter?



Berlitz
Interpreter Name (b)(6), (b)(7)(C)
COI #
Invoice #

CERTIFICATION OF INTERPRETATION (COI)
UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

EPD
INTERPRETATION DATE: 6/7/99
EL PASO, TX
SCHEDULED TIME: 1:00 a.m./p.m.

TO BE COMPLETED BY INTERPRETER
ASSIGNMENT
TIME(S) 12:30PM to
ALIEN NUMBER
ALIEN NAME
to
I, (b)(6), (b)(7)(C) (name of interpreter), hereby certify that the foregoing interpretations between the Vietnamese Language and English are accurate interpretations of the immigration hearing(s) held before Immigration Judge (b)(6), (b)(7)(C) on 6/ (month) 7 (day) 1999, at the time(s) g
☐ Interpreter's First Hearing

TO BE COMPLETED BY IMMIGRATION JUDGE
HOURS worked: 45 min. START 1:00 a.m./p.m. to END 1:45 a.m./p.m.
(Interpreter lunch: from to)
☐ Interpreter appeared, but not used. Time released
☐ Interpreter appeared, not ordered. Time released
☐ Interpreter late: (ARRIVAL TIME)
COMMENTS:
Very Good Speaking Voice
Good Recall
Excellent Court demeanor
(b)(6), (b)(7)(C)
INTERPRETER MUST SEND YELLOW COPY TO BERLITZ WITHIN 10 DAYS OF HEARING FOR PAYMENT

(b)(6), (b)(7)c

U.S. Immigration and Customs Enforcement

(b)(6), (b)(7)(c)


(b)(6), (b)(7)(c)


U.S. Immigration
and Customs
Enforcement

**U.S. Department of Justice**
Immigration and Naturalization Service

**Notice and Order of Expedited Removal**

**DETERMINATION OF INADMISSIBILITY**

File No: _____

Date: _____

In the Matter of: _____ , _____

Pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act), (8 U.S.C. 1225(b)(1)), the Immigration and Naturalization Service has determined that you are inadmissible to the United States under section(s) 1 ☐ (6)(C)(i); ☐ (6)(C)(ii); ☒ (7)(A)(i)(I); ☐ (7)(A)(i)(II); ☐ (7)(B)(i)(I); and/or ☐ (7)(B)(i)(II) of the Act, as amended, and therefore are subject to removal, in that:

You did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document, to wit, you have entered into the United States illegally with the intent to reside in the United States.

_____ _____

Name and title of immigration officer (Print) Signature of immigration officer

**ORDER OF REMOVAL**
**UNDER SECTION 235(B)(1) OF THE ACT**

Based upon the determination set forth above and evidence presented during inspection or examination pursuant to section 235 of the Act, and by the authority contained in section 235(b)(1) of the Act, you are found to be inadmissible as charged and ordered removed from the United States.

_____ _____

Name and title of immigration officer (Print) Signature of immigration officer

_____ _____

Name and title of supervisor (Print) Signature of supervisor, if available

☐ Check here if supervisory concurrence was obtained by telephone or other means (no supervisor on duty).

**CERTIFICATE OF SERVICE**

I personally served the original of this notice upon the above-named person on _____
(Date)

_____
Signature of immigration officer

U.S. Immigration and Customs Enforcement

(b)(6), (b)(7)(c)

U.S. Immigration and Customs Enforcement

(b)(6), (b)(7)(c)


(b)(6), (b)(7)(c)

# Form M-444: Information about Credible Fear Interview

- Provide every alien referred for credible fear interview with this form
- Have alien sign and date 2 copies
- Give 1 copy to alien
- Place 1 copy in alien's A-file
- Fax 1 of the signed (or refused to sign) copies to asylum office.
- Provide alien with list of free legal service providers

U.S. Immigration and Customs Enforcement

(b)(6), (b)(7)(c)

# Procedures for Referring Alien for CF Interview

U.S. Immigration and Customs Enforcement

(b)(6), (b)(7)(c)


(b)(6), (b)(7)(c)


(b)(6), (b)(7)(c)

Segment 5

# Case Studies

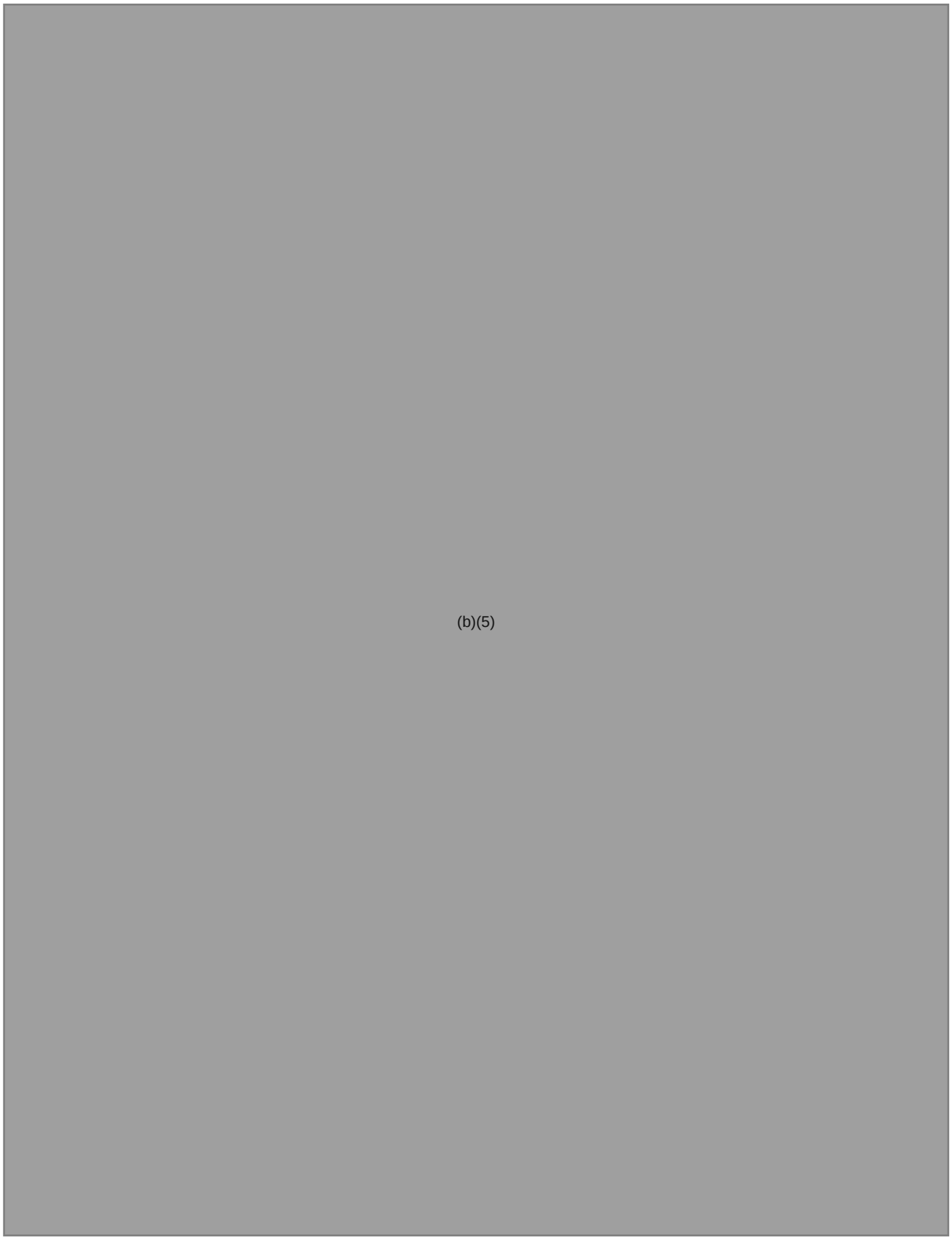
Pages 86 through 116 redacted for the following reasons:
- - - - - - - - - - - - - - - - - - - - - - - - - - -
(b)(7)e

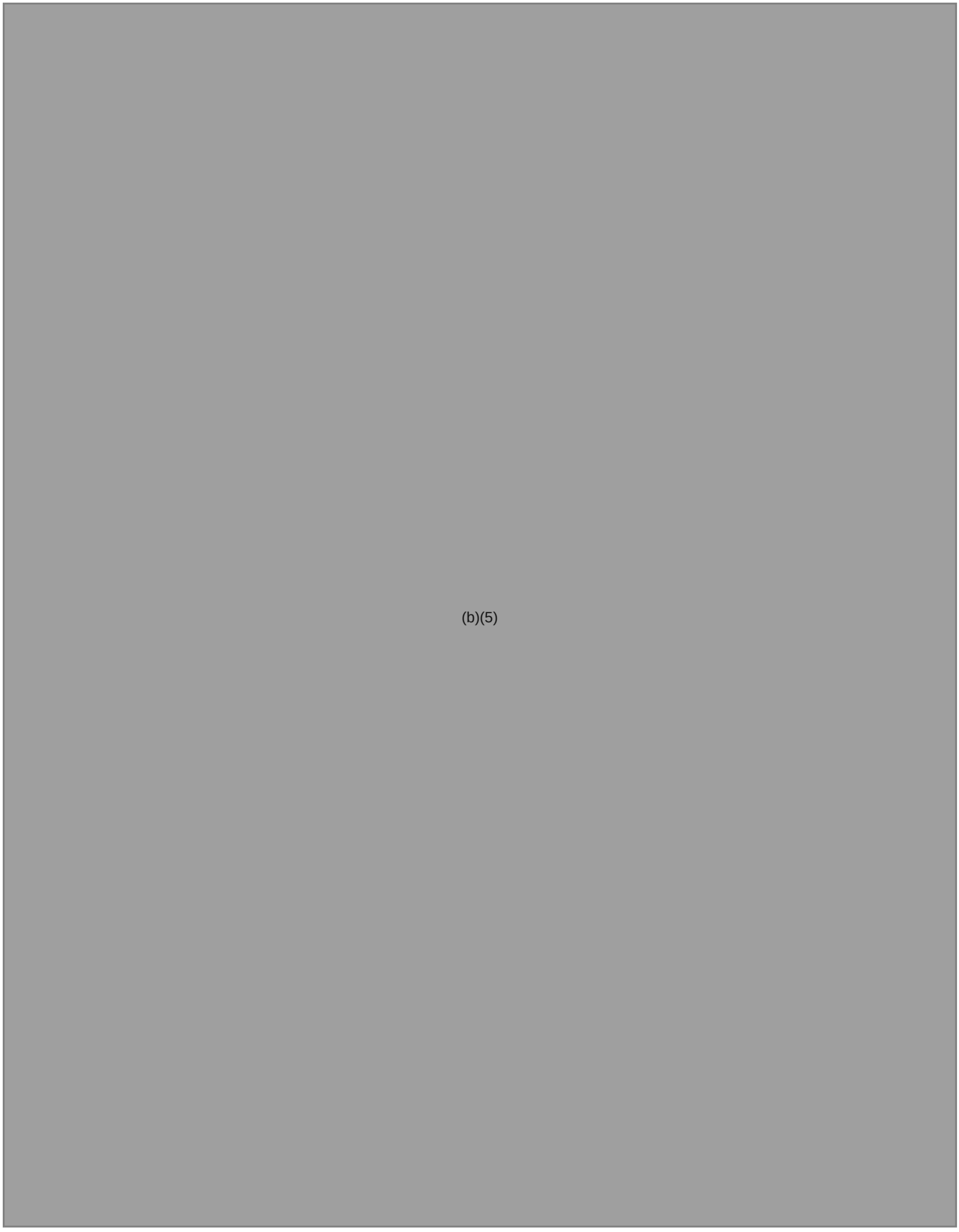
Thank you for your attention.

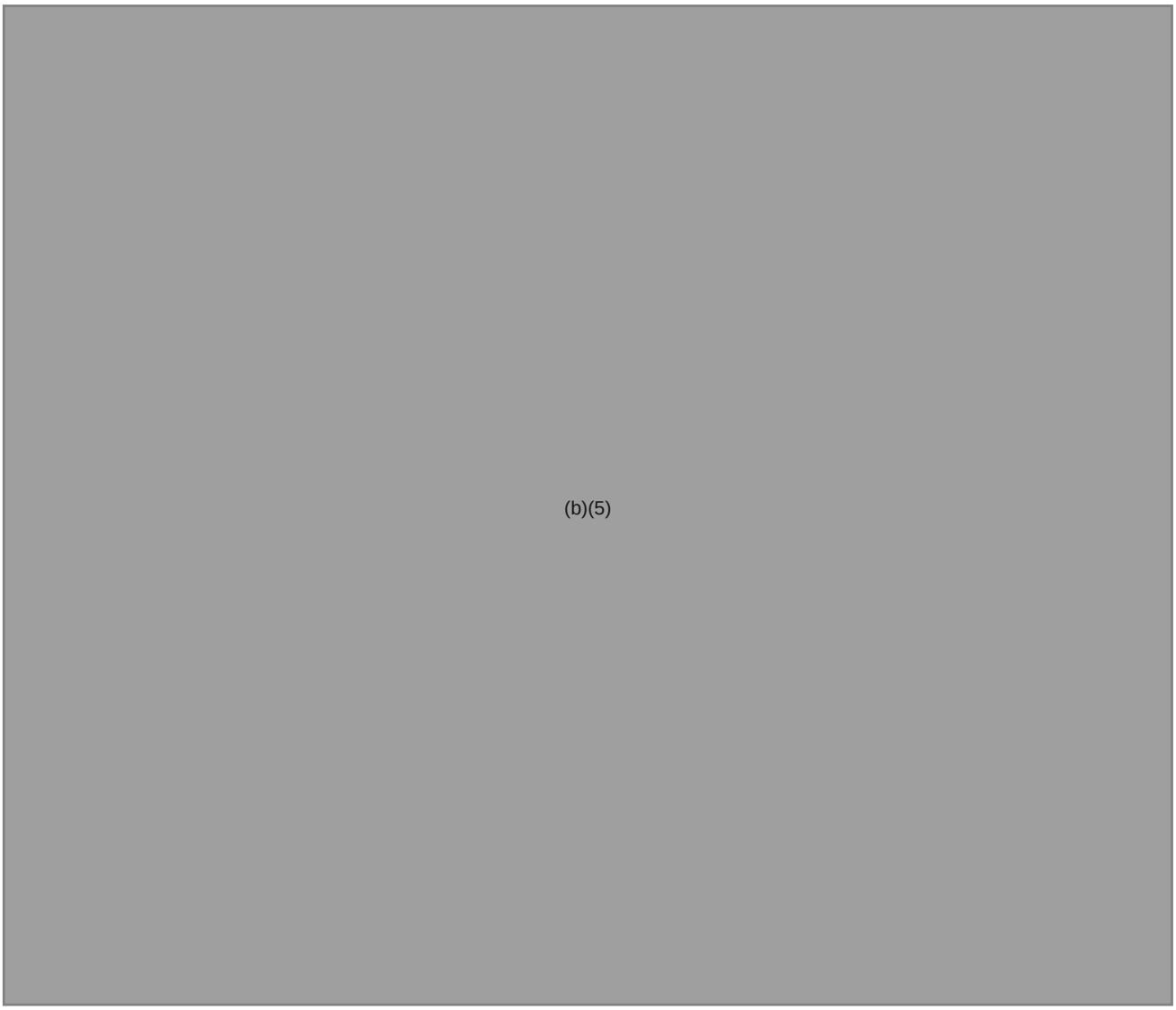

U.S. Immigration and Customs Enforcement

(b)(6), (b)(7)(c)

## a. Family Detention




(b)(5)


(b)(5)

**From:**
**To:** (b)(6), (b)(7)(c)
**Subject:** FW: ICE Family Detention History Section
**Date:** Tuesday, November 04, 2014 11:21:55 AM
**Attachments:** image001.jpg
Family Detention Section.docx

---

**From:** Davis, Mike P
**Sent:** Tuesday, November 04, 2014 10:58 AM
**To:**
**Cc:** (b)(6), (b)(7)(c)
**Subject:** Fw: ICE Family Detention History Section

(b)(6), (b)(7)(c)

Per my last msg.

Thanks!

---

Sent via BlackBerry by:

MIKE P. DAVIS
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
(202) 732 (b)(6), (b)(7)(c) office)
(202) 904 cell)
(b)(6), (b)(7)(c)



---

**From:** (b)(6), (b)(7)(c)
**Sent:** Monday, November 03, 2014 09:49 PM
**To:** (b)(6), (b)(7)(c) Davis, Mike P; (b)(6), (b)(7)(c)
**Subject:** ICE Family Detention History Section

ICE Folks (b)(6), (b)(7)(c)

Attached is a section from the Motion on the background of family detention. I stole pieces of it

from various things, one of which was a motion filed in the Hutto litigation. In that case, we used a declaration to support most of the assertions we made regarding family detentio (b)(5)

(b)(5)

I know you're also working on the redline of the agreement but I'm sending this to you now to give you as much time as possible with this because I think it's an important section that needs some time and attention. Let me know if you have any questions.

Thanks!

(b)(6), (b)(7)(c)
Trial Attorney
Office of Immigration Litigation – District Court Section
Department of Justice
PO Box 868, Ben Franklin Station
Washington, DC 20044
(202) 532 (b)(6), (b)(7)(c)

doj

**From:**
**To:** (b)(6), (b)(7)(c)
**Subject:** FW: Pot"l LOP at Artesia Family Detention Center
**Date:** Tuesday, July 08, 2014 1:54:02 PM

---

**From** (b)(6), (b)(7)(c)
**Sent:** Tuesday, July 8, 2014 1:07 PM
**To** (b)(6), (b)(7)(c)
**Cc:** Moore, Marc J; Ramlogan, Riah; (b)(6), (b)(7)(c) Ragsdale, Daniel H; (b)(6), (b)(7)(c)
**Subject:** Pot'l LOP at Artesia Family Detention Center

Dear Assistant Field Office Director (b)(6), (b)(7)(c)

Field Office Director Marc Moore referred me to you as the POC for the Artesia Family Detention Center and provided your contact information. In response to the current surge of incoming migrants through the Mexican border, the Executive Office for Immigration Review (EOIR) is hoping to cooperate with ICE to establish a Legal Orientation Program (LOP) at the Artesia Family Detention Center. I am the Program Director of the EOIR Office of Legal Access Programs (OLAP), which administers the LOP. Copied on this email is (b)(6), (b)(7)(c) OLAP Legal Analyst, who is in charge of overseeing other LOPs in the region.

EOIR administers the LOP through a GSA contract with the Vera Institute of Justice, which in turn subcontracts with local legal service providers for the delivery of LOP services at immigration detention facilities. We would plan to use our current subcontractor, the Diocesan Migrant and Refugee Services, Inc. (DMRS) of El Paso (in collaboration with Catholic Charities of Las Cruces), to provide LOP services at Artesia. DMRS is an experienced LOP provider and works closely in conjunction with the El Paso Field Office to deliver LOP services at the Otero County Processing Center in New Mexico and the El Paso Processing Center.

As you may be aware, the LOP is a DOJ-funded program that has been in operation since 2003. It currently operates at 25 immigration detention centers across the country, including the Berks County Family Shelter in Leesport, PA. The LOP, while similar to "Know-Your-Rights (KYR) programs, differs in that it is federally-funded and is more comprehensive than most KYR programs. The LOP is designed to provide services to all detainees at the detention facility who are or may be in immigration removal proceedings prior to the first immigration court hearing. The program is made up of four core levels of service which are group orientations, individual orientations, self-help/pro se workshops, and placement of unrepresented detainees with pro bono counsel (where available). However, the LOP does not include funding for direct representation. The LOP has been shown to promote immigration court efficiency and decrease detention times for detainees served by the program.

At the earliest possible convenience, we would like to send contract staff from DMRS and CC Las Cruces to Artesia to see the facility and meet with relevant staff to consider the potential for establishing a program as soon as feasible. Based on our experience with other LOPs in the region and our LOP at the Berks County Family Shelter, we would foresee the following requests to ICE:

- Access to space large enough to accommodate presentations for roughly 40 seated attendees. Preferably, the space would be suitable for conducting public speaking and teaching (e.g. temperature-controlled, adequate acoustics, limited background noise and interruptions).
- Access to space for conducting individual orientations following the group orientation. The space should allow for private conversations between the detainee and the LOP staff. This could be within the larger space (e.g. in a corner), or in a separate area, such as the attorney-client visitation area.
- A list of new arrivals to the facility (newly arrived since the prior visit) provided in advance of a scheduled visit (typically 24 hours in advance of a scheduled visit). The list would preferably include, at a minimum, the detainees' names, alien numbers, dates of birth, dates of arrival, and countries of origin. It would be very helpful if such list were also to include the type of proceeding (e.g. 240, ER, ER awaiting CFI/RFI, etc.) and determination outcomes (CFI/RFI). This assists the LOP provider in determining the types of services needed for each individual.
- A secure but accessible space to store visual aids, written information packets, dry erase boards and other teaching supplies and LOP materials.
- A POC for routine matters – e.g. scheduling presentations, changes to the schedule, sending arrivals lists and receiving attendance lists, as well as assistance in troubleshooting issues as they arise.
- Telephone access for interpreter services to non-English and Spanish speakers.
- Childcare assistance for parents while they attend LOP services.

Thank you for your consideration of this request, and please let me know if you are available to discuss this further on the phone.

Sincerely,

(b)(6), (b)(7)(c)
Program Director
Office of Legal Access Programs
Office of the Director
Executive Office for Immigration Review
U.S. Department of Justice
Tel. (703) 305-(b)(6), (b)(7)(c)

Pages 125 through 129 redacted for the following reasons:
- - - - - - - - - - - - - - - - - - - - - - - - - - -
(b)(5), (b)(7)e

**From:** (b)(6), (b)(7)(c)
**To:** Pincheck, Catherine; Stolley, Jim; (b)(6), (b)(7)(c)
**Cc:** Davis, Mike P; (b)(6), (b)(7)(c) Choi, Raphael; (b)(6), (b)(7)(c)
**Subject:** RE: Artesia Update
**Date:** Monday, July 07, 2014 12:57:17 PM

---

Adding (b)(6), (b)(7)(c) Raphael and (b)(6), (b)(7)(c)

---

**From:** Pincheck, Catherine
**Sent:** Monday, July 07, 2014 12:34 PM
**To:** Stolley, Jim; (b)(6), (b)(7)(c)
**Cc:** Davis, Mike P; (b)(6), (b)(7)(c)
**Subject:** RE: Artesia Update

(b)(6), (b)(7)(c)

Is this the link you are looking for?

**From:** (b)(6), (b)(7)(c)
**Sent:** Monday, July 07, 2014 9:42 AM
**To:** Pincheck, Catherine
**Cc:** (b)(6), (b)(7)(c)
**Subject:** RE: SP Link to Information from RGV Courtrooms

GM Catherine,

Here is the (b)(7)(e) the RGV site

*Thanks,*

(b)(6), (b)(7)(c)
Chief of Knowledge Management Division
DHS/ICE/Office of the Principal Legal Advisor
202-732- (Work)
202-470- (Cell)
(b)(6), (b)(7)(c)



---

**From:** Stolley, Jim
**Sent:** Thursday, July 03, 2014 4:39 PM
**To:** (b)(6), (b)(7)(c) Pincheck, Catherine; (b)(6), (b)(7)(c)
**Cc:** Davis, Mike P; (b)(6), (b)(7)(c)
**Subject:** RE: Artesia Update

(b)(6), (b)(7)(c) Thanks. I am sure she'll assist Monday

James S Stolley, Jr
Director, Field Legal Operations
Office of the Principal Legal Advisor
U S Immigration and Customs Enforcement

(952) 85(b)(6), (b)(7)(c)

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Thursday, July 03, 2014 3:34 PM
**To:** Stolley, Jim
**Cc:** Davis, Mike P
**Subject:** Artesia Update

Jim:

I tried to access the (b)(6), (b)(7)(e) and couldn t find where I needed to input the Artesia information (b)(6), (b)(7)(c) you today, so I ll get with her on Monday.

But using the link she provided, I created an update for today and placed under a newly created folder for Artesia under FAMU

(b)(7)(e)

Here is the update I plan on sending Riah. Please let me know if this look okay or if there is anything I should add/revise. Thanks.

**3 NTAs (one family) were filed today with EOIR and docketed for court on Monday, July 7th with Judge Hladyowycz:**

(b)(6), (b)(7)(c)

**2 Negative Credible Fear Reviews (I-863s) were also filed with EOIR and docketed for court on Monday, July 7th with Judge Owens:**

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) on-site manager), along with attorneys (b)(6), (b)(7)(c) and legal assistant (b)(6), (b)(7)(c) will be in Artesia, New Mexico covering court hearing and assisting ERO as of Monday, July 7th.

Houston Asylum had a team in Artesia this week. They have 7 NTAs they will finalize for filing with EOIR on Monday, July 7th and a new team headed by Supervisory Asylum Officer (b)(6), (b)(7)(c) six asylum officers, and two asylum officer assistants also arrive on Monday. Approximately 70 credible fear hearing still need to be conducted by the asylum team.

The population remains at 192, but it is anticipated that it will increase to over 300 by Monday.

(b)(6), (b)(7)(c)
Chief
Immigration Law and Practice Division
Immigration and Customs Enforcement (ICE)
US Department of Homeland Security
500 12th Street, SW
Mail Stop 5900
Washington, DC 20536
202-732
520-249 (cell)
(b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c)
**To:** (b)(6), (b)(7)(c)
**Subject:** RE: Family detention
**Date:** Wednesday, August 13, 2014 3:54:00 PM
**Attachments:** Talking Points Family Detention.docx

---

(b)(6), (b)(7)(c)

Here's what I've come up with so far. Not knowing your timeline, I wanted to give you a chance to review briefly and determine whether redirection is needed.

Thanks,

(b)(6), (b)(7)(c)
858-487-(b)(6), (b)(7)(c)

-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Wednesday, August 13, 2014 11:02 AM
To (b)(6), (b)(7)(c)
Subject: RE: Family detention

Thanks. Nothing extensive.

-----Original Message-----
From (b)(6), (b)(7)(c)
Sent: Wednesday, August 13, 2014 2:00 PM
To: (b)(6), (b)(7)(c)
Subject: RE: Family detention

Sure, (b)(6), (b)(7)(c) will work on this now.

-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Wednesday, August 13, 2014 10:57 AM
To: (b)(6), (b)(7)(c)
Subject: FW: Family detention

(b)(6), (b)(7)(c)

Can you put together a few TPs for me on this? Thanks.

(b)(6), (b)(7)(c)

-----Original Message-----
From: Davis, Mike P

Sent: Wednesday, August 13, 2014 1:47 PM
To: (b)(6), (b)(7)(c)
Subject: RE: Family detention

Adding (b)(6), (b)(7)(c) could you please put together some talking points on this?

---

Mike P. Davis
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
202-732-(b)(6), (b)(7)(c) (O) | 202-904-(b)(6), (b)(7)(c) (M)

-----Original Message-----
From: (b)(6), (b)(7)(c)
Sent: Wednesday, August 13, 2014 1:47 PM
To: Davis, Mike P; (b)(6), (b)(7)(c)
Subject: Family detention

Mike and (b)(6), (b)(7)(c)

One of the committee members briefly touched on family detention at the border and the no bond position may be raised tomorrow. Do we have any talking points on this other than recent entrants are an enforcement priority and this recent border surge represents an exceptional circumstance?

Thanks,
(b)(6), (b)(7)(c)

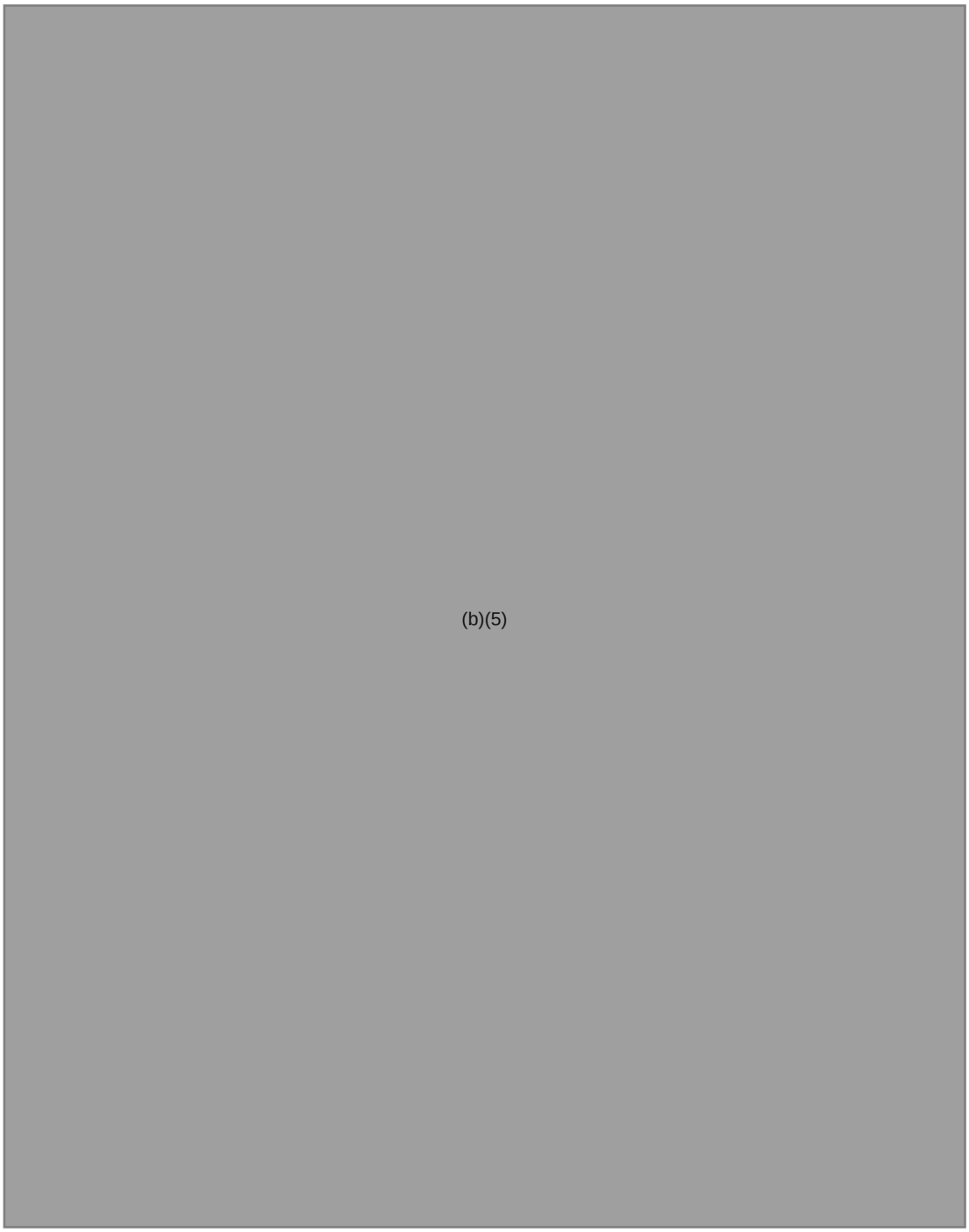
(b)(6), (b)(7)(c)
Special Counsel
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-732-(b)(6), (b)(7)(c)
Cell: 202-904-(b)(6), (b)(7)(c)
Email (b)(6), (b)(7)(c)

**Talking Points Family Detention**

**TALKING POINTS:**

(b)(5)

(b)(5)


(b)(5)


(b)(5)

# United States Border Patrol

## Southwest Border Sectors

**Family Unit and Unaccompanied Alien Children (0-17) apprehensions FY 14 through August, compared to the same time period for FY 13**

| Sector | Fiscal Year 13 Family Unit | Fiscal Year 14 Family Unit | Percent Change | Fiscal Year 13 Unaccompanied Alien Children | Fiscal Year 14 Unaccompanied Alien Children | Percent Change |
|---|---|---|---|---|---|---|
| *Big Bend* | 97 | 164 | 69% | 122 | 244 | 100% |
| *Del Rio* | 591 | 4,839 | >500% | 1,943 | 3,150 | 62% |
| *El Centro* | 347 | 592 | 71% | 396 | 612 | 55% |
| *El Paso* | 290 | 530 | 83% | 693 | 945 | 36% |
| *Laredo* | 1,514 | 3,487 | 130% | 3,503 | 3,629 | 4% |
| *Rio Grande Valley* | 6,002 | 50,619 | >500% | 19,247 | 48,475 | 152% |
| *San Diego* | 1,424 | 1,617 | 14% | 589 | 877 | 49% |
| *Tucson* | 2,436 | 3,668 | 51% | 8,480 | 7,867 | -7% |
| *Yuma* | 207 | 626 | 202% | 236 | 328 | 39% |
| *Southwest Border Total* | 12,908 | 66,142 | 412% | 35,209 | 66,127 | 88% |

**Citizenship of Family Unit / Unaccompanied Alien Children (UAC) Apprehensions FY 14 through August**

| Citizenship | Family Unit | UAC |
|---|---|---|
| *El Salvador* | 14,070 | 15,800 |
| *Guatemala* | 11,433 | 16,528 |
| *Honduras* | 33,972 | 17,975 |
| *Mexico* | 5,329 | 14,702 |

**Southwest Border and Rio Grande Valley Sector Other Than Mexican (OTM) Apprehensions FY 14 through August**

| | |
|---|---|
| *Rio Grande Valley* | 185,220 |
| *Southwest Border* | 242,329 |

**From:** (b)(6), (b)(7)(c)
**To:** (b)(6), (b)(7)(c)
**Subject:** FW: UNHCR Request to Secretary Johnson to Visit the Artesia Family Residential Center
**Date:** Friday, August 08, 2014 7:18:51 PM
**Attachments:** UNHCR Tour of AFRC.DOC

---

FYI

---

**From** (b)(6), (b)(7)(c)
**Sent:** Friday, August 08, 2014 5:34 PM
**To:** Ramlogan, Riah
**Cc:** (b)(6), (b)(7)(c); Davis, Mike P; (b)(6), (b)(7)(c)
**Subject:** RE: UNHCR Request to Secretary Johnson to Visit the Artesia Family Residential Center

Riah,

So you've got a copy, attached in the final paper, we elevated it to (b)(6), (b)(7)(C)

Thanks again to everyone for the help!

(b)(6), (b)(7)(c)

---

**From:** Ramlogan, Riah
**Sent:** Thursday, August 07, 2014 7:58 PM
**To:** (b)(6), (b)(7)(c) Davis, Mike P; (b)(6), (b)(7)(c)
**Cc:** (b)(6), (b)(7)(c)
**Subject:** Re: UNHCR Request to Secretary Johnson to Visit the Artesia Family Residential Center

I do not.
Riah Ramlogan
Deputy Principal Legal Advisor
(305) 970 (b)(6), (b)(7)(c) cell)
(202) 732 desk)

*** Warning *** Attorney/Client Privilege *** Attorney Work Product ***

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---

Sent from my BlackBerry Wireless Handheld

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**From** (b)(6), (b)(7)(c)
**Sent**: Thursday, August 07, 2014 07:50 PM
**To**: Ramlogan, Riah; Davis, Mike P; (b)(6), (b)(7)(c)
**Cc** (b)(6), (b)(7)(c)
**Subject**: RE: UNHCR Request to Secretary Johnson to Visit the Artesia Family Residential Center

Thanks, Riah. Will do on the substance, but do you all happen to know if the agency has done something like this

before with the UNHCR? Certainly observing credible fear interviews wouldn't be within ICE's purview, as noted, but do you all have institutional recall of the UNHCR previously monitoring hearings before IJs?

Thanks,
(b)(6), (b)(7)(c)

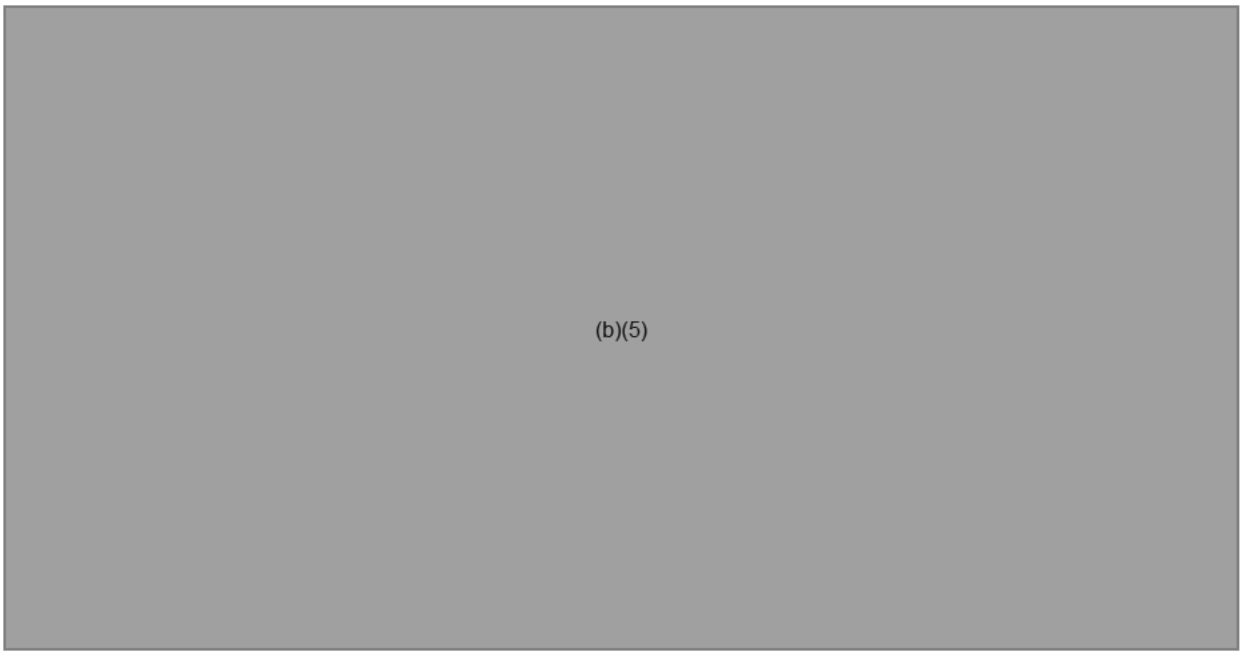
---

**From:** Ramlogan, Riah
**Sent:** Thursday, August 07, 2014 6:34 PM
**To** (b)(6), (b)(7)(c); Davis, Mike P; (b)(6), (b)(7)(c)
**Cc:** (b)(6), (b)(7)(c)
**Subject:** RE: UNHCR Request to Secretary Johnson to Visit the Artesia Family Residential Center

(b)(6), (b)(7)(c)

For insertion into the White Paper as needed.

UNHCR requests the following:




Please check in with (b)(6), (b)(7)(c) if you have any questions.

Thanks,
Riah

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Thursday, August 07, 2014 3:19 PM
**To:** Ramlogan, Riah; Davis, Mike P; (b)(6), (b)(7)(c)
**Subject:** RE: UNHCR Request to Secretary Johnson to Visit the Artesia Family Residential Center

Great; thanks, Riah! Any assistance would be greatly appreciated (b)(6), (b)(7)(c)

---

**From:** Ramlogan, Riah
**Sent:** Thursday, August 07, 2014 3:18 PM
**To** (b)(6), (b)(7)(c) Davis, Mike P; (b)(6), (b)(7)(c)
**Subject:** Re: UNHCR Request to Secretary Johnson to Visit the Artesia Family Residential Center

I asked (b)(6), (b)(7)(c) to take the lead on this for OPLA.

Riah Ramlogan
Deputy Principal Legal Advisor
(305) 970 (b)(6), (b)(7)(c) cell)
(202) 732 (b)(6), (b)(7)(c) desk)



---
Sent from my BlackBerry Wireless Handheld

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**From** (b)(6), (b)(7)(c)
**Sent**: Thursday, August 07, 2014 03:11 PM
**To**: Ramlogan, Riah; Davis, Mike P
**Subject**: FW: UNHCR Request to Secretary Johnson to Visit the Artesia Family Residential Center

Riah and Mike,

Though I'm hoping the vast majority of this white paper will come from ERO, but do either of you happen to have ANY insight into what happened as a result of/what lead to the issuance of the UNHCR's (apparent) confidential report to the USG on asylum seekers in expedited removal, referenced on page 2 of the attached proposal? ("As a follow-up to our most recent confidential report to the U.S. Government on the situation of asylum-seekers in expedited removal, we are currently undertaking a second round of monitoring. Artesia was not initially included among the monitoring visits planned for our 2014 expedited removal monitoring (see attachment); however, given the changed circumstances and the surge in asylum-seeker families being held there, the facility is a new priority for a UNHCR monitoring visit.")

I found this discussion, but it dates back to only 2010 (http://www.refworld.org/pdfid/4bcd741c2.pdf); it would seem to me that CIS has a very large piece of this, but it may be good to have some context related to that prior review/report. Any thoughts?

Thanks!
(b)(6), (b)(7)(c)

---

**From** (b)(6), (b)(7)(c)
**Sent:** Thursday, August 07, 2014 1:58 PM
**To:** Rapp, Marc A; (b)(6), (b)(7)(c)
**Cc** (b)(6), (b)(7)(c)
**Subject:** FW: UNHCR Request to Secretary Johnson to Visit the Artesia Family Residential Center
**Importance:** High

Hi Marc and (b)(6), (b)(7)(c)

In case I (b)(6), (b)(7)(c) haven't had the chance to forward this to you, we're going to need to provide DHS with a white paper

on this proposal by the UNHCR, addressing the agency's position on this request for this facility tour. Unfortunately, we're going to need to have it ready by 2pm tomorrow, so that we can get it to DHS, given the need to respond to the request and the proposed dates for the tour.

As always, if necessary, I'm happy to provide any thoughts as to approach or position.

Thanks,
(b)(6), (b)(7)(c)

---

**From:** Ragsdale, Daniel H
**Sent:** Thursday, August 07, 2014 12:12 PM
**To:** Homan, Thomas; (b)(6), (b)(7)(c) Vincent, Peter S; Ramlogan, Riah
**Cc:** Fenton, Jennifer M; O'Neill, Gerard R
**Subject:** Fw: UNHCR Request to Secretary Johnson to Visit the Artesia Family Residential Center

Folks:

Need your views on this.

(b)(6), (b)(7)(c) please work with ERO on a consolidated position white paper. Thx.

Sent from my BlackBerry 10 smartphone.

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Thursday, August 7, 2014 11:03 AM
**To:** Ragsdale, Daniel H
**Subject:** FW: UNHCR Request to Secretary Johnson to Visit the Artesia Family Residential Center

Hi Dan – I wasn't sure how to proceed with this, and (b)(6), (b)(7)(c) suggested I start with you. Can you let me know your thoughts? thanks

---

**From** (b)(6), (b)(7)(c)
**Sent:** Tuesday, August 05, 2014 3:14 PM
**To:** (b)(6), (b)(7)(c)
**Cc:** (b)(6), (b)(7)(c)
**Subject:** UNHCR Request to Secretary Johnson to Visit the Artesia Family Residential Center

Good afternoon (b)(6), (b)(7)(c)

Greetings from UNHCR. Attached please find a letter from UNHCR to Secretary Johnson officially requesting to visit the Artesia Family Residential Center to monitor the situation of asylum-seekers in expedited removal. Could you please assist us in ensuring that the Secretary receives this letter?

Many thanks, in advance, for your assistance. Please do not hesitate to reach out with any questions you might have.

Warm regards,
(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Assistant Protection Officer, U.S. Protection
UNHCR Regional Office for the USA and the Caribbean
(b)(6), (b)(7)(c)
Washington, DC 20006
Main: 202-296 (b)(6), (b)(7)(c)
Direct: 202-243 (b)(6), (b)(7)(c)
Fax: 202-296 (b)(6), (b)(7)(c)

www.unhcrwashington.org

U.S. Immigration and Customs Enforcement

August 8, 2014

# UNHCR Request to Visit the Artesia Family Residential Center

On August 5, 2014, the Office of the Secretary of Homeland Security received a request from the United Nations High Commissioner for Refugees (UNHCR) Regional Office in Washington, D.C. to visit and tour the Artesia Family Residential Center (AFRC) in Artesia, New Mexico on August 13-15, 2014. As part of this tour, the UNHCR would like to conduct interviews with individual asylum seekers, observe credible fear interviews and hearings with immigration judges, and meet with staff and leadership from both U.S. Immigration and Customs Enforcement (ICE) and U.S. Citizenship and Immigration Services (USCIS), who are currently detailed to the AFRC.

Although ICE cannot comment as to the appropriate amount of access to proceedings UNHCR should be granted, as they fall under the purview of other agencies, given ICE's ongoing relationship with the UNHCR and its commitment to providing appropriate access to our detention facilities, ICE would be pleased accommodate the UNHCR's request, subject to some limitations, as outlined below.

**Discussion:**

The United States is a State party to the 1967 Protocol, a treaty which obliges States Parties to:

> …undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol. In order to enable the Office of the High Commissioner … to make reports to … the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning [among other items] the conditions of refugees [and the] (l)aws, regulations and decrees which are…in force relating to refugees.

19 U.S.T. 6223, T.I.A.S. No. 6577 (1968). Thus, in furtherance of its work to ensure that asylum seekers are provided access to "safe territory" and fair and efficient procedures, the UNHCR has requested this tour to assess the impact that expedited removal can have on individuals seeking asylum in the United States. Because the AFRC was recently established in response to the surge of family units apprehended along the Southwest border, the UNHCR now considers the facility a priority for inspection.

Recognizing the UNHCR's unique role and U.S. obligations under the Protocol, and balancing these against ICE operational realities, ICE believes that a UNHCR visit to the AFRC should follow these general parameters:

- Facility Tour – ICE would facilitate a tour of the AFRC for a reasonable number of participants during regular visitation hours, i.e. 7 a.m. to 7 p.m.
    - Enforcement and Removal Operations' (ERO) point of contact to coordinate the site visit locally would be Richard Rocha, Custody Programs.

- Meetings with ICE and USCIS leadership/staff at the AFRC - ICE would facilitate this aspect of UNHCR's request with appropriate coordination with local USCIS.

- Interviews with individual asylum-seekers – Although, absent a formal exercise of the Secretary's discretion or the written consent of the subject alien, the Department is prohibited from disclosing the identity of an "asylum seeker" to an unauthorized party,[1] ICE can provide the UNHCR representatives with access to residents, generally, so that they can participate in interviews, if they wish to do so. This approach would be consistent with prior tours ICE facilitated for the UNHCR (e.g. Miami - Krome 2009).
    - In accordance with the requirements of ICE's Family Residential Standards, such a tour should be limited to a reasonable number of participants, conform to the AFRC's policies and procedures (including participation in background checks for purposes of admission), and avoid disruption of normal facility operations.

- Observation of credible fear interviews – Such interviews fall within the jurisdiction of USCIS and the Department of Justice's Executive Office for Immigration Review (EOIR). Accordingly, USCIS and EOIR should provide their views on this aspect of the UNHCR request.
    - If USCIS and EOIR agree to permit observation, the UNHCR should be able to obtain written waivers from any residents who agree to observation of their credible fear interviews.

- Observation of hearings before the immigration judges – Any hearings before an immigration judge fall within EOIR's jurisdiction. Accordingly, the UNHCR will need to contact EOIR regarding its interest in observing immigration court hearings.
    - If EOIR is amenable their observation, the UNHCR should be able to obtain written waivers from any residents who agree to observation of hearings.

Lastly, as the UNHCR has done for previous facility tours, ICE would very much appreciate the benefit of their debriefing ERO leadership at the conclusion of its visit.[2]

---

[1] *See* 8 C.F.R. § 208.6(a).

[2] Of note, their tours are unique in that they are conducted under their own established confidentiality rules, meaning that their observations are not disclosed to the press.

BROOKINGS

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Diana Villiers Negroponte | July 2, 2014 3:15pm

# The Surge in Unaccompanied Children from Central America: A Humanitarian Crisis at Our Border

The fate of 47 thousand children, most of them from Central America and the prospect of 43 thousand more children crossing the Texan border illegally by the end of 2014 poses a serious challenge to the laws of the United States and our humanitarian values. How should we treat these children? Should they be united with parents and family members living in the US or deported for entering the U.S. without sufficient reasons to justify asylum?

Three quarters of recently arrived and unaccompanied children originate from the three northern Central American states: Honduras, El Salvador and Guatemala. The phenomenon of children seeking to join their parents in the United States is not new. The difference lies in the number of children making their way from Central America to cross the Rio Grande Valley into South Texas. According to the Border Patrol, apprehension of unaccompanied children increased from 16,067 in FY 2011 to 24,481 in FY 2012 and 38,833 in FY 2013. During the first eight months of FY 2014, 47,017 children were apprehended, most of them from Honduras. If this flow continues at the current rate, the Border Patrol anticipates that 90,000 unaccompanied children could be apprehended by the end of the fiscal year (FY) on September 30. The journey is fraught with the danger of depending on human traffickers.

Children originating from a non-contiguous country are subject to distinct legal procedures from those originating in Mexico or Canada. The former are transferred from the Border Patrol to the Office of Refugee Resettlement (ORR), an agency of the Department of Health and Human Services (HHS) that is responsible for processing and sheltering unaccompanied minors. Under the Trafficking Victims Protection Reauthorization Act (PDF) (TVPRA) children from non-contiguous states must be transferred to ORR within 72 hours and simultaneously placed in removal proceedings with the Executive Office for Immigration Review (EOIR), within the Department of Justice.

The reality is that insufficient space exists to house the large number of apprehended children and the Immigration Courts are seriously overwhelmed by the number of removal proceedings. Consequently children wait on average 578 days before a Hearing. During that time, the child is placed with a parent or family member who must vouch that the child will appear in Court. The Migration Policy Institute anticipates that approximately 85-90 percent of children are placed with a parent or close relative. Thus, the current procedures provide the incentive for parents to be reunited with their children while awaiting their Hearing date. Emotional bonds are reestablished, schools attended, vaccines given and hope raised that the child can remain in the United States.

Before joining their families, ORR is responsible for lodging and feeding the child for up to 45 days. But current HHS centers are already filled in Texas, California and Oklahoma. To meet this need, the administration in early June requested $1.57 billion in emergency funding to house, feed, process and transport these children before they can be released to join relatives, or be placed in foster care.

The principal grounds for remaining in the United States are *refugee asylum* – fear of persecution for reasons of race, religion, nationality and membership in a particular social group or political opinion – and *Special Immigrant Juvenile Status*, granted to children who can establish that they were abused, neglected or abandoned by one or both parents. The Vera Institute estimates that 40 percent of unaccompanied children have humanitarian claims recognized in U.S. and international courts. However, the principal causes that send children to the United States are family reunification, poverty and fear of violence from local criminal organizations. Unless they were abused by traffickers on their journey to the U.S. border, it is hard for defense attorneys to prove the legal grounds required for refugee status. Consequently, half the children may eventually be sent home. In the meantime while they await their Court Hearing, they have a right to attend school and access health care, posing costs upon State and District budgets. To date in FY 2014, 3,300 children have been discharged to relatives or foster care in New York State, alone.

Two push factors and two pull factors explain the recent surge in unaccompanied children migrants.

### Push Factors:

- Economic conditions with endemic poverty, high youth unemployment and a close correlation between poor geographic areas and outflows of child migrants.

- Violence in the region. Organized criminal violence plagues the three Central American countries with homicide rates among the highest in the hemisphere. Recruitment into *maras*, or other local gangs is pervasive and grandparents seek to protect their grandchildren by sending them to join a parent *al norte.*

### Pull Factors:

- It is estimated that 2.5 million Central Americans live in the United States, 60 percent of which are either undocumented or live with Temporary Protective Status (TPS) which denies them the right to petition for family reunification. Hope for reunification with children and better living standards enable family members in the United States to pay the $6-7,000 to traffickers who bring the child from his home in Central America to the U.S. side of the border. When Congress created TPS in 1990 and extended it to 220,000 Salvadorans in 2001, we failed to anticipate that they would seek to unite with their children.

- Criminal social networks, operating throughout the Americas have created human trafficking rings that offer door to door service. The Mexican government's combat against these criminal organizations has pushed them into alternative profitable ventures, including the smuggling of Central American children. We should expect that as U.S. policy changes so too will the behavior of these organizations. They will react smartly to evolving U.S. policies.

### What are the appropriate U.S. policy responses?

There is no easy solution to this complex problem which has existed for over a decade, but whose surge in numbers presents a challenge to U.S. policy makers and resources. Solutions require immediate action from law enforcement and HHS as well as engagement on longer term solutions by the State Department in support of the Central American sending nations.

1. Federal law enforcement authorities must confront and prosecute these criminal organizations which profit off unaccompanied children, as well as other undocumented migrants. Transnational efforts are needed to identify them and their work in the sending countries, as well as to disrupt their money laundering practices.

2. Apprehended children need to be screened by ORR as swiftly as possible to determine the validity of their claims. The White House's anticipated request for congressional action on a supplemental appropriation of an additional $2 million for immigration courts, among other issues, will not prove sufficient to legally process newcomers as well as hear the backlog of cases. Therefore, greater attention should be given to hearings for children arriving after July 2014 with the intent of sending a strong message to the sending country that their unaccompanied children will not be able to join their parent or family member while they wait 18 months or more for a court appearance.

3. Swift resolution of *refugee asylum* and *Special Immigration Status* cases will require a significant budget to increase the number of asylum officers, immigration judges and to train both prosecution and defense attorneys. This may come from civil society, but national support for training in the law could help to ensure that young defendants have a guide through the mysterious world of immigration law.

4. The backlog of ORR cases will take time to work through and should be accomplished, but the immediate task is to send a strong disincentive message to the adults who both send and receive these children.

5. Distinctive treatment between those arriving from Mexico and Canada and those arriving from non-contiguous states may have to end. Nearly all Mexican unaccompanied children are quickly returned to Mexico. With the assistance of Consuls from the countries of origin, a decision to deny asylum and Special Immigration Status requires governmental assistance in the repatriation and reintegration of the child back home. Civil society should monitor the returning children to ensure that they are not abused.

6. Over the longer term, the perennial concern for economic development and education in the sending nations of Central America endures. Levels of poverty have not decreased enough to ensure job creation and quality education. Standards of living must increase in order to persuade those who care for the children that the risks of the journey are not worth the gains in the United States.

Together, these policy recommendations seek to balance our respect for immigration laws and due process with humanitarian values which ensure that the child will be cared for both in the United States and, when appropriate, upon return to the sending country.

Diana Villiers Negroponte

Nonresident Senior Fellow, Foreign Policy, Latin America Initiative

A nonresident senior fellow with the Latin America Initiative under Foreign Policy at Brookings, Diana Negroponte focuses on Mexico and Central America. Formerly a lawyer who worked with the American Chamber of Commerce in Mexico City during the 1990s, Negroponte has retained an interest in issues concerning the rule of law, trade and energy. She is the author of *Seeking Peace in El Salvador: The Struggle to Reconstruct a Nation at the End of the Cold War* and editor of *The End of Nostalgia: Mexico Confronts the Challenges of Global Competition*. She is currently writing a history about James Baker's role at the end of the Cold War.

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→ →

SSG • 6 days ago
What is avoided here by the author is the biggest pull/push factor. The president of the United States stance on illegal immigration. His verbiage surrounding the "Dream Act" and his penchant for presidential decrees along with the Attorney Generals penchant to pick and choose which laws the administration shall enforce has led to miscommunications regarding the Dream Act along with an overall reduction in peoples (both internal and external) belief in America's desire to uphold its' own laws.

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Lachlan Alexander • 2 days ago
In Australia, we have similar policy discussions occurring everywhere from the media to the

DHS-011-0000001-001053

**From:** (b)(6), (b)(7)(c)
**To:**
**Subject:** RE: case
**Date:** Wednesday, January 14, 2015 10:02:00 AM

(b)(6), (b)(7)(c)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(6), (b)(7)(c)
Appellate & Protection Law Section
Office of the Principal Legal Advisor - Immigration Law and Practice Division
U.S. Immigration & Customs Enforcement
(305) 534(b)(6), (b)(7)(c)



**From:** (b)(6), (b)(7)(c)

**Sent:** Wednesday, January 14, 2015 9:00 AM
**To** (b)(6), (b)(7)(c)
**Subject:** RE: case

Thanks!

---

**From** (b)(6), (b)(7)(c)
**Sent:** Wednesday, January 14, 2015 8:58:25 AM
**To** (b)(6), (b)(7)(c)
**Subject:** RE: case

(b)(6), (b)(7)(c)

I've read the Hot Lit item. Offhand, other than Matter of X-K-, I cannot think of any cases on point, but will search WL and also check the Notables Index. I do not recall this issue arising in any ICE appeals but will double-check.

(b)(6), (b)(7)(c)
Appellate & Protection Law Section
Office of the Principal Legal Advisor - Immigration Law and Practice Division
U.S. Immigration & Customs Enforcement
(305) 534(b)(6), (b)(7)(c)



---

**From** (b)(6), (b)(7)(c)
**Sent:** Wednesday, January 14, 2015 8:10 AM
**To:** (b)(6), (b)(7)(c)
**Subject:** case

(b)(6), (b)(7)(c)

Check out the first item on this report, the surge of BNP cases, the last bullet in the update section mentions the cases are being terminated by IJ Abbott where USCIS issues the NTA (they are doing so because they cannot get an interpreter) and the ER order is being cancelled (b)(5)

(b)(5)

(b)(6), (b)(7)(c)
Acting Director of Enforcement and Litigation
Office of the Principal Legal Advisor
Immigration and Customs Enforcement (ICE)
US Department of Homeland Security
500 12th Street, SW

Mail Stop 5900
Washington, DC 20536
202-732-(b)(6), (b)(7)(c) cell)
(b)(6), (b)(7)(c) (e-mail)

**From:**
**To:** (b)(6), (b)(7)(c)
**Cc:**
**Subject:** RE: Credible Fear NTA question
**Date:** Wednesday, July 09, 2014 2:30:00 PM

(b)(6), (b)(7)(c)

And, generally, our view has always been to (b)(5)

(b)(5)

(b)(6), (b)(7)(c)
Appellate & Protection Law Section
Office of the Principal Legal Advisor - Immigration Law and Practice Division
U.S. Immigration & Customs Enforcement
(305) 534(b)(6), (b)(7)(c)



**From** (b)(6), (b)(7)c
**Sent:** Wednesday, July 09, 2014 2:28 PM
**To**
**Cc** (b)(6), (b)(7)c
**Subject:** RE: Credible Fear NTA question

(b)(6), (b)(7)(c)

Was reading when (b)(6), (b)(7)(c) called about (b)(6), (b)(7)(c) Yesterday, providing input for the EOIR-43 issue, I was wondering which charges DHS would bring against these individuals. (b)(5)

(b)(5)

(b)(5)

(b)(6), (b)(7)(c)
Appellate & Protection Law Section
Office of the Principal Legal Advisor - Immigration Law and Practice Division
U.S. Immigration & Customs Enforcement
(305) 534(b)(6), (b)(7)(c)



**From:** (b)(6), (b)(7)(c)
**Sent:** Wednesday, July 09, 2014 2:21 PM

**To** (b)(6), (b)(7)(c)
**Subject:** RE: Credible Fear NTA question

I haven't elevated this yet, but would love to get your thoughts before I do so.

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Wednesday, July 09, 2014 2:12 PM
**To** (b)(6), (b)(7)(c)
**Subject:** FW: Credible Fear NTA question

(b)(6), (b)(7)(c) do you agree with me?

(b)(6), (b)(7)c

(b)(5)

(b)(5)

Please let me know your thoughts. Thanks.

Best regards,
(b)(6), (b)(7)(c)

---

**From** (b)(6), (b)(7)(c)
**Sent:** Wednesday, July 09, 2014 1:44 PM
**To:** (b)(6), (b)(7)(c)
**Subject:** FW: Credible Fear NTA question

(b)(6), (b)(7)(c)

The email below sums up why we use the 212(a)(7) charge.

(b)(6), (b)(7)(c)

---

**From** (b)(6), (b)(7)(c)
**Sent:** Wednesday, July 09, 2014 1:25 PM
**To:** (b)(6), (b)(7)(c)

**Subject:** FW: Credible Fear NTA question

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Wednesday, November 30, 2011 11:53 AM
**To:** (b)(6), (b)(7)(c)
**Cc** (b)(6), (b)(7)(c)
**Subject:** RE: Credible Fear NTA question

Hi (b)(6), (b)(7)(c)
Thanks for your patience on this, (b)(6), (b)(7)(c) and I reviewed the question and the regulation and we think

(b)(5)

(b)(6), (b)(7)(c) Associate Counsel
Refugee and Asylum Law Division
Office of the Chief Counsel
U.S. Citizenship and Immigration Services
Phone: (202) 272-(b)(6), (b)(7)(c)
Fax: (202) 272-1405
Email: (b)(6), (b)(7)(c)

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Tuesday, November 08, 2011 8:49 AM
**To** (b)(6), (b)(7)(c)
**Cc** (b)(6), (b)(7)(c)
**Subject:** FW: Credible Fear NTA question

Hi (b)(6), (b)(7)(c)

Please see the question below from ZHN. ICE and a Houston IJ are asking ZHN to add a 212(a)(6)(A) charge to the CF NTA. (b)(5)

(b)(5)

Any guidance you could provide would be greatly appreciated!

Thank you,
(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
USCIS/RAIO/Asylum Division
202-272-(b)(6), (b)(7)(c)

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Friday, November 04, 2011 12:01 PM
**To** (b)(6), (b)(7)(c)
**Cc:** H (b)(6), (b)(7)(c)
**Subject:** Credible Fear NTA question

Good morning:

We have an issue that has arisen recently with one of the immigration judges in Houston regarding the charges we use on our credible fear NTAs (b)(5)

(b)(5)

(b)(5)

(b)(5)

If you need any additional information about this issue, please feel free to contact me. Thank you in advance for any guidance you can provide us on this issue!

Best,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Quality Assurance/Trainer
DHS/USCIS - Houston Asylum Office
16630 Imperial Valley Drive, Suite 200
Houston, Texas 77060
(281) 93(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

---

**From** (b)(6), (b)(7)(c)
**Sent:** Thursday, November 03, 2011 12:24 PM

**To:** (b)(6), (b)(7)(c)
**Cc:**
**Subject:** Thanks for meeting with us today

(b)(6), (b)(7)(c)

Thanks for meeting with us today. I went back and re-read 8 C.F.R. § 235.3(a)(3) (Additional charges of inadmissibility). (b)(5)

(b)(5)

(b)(5) Again, it was nice to see you and your two quality control folks were a pleasure to meet.

Best Regards,

(b)(6), (b)(7)(c)
Senior Attorney
Office of the Chief Counsel
Houston, Texas

**From:**
**To:** (b)(6), (b)(7)(c)
**Cc:**
**Subject:** RE: need a paragraph asap
**Date:** Friday, June 13, 2014 4:05:09 PM

---

Thanks (b)(6), (b)(7)(c) We've heard the same thing. I know they are also hiring 100 more asylum officers. (b)(5)

(b)(5)

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Friday, June 13, 2014 4:04 PM
**To:**
**Cc:** (b)(6), (b)(7)(c)
**Subject:** RE: need a paragraph asap

(b)(6), (b)(7)(c) Also, from what I have heard, USCIS, at least, has been diverting resources and reassigning AOs to try to deal with the credible fear influx, but, in the end, that means that (b)(5) (b)(6), (b)(7)(c)

---

**From** (b)(6), (b)(7)(c)
**Sent:** Friday, June 13, 2014 3:59 PM
**To:**
**Cc:** (b)(6), (b)(7)(c)
**Subject:** RE: need a paragraph asap

***SENSITIVE/PRIVILEGED***PRE-DECISIONAL***ATTORNEY WORK PRODUCT***

(b)(6), (b)(7)(c) how is this:

(b)(5)


(b)(6), (b)(7)(c)
Appellate & Protection Law Section
Office of the Principal Legal Advisor - Immigration Law & Practice Division
U.S. Immigration & Customs Enforcement
U.S. Department of Homeland Security

Telephone: (202) 732(b)(6), (b)(7)(c)
E-mail: (b)(6), (b)(7)(c)



---

**From:** (b)(6), (b)(7)(c)
**Sent:** Friday, June 13, 2014 2:30 PM
**To:**
**Cc:** (b)(6), (b)(7)(c)
**Subject:** RE: need a paragraph asap

(b)(6), (b)(7)(c)

Thank you. The paragraph you provided below is very helpful. I received a further clarification regarding the task, Mike indicates that they are now more focused on the family units than UACs.

As such, the TVPRA isn't applicable. Could you have make your blurb more about USCIS's (and EOIR's, I guess) roles in the CF process. The important point we want to make out of all of this is that (b)(5) (b)(5) Make sense?

Thanks much!

(b)(6), (b)(7)(c)

---

**From:** Martin, George R
**Sent:** Friday, June 13, 2014 1:47 PM

**To:** (b)(6), (b)(7)(c)
**Cc:**
**Subject:** RE: need a paragraph asap

(b)(6), (b)(7)(c) that is correct, i.e., the initial adjudication must be by USCIS. (b)(6), (b)(7)(c)

PS – If this is for the S1 (b)(5)
(b)(5)
(b)(5) Also, see my slight tweak in red to my summary paragraph below.

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Friday, June 13, 2014 1:35 PM
**To:**
**Cc:** (b)(6), (b)(7)(c)
**Subject:** RE: need a paragraph asap

Thanks (b)(6), (b)(7)(c) Is it correct that even in removal proceedings, the IJ's cannot adjudicate their asylum application until USCIS has done so?

---

**From** (b)(6), (b)(7)(c)
**Sent:** Friday, June 13, 2014 1:20 PM
**To:**
**Cc:** (b)(6), (b)(7)(c)
**Subject:** RE: need a paragraph asap

(b)(6), (b)(7)(c) based upon my research, my understanding of the process for unaccompanied children and USCIS jurisdiction is as follows:

(b)(5)

(b)(6), (b)(7)(c)
Appellate & Protection Law Section
Office of the Principal Legal Advisor - Immigration Law & Practice Division

U.S. Immigration & Customs Enforcement
U.S. Department of Homeland Security

Telephone: (202) 732(b)(6), (b)(7)(c)
E-mail: (b)(6), (b)(7)(c)



---

**From:** (b)(6), (b)(7)(c)
**Sent:** Friday, June 13, 2014 12:01 PM
**To:**
**Cc:** (b)(6), (b)(7)(c)
**Subject:** RE: need a paragraph asap

I'll call you.

-----Original Message-----
**From** (b)(6), (b)(7)(c)
**Sent:** Friday, June 13, 2014 12:00 PM Eastern Standard Time
**To:**
**Cc:** (b)(6), (b)(7)(c)
**Subject:** RE: need a paragraph asap

(b)(6), (b)(7)(c) what is the context, i.e., as opposed to IJs? IJs do conduct limited hearings reviewing negative USCIS AO negative credible fear determinations. See:

8 CFR 208.30(a): "Jurisdiction . The provisions of this subpart B apply to aliens subject to sections 235(a)(2) and 235(b)(1) of the Act. Pursuant to section 235(b)(1)(B) of the Act, DHS has exclusive jurisdiction to make credible fear determinations, and the Executive Office for Immigration Review has exclusive jurisdiction to review such determinations."

8 CFR 1208.30(a): "Jurisdiction The provisions of this subpart B apply to aliens subject to sections 235(a)(2) and 235(b)(1) of the Act. Pursuant to section 235(b)(1)(B) , asylum officers have exclusive jurisdiction to make credible fear determinations, and the immigration judges have exclusive jurisdiction to review such determinations."

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Appellate & Protection Law Section

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U.S. Department of Homeland Security

Telephone: (202) 732-(b)(6), (b)(7)(c)
E-mail: (b)(6), (b)(7)(c)



---

**From** (b)(6), (b)(7)(c)
**Sent:** Friday, June 13, 2014 11:25 AM
**To**
**Cc** (b)(6), (b)(7)(c)
**Subject:** need a paragraph asap

On USCIS's exclusive authority to conduct credible fear hearings.

(b)(6), (b)(7)(c)
Chief
Immigration Law and Practice Division
Immigration and Customs Enforcement (ICE)
US Department of Homeland Security
500 12th Street, SW
Mail Stop 5900
Washington, DC 20536
202-732-(b)(6), (b)(7)(c)
520-249-(b)(6), (b)(7)(c) (cell)
(b)(6), (b)(7)(c) e-mail)

**From:** (b)(6), (b)(7)(c)
**To:**
**Subject:** RE: DROPPM
**Date:** Tuesday, March 12, 2013 3:56:00 PM

Hi (b)(6), (b)(7)(c)

I looked into *Matter of Lujan-Quintana*, 25 I&N Dec. 53 (BIA 2009), and (b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(6), (b)(7)(c) Associate Legal Advisor
Immigration Law & Practice Division (West)
Office of the Principal Legal Advisor
U.S. Immigration & Customs Enforcement
Office: (703) 820 (b)(6), (b)(7)(c)
Mobile: (210) 896 (b)(6), (b)(7)(c)

Legal Advisor, U.S. Immigration and Customs Enforcement. This document is for INTERNAL GOVERNMENT USE ONLY and may be exempt from disclosure under the Freedom of Information Act, 5 USC §§ 552(b)(5), (b)(7).

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Tuesday, March 12, 2013 1:02 PM
**To:** (b)(6), (b)(7)(c)
**Subject:** FW: DROPPM

(b)(6), (b)(7)(c)

FYI. I see you already reached out to EROLD.

Thanks,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
5201 Leesburg Pike, Suite 1300
Falls Church, Virginia 22041
(703) 820-(b)(6), (b)(7)(c)



---

**From:** (b)(6), (b)(7)(c)
**Sent:** Tuesday, March 12, 2013 12:46 PM
**To:** (b)(6), (b)(7)(c)
**Subject:** RE: DROPPM

Yes, feel free to reach out to (b)(6), (b)(7)(c) for a copy of the DROPPM. However, bear in mind post-Lujan-Quintana the guidance has been not to place someone claiming citizenship in a "claim status review" posture and 240 proceedings is the preferred approach.

---

**From** (b)(6), (b)(7)(c)
**Sent:** Tuesday, March 12, 2013 12:31 PM
**To** (b)(6), (b)(7)(c)
**Subject:** DROPPM

*** Warning *** Attorney/Client Privilege *** Attorney Work Product ***

(b)(6), (b)(7)(c)

Do you have a copy of the ERO Policy and Procedures Manual? We don't have intranet access to it- I guess because it isn't an agency wide document. Liz would like to check the policies and procedures related to Section 238 Admin Removal with relation to a foreign fugitive case she's working on for issues not covered in the Act or regs. Specifically, an alien subject to expedited removal under section 238 made a USC claim under an alias. (b)(5) This is a Mexican prison escapee convicted of murder. (b)(5) (b)(5) (b)(5)

If you don't have the manual, can I reach out to (b)(6), (b)(7)(c) to see if I can get a copy?

Thanks,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Section Chief, Immigration Court Practice Section- West
Immigration Law and Practice Division (ILPD)
U.S. Immigration and Customs Enforcement
5201 Leesburg Pike, Suite 1300
Falls Church, Virginia 22041
(703) 820-(b)(6), (b)(7)(c)

BULLET POINTS FOR ADDITION TO FAMILY DETENTION SECTION

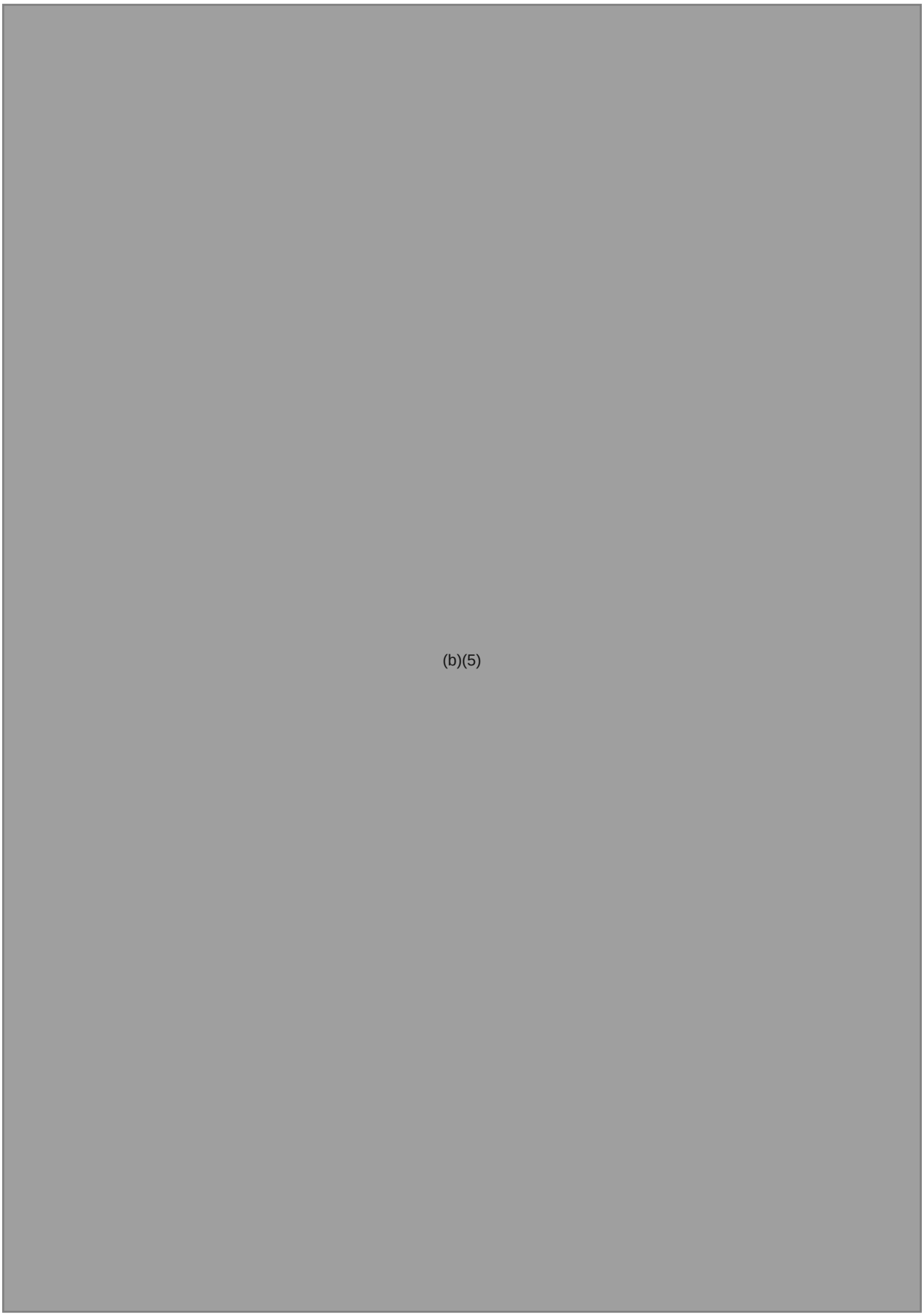
IN UPDATE TO FLORES DECLARATION

(b)(5)

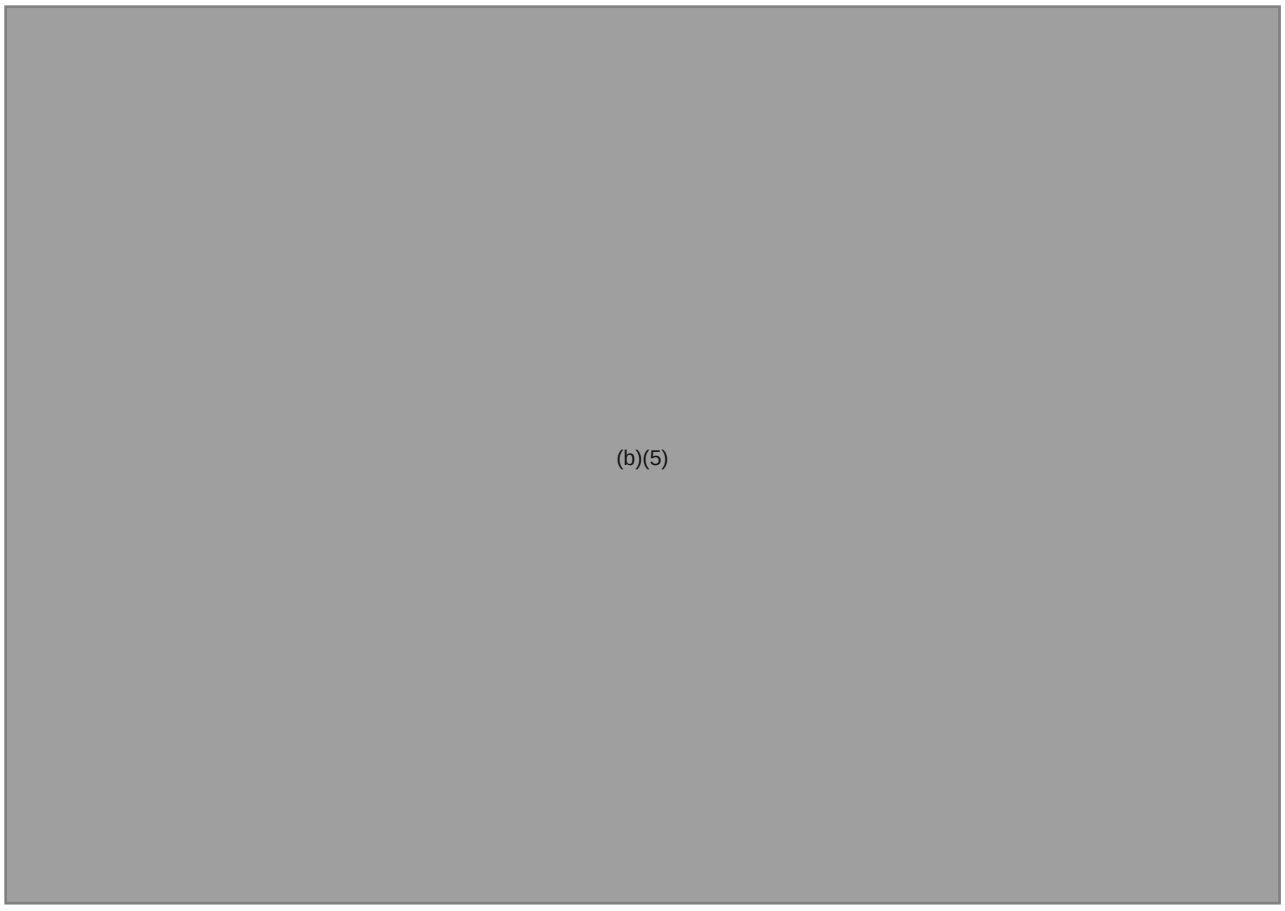
(b)(6), (b)(7)(c)

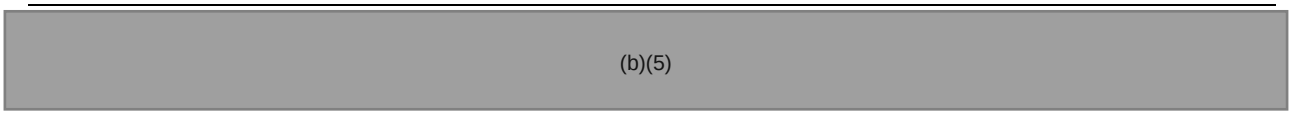
(b)(5)

(b)(5)


(b)(5)

(b)(5)


(b)(5)


(b)(5)

**From:** Vroom, Patricia M
**To:** (b)(6), (b)(7)(c)
**Cc:** (b)(6), (b)(7)(c) Almeida, Corina E; Gastelo, Elias S Jr
**Subject:** FW: Bond Exhibit Packets?
**Date:** Tuesday, July 08, 2014 5:56:13 PM

---

(b)(6), (b)(7)(c)

Some more insight on bond hearings involving credible fear cases from SA (b)(6), (b)(7)(c)

Pat

Patricia M. Vroom
**Chief Counsel**
Office of the Chief Counsel – Arizona
U.S. Immigration and Customs Enforcement
Department of Homeland Security
2035 N. Central Avenue
Phoenix, Arizona 85004
(602) 744 (b)(6), (b)(7)(c) (direct)
(602) 721 (cell)
(b)(6), (b)(7)(c)



---

**From:** (b)(6), (b)(7)(c)
**Sent:** Tuesday, July 08, 2014 1:29 PM
**To:** (b)(6), (b)(7)(c) Vroom, Patricia M; (b)(6), (b)(7)(c)
**Subject:** RE: Bond Exhibit Packets?

Pat,

What Jen sent is all we have as well. If applicable, we submit any credible fear interviews and sworn statements made to Border Patrol provided they will show that any fear is based on gangs or general crime and violence because we argue that the claimed fear is not recognized as a basis for protection. Also, oftentimes the respondent will tell Border Patrol they have no fear of returning to their country and then later claim a fear. Our IJ's view the

inconsistent statement as a significant factor for flight risk.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Senior Attorney
U.S. Immigration and Customs Enforcement
Department of Homeland Security
3250 N. Pinal Parkway
Florence, AZ 85132
Voice: (520) 868 (b)(6), (b)(7)(c)
Fax: (520) 868 (b)(6), (b)(7)(c)
Cell: (520) 401-0741



---

**From:** (b)(6), (b)(7)(c)
**Sent:** Tuesday, July 08, 2014 1:23 PM
**To:** Vroom, Patricia M; (b)(6), (b)(7)(c)
**Subject:** RE: Bond Exhibit Packets?

Pat – here are all the packets and articles we have for those three countries. None are bond packets – but information we submit in the merits hearings. I'll check around, but I think this is what we have.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Senior Attorney
Office of Chief Counsel
Immigration and Customs Enforcement
Department of Homeland Security
1705 E. Hanna Rd.
Eloy, AZ 85131
(520) 464
(520) 252 (b)(6), (b)(7)(c)

**From:** Vroom, Patricia M
**Sent:** Tuesday, July 08, 2014 1:14 PM
**To:** (b)(6), (b)(7)(c)
**Subject:** FW: Bond Exhibit Packets?
**Importance:** High

All:

Do we have anything like this?

Thanks!

Pat

Patricia M. Vroom
**Chief Counsel**
Office of the Chief Counsel – Arizona
U.S. Immigration and Customs Enforcement
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2035 N. Central Avenue
Phoenix, Arizona 85004
(602) 744 (b)(6), (b)(7)(c) direct)
(602) 721 cell)
(b)(6), (b)(7)(c)



**From:** (b)(6), (b)(7)(c)
**Sent:** Tuesday, July 08, 2014 12:24 PM
**To:** Almeida, Corina E; Vroom, Patricia M; Gastelo, Elias S Jr
**Cc:** (b)(6), (b)(7)(c)
**Subject:** Bond Exhibit Packets?
**Importance:** High

Greetings Corina, Pat, and Elias!

Your offices came up in today's meeting of the fledgling "OCC-Artesia" as possible sources of existing bond evidence packets for our cases from El Salvador, Guatemala and Honduras. If your attorneys have created bond evidence packets, would you be willing to share them with us? We are also working on this, but anticipate our first bond hearings tomorrow and would love to make use of existing OPLA resources.

Thanks for any assistance you may be able to provide.

Warm regards,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Associate Legal Advisor
Immigration Court Practice - West
Office of the Principal Legal Advisor - Enforcement and Litigation Directorate
Immigration Law and Practice Division
U.S. Immigration and Customs Enforcement
858-487 (b)(6), (b)(7)(c) office
619-368 cell
*E-mail:* (b)(6), (b)(7)(c)

**From:**
**To:** (b)(6), (b)(7)(c)
**Subject:** FW: 9c (b)(6), (b)(7)(c) due process rights inhere in expedited removal, and potential for withdrawing applic for admission enough for prejudice
**Date:** Monday, January 26, 2015 4:37:53 PM
**Attachments:** (b)(6), (b)(7)(c) due proc applies to ER + poss of withdrawing appl for adm enough prej pub SDCal Nov14.pdf

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Monday, November 10, 2014 7:58 PM
**To:** (b)(6), (b)(7)(c) Aguilar, Jason; Almeida, Corina E; (b)(6), (b)(7)(c) Beattie, Patricia A; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) Sanchez, Raphael; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) Ungerman, Leslie; Vroom, Patricia M; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) Davis, Mike P; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) Ramlogan, Riah; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)
**Cc:** (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)
**Subject:** 9c Raya-Vaca: due process rights inhere in expedited removal, and potential for withdrawing applic for admission enough for prejudice

All:

The other bad news from the 9c today comes in this re-entry prosecution out of the SDCal which potentially opens the door to lots of collateral challenges to expedited removal orders.

(b)(6), (b)(7)(c) is a Mexican national who has lived in the US without status since age 6, and has two USC kids. (b)(6), (b)(7)(c) has three minor criminal convictions – a 2003 misdemeanor conviction for burglary under CPC § 459 and two convictions in 2010 for giving false identification to a police officer, and for obstructing a police officer. He has a number of voluntary returns in 2009-2010, as well as a stipulated removal in 2009, and lurking in the facts here is that he was a suspected alien smuggler, but he was never prosecuted on such grounds. In 2011, he was apprehended by the BP and removed under an expedited removal order. At pages 5-7, the court summarizes the ER process generally, and then discusses the process in this case. At page 8, the court turns to his 2012 arrest near Tecate, CA that led to the 1326 charges. The USG did not defend the validity of the 2009 stipulated removal order, but did contend that (b)(6), (b)(7)(c) had no plausible relief from his 2011 removal order and thus that he suffered no prejudice attributable to any due process violation at his 2011 expedited removal proceeding. The trial judge found that, based on the Inspectors' Field Manual, it was unlikely he would have been allowed to withdraw his application for admission, and hence he could not show prejudice. He was convicted and sentenced to time served.

The court launches its analysis at page 10, first outlining the requirements for a 1326 collateral

attack, then finding that he is excused from the exhaustion requirement insofar as there is no administrative or judicial review for an ER order. They then turn to his claims that his due process rights were violated in three different ways: "(1) the immigration officer's failure to inform (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) (in violation of DHS regulations) of the charge of inadmissibility he faced and to read to him (or allow him to read) his sworn statement; (2) the officer's failure to advise (b)(6), (b)(7)(c) of the possibility of withdrawing his application for admission; and (3) the officer's failure to afford (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) the opportunity to consult with counsel."

At pages 12-14, the court addresses whether an alien has due process rights in expedited removal hearings. Relying heavily on *Zadvydas*, the court finds that an alien who has entered the US has due process protections. They rely on pre-IRRIRA decisions to find even a far briefer incursion beyond the border suffices to render due process protections. The court goes on to find that the ER regulation's language requiring aliens to be informed of the removal charge and given an opportunity to respond is a guarantee of due process, then finds there was a clear violation here:

> The regulations instructing the immigration officer to advise an alien of the charge against him and to permit the alien to read or be read the sworn statement prepared in his name protect those fundamental due process rights: notice of the charge the alien faces and the alien's opportunity to respond to that charge. Accordingly, because (b)(6), (b)(7)(c) was protected by the Due Process Clause when he faced removal, we conclude that any failure to inform (b)(6), (b)(7)(c) of the charge against him and to provide him the opportunity to review the sworn statement constituted a violation of (b)(6), (b)(7)(c) due process rights. [citations omitted]
>
> We further conclude that (b)(6), (b)(7)(c) due process rights to notice and an opportunity to respond were indeed violated during his expedited removal proceedings. (b)(6), (b)(7)(c) asserted in a signed declaration that no immigration officer explained to him either the nature of the removal proceedings or that he could be ordered removed from the United States. (b)(6), (b)(7)(c) further asserted that the immigration officer neither read to him nor permitted him to review the information in the sworn statement. While (b)(6), (b)(7)(c) initialed the Record of Sworn Statement and signed the Jurat, he did not, according to his declaration, understand what he was signing. Further, (b)(6), (b)(7)(c) acknowledged on the Jurat that he had "read (or . . . had read to [him]) this statement, consisting of 1 pages (including this page)." However, the Record of Sworn Statement and Jurat together totaled four pages, and the Jurat—the sole page (b)(6), (b)(7)(c) acknowledged having read—including only four questions he was asked and answered, none of which spoke to his admissibility. Beyond suggesting that the number of pages listed on the Jurat was perhaps a typographical error, the Government does not argue that the immigration officer did indeed comply with the regulation at issue by advising (b)(6), (b)(7)(c) of the charge against him and reading to him, or allowing him to read, the sworn statement. *Cf. United States v. Ramos*, 623 F.3d 672, 677–78 (9th Cir. 2010) (immigration officer who conducted stipulated removal proceedings testified about the processes she followed). Taking into consideration (b)(6), (b)(7)(c) declaration, the error on the Jurat, and the Government's failure to contest allegations, we hold that the immigration officer failed to advise (b)(6), (b)(7)(c) of the charge against him and to permit him to review the sworn statement, in contravention of (b)(6), (b)(7)(c) due process rights

Starting at page 18, the court rejects the USG argument that a showing that the regulatory violation prejudiced the defendant is a threshold inquiry before finding a due process violation:

> Because the regulatory violation here constituted a denial of (b)(6), (b)(7)(c) right to notice and an opportunity to respond, no showing of prejudice is necessary to establish a due process violation. We further reject the Government's argument that it should have been obvious to (b)(6), (b)(7)(c) that he was being scrutinized for his presence in the United States without valid documentation. Even if express notice of the charge of inadmissibility were not necessary, we do not see how he could have known the specific charge against him without being told of it, and (b)(6), (b)(7)(c) averred he was unaware that he was facing a formal removal order based on his lack of documentation.

Showing prejudice nonetheless remains an element of showing the ER order to be fundamentally unfair, and (b)(6), (b)(7)(c) claims that he was prejudiced by not being able to seek to withdraw his application for admission – an issue to which the court turns at page 20. They specify the showing he must make:

> Conducting the corresponding, fact-specific analysis here, we remain cognizant of the threshold (b)(6), (b)(7)(c) must satisfy: he must prove only the plausibility of relief. (b)(6), (b)(7)(c) cannot succeed by merely showing a "theoretical[]" possibility of relief, see United States v. Reyes-Bonilla, 671 F.3d 1036, 1050 (9th Cir. 2012), but he need not prove that relief was probable . . . [citations omitted] [ ] Certainly, he need not show "that he definitely would have received immigration relief." Barajas-Alvarado, 655 F.3d at 1089. Instead, (b)(6), (b)(7)(c) need only establish "some evidentiary basis on which relief could have been granted." Reyes-Bonilla, 671 F.3d at 1049–50.]

The court goes on to parse through the six enumerated considerations from the Inspectors' Field Manual for whether to allow an alien to withdraw his application for admission. They find that several cut against (b)(6), (b)(7)(c) but that in his favor are the fact that he committed no fraud, and that humanitarian factors weigh in his favor:

> Under the final factor identified by the Manual, (b)(6), (b)(7)(c) presents significant humanitarian considerations counseling in favor of relief. (b)(6), (b)(7)(c) partner (b)(6), (b)(7)(c) and their children, in addition to his mother, siblings, and much of his extended family, currently live in the United States. There is a "compelling humanitarian interest in keeping families united," so the humanitarian and public interest factors weigh significantly in (b)(6), (b)(7)(c) favor. [citations omitted]
>
> Certain other considerations counsel in (b)(6), (b)(7)(c) favor. First, his misdemeanor criminal history is fairly minimal and does not appear to have much bearing on the plausibility of relief. Second, (b)(6), (b)(7)(c) offers a record from another case in which withdrawal of application for admission was granted. While that record of withdrawal does not explain why relief was granted and thus does not help (b)(6), (b)(7)(c) carry his burden, *see Barajas-Alvarado*, 655 F.3d at 1091 n.17, it does make clear that even an individual with a conviction for false statement to a federal officer, no pending petitions for legal status, and a prior exclusion order can be permitted to withdraw his application for admission—and thus relief under such circumstances was plausible.
>
> Third, (b)(6), (b)(7)(c) presents statistics from DHS demonstrating that a significant proportion of aliens apprehended were permitted to withdraw their applications for admission. In fiscal

> year 2004, approximately 70 percent of the individuals subject to expedited removal proceedings were allowed to withdraw their application . . . . And the DHS statistics suggest that, at least in 2008, a very significant proportion of aliens in expedited removal proceedings obtained relief. Although (b)(6), (b)(7)(c) expedited removal proceedings took place in 2011, the data provide relevant context for the frequency with which withdrawal was permitted and, when considered in conjunction with other individualized evidence supporting the plausibility of relief, cuts in (b)(6), (b)(7)(c) favor.
>
> Given these considerations, we conclude that (b)(6), (b)(7)(c) has shown that in 2011 he had "some evidentiary basis on which relief could have been granted," *United States v. Reyes-Bonilla*, 671 F.3d 1036, 1050 (9th Cir. 2012), and thus that he had a plausible basis for relief.

In the last three pages, the court rather summarily rejects various other USG arguments.

(b)(6), (b)(7)(c) Associate Legal Advisor
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U.S. Immigration and Customs Enforcement
Office: 503-353(b)(6), (b)(7)(c)
E-mail: (b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c)
**To:**
**Subject:** FW: New York Times: Artesia questions
**Date:** Monday, January 26, 2015 4:25:58 PM

---

**From:** Zamarripa, Leticia
**Sent:** Thursday, July 31, 2014 7:54 PM
**To:** (b)(6), (b)(7)(c)
**Cc:** MACIAS, ADRIAN; (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c) Pincheck, Catherine; (b)(6), (b)(7)(c)
**Subject:** RE: New York Times: Artesia questions

(b)(6), (b)(7)(c)

Thank you for your prompt response

L

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Thursday, July 31, 2014 6:50 PM
**To:** Zamarripa, Leticia; (b)(6), (b)(7)(c)
**Cc:** MACIAS, ADRIAN; (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c) Pincheck, Catherine; (b)(6), (b)(7)(c)
**Subject:** RE: New York Times: Artesia questions

Lettie,

Bond decisions are made on a case by case basis.

(b)(6), (b)(7)(c)

---

**From:** Zamarripa, Leticia
**Sent:** Thursday, July 31, 2014 5:29 PM
**To** (b)(6), (b)(7)(c)
**Cc:** MACIAS, ADRIAN; (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
**Subject:** RE: New York Times: Artesia questions

You're awesome! Thank you. I know it's late in the day.
L

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Thursday, July 31, 2014 6:22 PM
**To:** Zamarripa, Leticia
**Cc:** MACIAS, ADRIAN; (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
**Subject:** RE: New York Times: Artesia questions

Lettie,

I have no answer to the goals and limits on detention question. Copying local OPLA, as they are working on a response to the final bullet.

Thanks

---

**From:** Zamarripa, Leticia
**Sent:** Thursday, July 31, 2014 4:42 PM
**To:** (b)(6), (b)(7)(c)
**Cc:** MACIAS, ADRIAN; (b)(6), (b)(7)(c)
**Subject:** New York Times: Artesia questions
**Importance:** High

(b)(6), (b)(7)(c)

Help.

DHS OPA sent this request to us on a short fuse.
Can you assist in providing answers for these questions:

- What is the current population at Artesia?

  (b)(5)

- How many adults? Children? What is the age range of the children?

  (b)(5)

- How many people detained at Artesia have been deported from its opening to now? What is the breakdown by nationality?

  (b)(5)

- What is the average time for migrants to be detained in Artesia?

  (b)(5)

- Are there play areas or day care provisions in the detention facility?

  (b)(5)

- Are families with young children given priority for removal?

(b)(5)

- Is there a time goal or limit for detention of the younger children?

(b)(5)

- Is it correct that there are 5 asylum officers stationed in Artesia and at least one immigration judge (in Arlington, Va.) who is hearing cases by teleconference.

(b)(5)

- How many mobile phones are available for detainee use? Is there a need for more? If so, are there plans to acquire more phones?

(b)(5)

- Is ICE applying a "no-bond, high-bond" policy to all detainees at Artesia who reach the stage of a bond determination?

  I have forwarded this question to local OPLA for response.

If at all possible, I'd like to have your responses by 6 p.m.
HQ OPA wants to forward to HQ ERO for vetting this evening.

Thanks!
Lettie

---

**From:** Christensen, Gillian M
**Sent:** Thursday, July 31, 2014 4:53 PM
**To:** (b)(6), (b)(7)(c)
**Subject:** Fw: Artesia

Can u send me somethinh??

---

**From**: Boogaard, Peter
**Sent**: Thursday, July 31, 2014 05:40 PM
**To**: O'CONNOR, KIMBERLY; Gonzalez, Barbara M; Christensen, Gillian M; BURKE, JENNY L; FRIEL, MICHAEL J; ONEIL, CHRISTOPHER T; Bentley, Christopher S; Alfonso, Angelica M; Carter, Jeffrey T; (b)(6), (b)(7)(c)
**Cc**: Catron, Marsha
**Subject**: FW: Artesia

+ ICE , CBP and CIS

Can we split these up and circulate answers here? Thanks all.

**From:** Preston, Julia (b)(6), (b)(7)(c)
**Sent:** Thursday, July 31, 2014 5:17 PM
**To:** Boogaard, Peter
**Subject:** Artesia

Hi Pete:

I am writing a story about the family detention center at Artesia, N.M. Basically this story will say that DHS and the administration, faced with a border crisis in part spurred by misinformation about releases of illegal border crossers from the Rio Grande Valley, is moving to increase detention of families, with the facility at Artesia, the expansion of Berks and the new detention center at Karnes that will open tomorrow. As in all things having to do with immigration, there is controversy about this policy.

My questions are:

--What is the current population at Artesia? How many adults? Children? What is the age range of the children?

--How many people detained at Artesia have been deported from its opening to now? Is there a breakdown by nationality? What is the average time for migrants to be detained in Artesia?

--How are CBP/ICE deciding who to send to Artesia? Are all the migrants coming from the Rio Grande Valley? (When I was in McAllen last week some migrants were still being released on their own recognizance. How are those choices made?)

--Are there play areas or day care provisions in the detention facility? Are families with young children given priority for removal? Is there a time goal or limit for detention of the younger children?

--I understand there are 5 asylum officers stationed at the facility and at least one immigration judge in Arlington, Va. who is hearing cases by teleconference. Is that correct?

--Reportedly there are no telephones for detainees to call out other than mobiles phones supplied to ICE officers. Are there plans for more phones?

--Communications for attorneys with EOIR, the immigration judges and the asylum officers are currently very difficult. Is that because CBP has already determined these migrants are in expedited removal and likely not eligible for relief?

--Has USCIS raised its credible fear threshold as a result of new guidance issued 2/28/2014?ma

--Is ICE applying a "no-bond, high-bond" policy to all detainees at Artesia who reach the stage of a bond determination?

It would be great to have a broad, current statement of the policy reasoning for expanding family detention. Is this a permanent policy or a temporary response to the surge?

Many thanks, Julia

**Julia Preston**
**National Immigration Correspondent**
**The New York Times**
(b)(6), (b)(7)(c)
**New York, N.Y. 10018-1405**

**(212) 556- (office)**
**(201) 805 (mobile)**
(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

**LITIGATION REPORT FOR MEETING WITH DD RAGSDALE**
September 4, 2014

1. **Case:** *United States v.* (b)(6), (b)(7)(c) No. 1:13-cr-00126-BYP (N.D. Ohio filed March 5, 2013)

**Assigned Attorneys:** Senior Attorney (b)(6), (b)(7)(c) OCC DET (CLE); (b)(6), (b)(7)(c) – HSILD/HRLS; AUSAs (b)(6), (b)(7)(c) – USAO N.D. Ohio

**Type of Action:** Criminal – Guilty Verdict

**Clients/Stakeholders:** HSI

**Purpose:** For information only

**Update:**

- On August 7, 2014, Bosnian citizen (b)(6), (b)(7)(c) was sentenced to two years' probation and an order revoking her U.S. citizenship was issued pursuant to her convictions for Naturalization Fraud in violation of 18 U.S.C. § 1425 and Misuse of Evidence of Naturalization in violation of 18 U.S.C. § 1423. An appeal was filed in the U.S. Court of Appeals for the Sixth Circuit on August 29, 2014.

- On April 17, 2014, a jury in Cleveland, Ohio, convicted (b)(6), (b)(7)(c) the wife of Srebrenica target (b)(6), (b)(7)(c) of one count of unlawful procurement of naturalization (18 U.S.C. § 1425) and one count of misuse of evidence of citizenship (18 U.S.C. § 1423). (b)(5) (b)(5) (b)(5) HSI Cleveland investigated the case and OCC Detroit (Cleveland sub-office) provided significant support to the USAO and HSI Cleveland in this case, including during witness preparations.

**Facts:** Defendant (b)(6), (b)(7)(c) and her husband (b)(6), (b)(7)(c) claimed that they were refugees from Bosnia during the 1992-1995 civil war. In fact, they continued to live in Bosnia during the war. (b)(6), (b)(7)(c) was the primary applicant on the refugee application for herself and her husband. From the beginning of the immigration application process and continuing through her naturalization and her 2009 immigration court testimony on behalf of her husband, she made material misrepresentations about (b)(6), (b)(7)(c) military service and their places of residence.

(b)(6), (b)(7)(c) was himself convicted in 2008 in the United States District Court, Northern District of Ohio (Case Number 5:07CR4-1), under 18 U.S.C. § 1546(a) in relation to fraud on his immigration applications. In particular, he failed to disclose his military service in the Bosnian Serb Army's (VRS) Bratunac Brigade from January to November 1995. (b)(6), (b)(7)(c) also served as a company commander when the VRS, including the Bratunac Brigade, assisted or otherwise participated in grave human rights violations, including the execution of 7,000-8,000

men and boys in July 1995 at Srebrenica. Those crimes are the only court-declared instance of genocide in Europe since World War II.

(b)(6), (b)(7)(c) (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) (b)(5)

**Next Steps:** (b)(5) (b)(6), (b)(7)(c) (b)(5) (b)(5) (b)(6), (b)(7)(c) has an individual hearing scheduled for October 31, 2014. OCC Detroit (Cleveland) and HRLS will continue consulting with HSI and ERO on detention and removal options for both subjects.

2. **Case:** *Washington Alliance of Technology Workers v. DHS*, No. 1:14-cv-00529 (D.D.C. filed March 28, 2014)

**Assigned Attorneys:** (b)(6), (b)(7)(c) – ELS; (b)(6), (b)(7)(c) and (b)(6), (b)(7)(c) – OIL; (b)(6), (b)(7)(c) – DHS OGC; District Judge Ellen S. Huvelle

**Type of Action:** Civil – Administrative Procedure Act (APA); declaratory and injunctive relief

**Clients/Stakeholders:** SEVP, DHS, USCIS

**Purpose:** For information only

**Updates:**

- On August 25, 2014, the government filed a motion to dismiss, arguing that Plaintiff lacks standing to challenge the 12-month Optional Practical Training (OPT) program and the 17-month Science, Technology, Engineering and Mathematics (STEM) OPT extension. The motion also argues that, to the extent the Plaintiff challenges the general OPT program (which was first established in 1947 and limited to 12 months since 1977), the claim is barred by the six-year statute of limitations for civil actions against the United States. Plaintiff's response to the motion to dismiss is due by September 11, 2014, and any reply must be filed by September 22, 2014.

**Facts:** The Washington Alliance of Technology Workers (WashTech) filed a complaint on March 28, 2014 (but did not serve it until June 14, 2014) challenging the Department's Interim Final Rule (IFR) extending the period of OPT for F-1 nonimmigrants with STEM degrees and the Department's subsequent designations of additional fields as qualifying for extended OPT.

The complaint alleges that WashTech suffered injury because, among other things, the OPT regulations undermine the H-1B statute's protections for domestic workers and have impacted the labor market. The complaint argues that the IFR violates the APA because: (1) the regulation is *ultra vires*; (2) the interpretation of the statute in the IFR was arbitrary and capricious; and (3) the Department lacked good cause for waiving the notice and comment requirements. The complaint seeks a declaratory judgment that: (1) DHS exceeded its authority when it created the OPT program and when it extended the available OPT for STEM; and (2) the Department's 2011 and 2012 expansions of the fields eligible for STEM OPT are null and void. The complaint seeks an injunction: (1) enjoining DHS from authorizing F-1 nonimmigrants to be employed after completing their course of study; and (2) requiring that DHS notify all F-1 nonimmigrants on post-completion OPT that they must cease employment in the United States immediately.

On April 8, 2008, DHS published an IFR extending the period of OPT by 17 months for F-1 nonimmigrant students with STEM degrees. For a total of up to 29 months, STEM OPT allows F-1 students with pending H-1B petitions to continue to work in the United States during the pendency of the H-1B petition. The rule was effective immediately, though post-publication comments were requested. DHS received many comments but has not acted upon them. WashTech did not submit any comments, but AFL-CIO (WashTech is affiliated with AFL-CIO) did raise some of the arguments presented in the complaint. Since issuance of the IFR, ICE updated the list of STEM-Designated Degree Programs in 2011 and 2012.

**3. Case:** *Matter of A-R-C-G-*, 26 I & N Dec. 388 (BIA 2014)

**Assigned Attorney:** (b)(6), (b)(7)(c) ILPD

**Type of Action:** BIA Precedent Decision

**Client/Stakeholder:** OPLA, USCIS

**Purpose:** For information only

**Updates:**

- On August 26, 2014, the Board of Immigration Appeals (Board) issued a precedent decision, finding that, "depending on the facts and evidence in an individual case, 'married women in Guatemala who are unable to leave their relationship' can constitute a cognizable particular social group that forms the basis of a claim for asylum." The Board found that the alien in the case had established past persecution based upon this protected ground, and remanded the record to the Immigration Judge for further proceedings on other issues pertinent to whether she should be granted asylum, including the availability of state protection and reasonable internal relocation.

- The new precedent has garnered media attention and follows closely in the wake of two other Board precedents that focused on the basic requirements for claims based on

membership in a particular social group, *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014) and *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014).

- (b)(5)
- (b)(5)

**Facts:** *A-R-C-G-* is the acronym for (b)(6), (b)(7)(c) a Guatemalan national who, along with her three children, entered the United States without inspection in December 2005. She was placed in removal proceedings before an immigration judge (IJ) and applied for asylum, with her children as derivative applicants, based on the domestic abuse that she had suffered at the hands of her husband in Guatemala, which included being raped, having her nose broken and being burned by paint thinner. She claimed to have sought help from the local police, but they were unresponsive. In an October 2009 written decision, the IJ denied the asylum application. (b)(6), (b)(7)(c) timely appealed to the Board. Although ICE initially concurred in the result, the Board subsequently set supplemental briefing for the parties and amici curiae (including the American Immigration Lawyers Association, the Federation for American Immigration Reform, the National Immigrant Justice Center, and the United Nations High Commissioner for Refugees). Following coordination within DHS, including the Office of the General Counsel and USCIS, OPLA submitted to the Board a motion to remand in which ICE stipulated, consistent direction from DHS, that, based on the record evidence, (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) had established past persecution on account of a protected ground, i.e., her cognizable particular social group of "married women in Guatemala who are unable to leave their relationship."

**Next Steps:** (b)(5)

(b)(5)

4. **Case:** *M.S.P.C. v. Johnson*, No. 14-1437 (D.D.C. filed Aug. 22, 2014)

**Assigned Attorneys:** (b)(6), (b)(7)(c) DCLD; (b)(6), (b)(7)(c) EROLD; (b)(6), (b)(7)(c) – OCC El Paso; (b)(6), (b)(7)(c) – DHS OGC; (b)(6), (b)(7)(c) – OIL; District Judge Amy Berman Jackson

**Type of action:** Civil – declaratory and injunctive relief

**Clients/Stakeholders:** ERO

**Purpose:** For information only

**Updates:**

- Ten Plaintiffs seek declaratory and injunctive relief with respect to the asylum process at the Artesia Family Residential Center (Artesia), which is characterized as a "deportation mill that is sending mothers and children back to their home countries to face serious harm without ever having given them a meaningful opportunity to present their claims." Plaintiffs also allege that "[i]n response to this recent flow of Central American families and children entering the United States, the government has created a new further-accelerated and results-oriented expedited removal system that deprives asylum applicants of their constitutional, statutory, and regulatory rights to a fair and meaningful hearing."

- Plaintiffs ask the court to: (1) enjoin the continuation of the "unlawful system of expedited removal;" (2) order Defendants "to submit a plan for corrective action for approval by the court" and to provide Plaintiffs with "a meaningful opportunity to apply for asylum, withholding of removal, and CAT relief;" (3) return any deported Plaintiff to the United States for new proceedings that comply with the law; and (4) award EAJA fees.

- On August 29, 2014, OPLA participated in a conference call with OIL, DHS OGC, USCIS, CBP, and EOIR to discuss the next steps in developing the defense of the suit.

(b)(5)

**Facts:** Plaintiffs allege that asylum officers and immigration judges (IJs) are "applying a substantively more demanding – and unlawful – credible fear standard to these individuals' claims," with the result that the rate of positive credible fear findings at Artesia (37.8%) is about one-half the nationwide rate that USCIS reported for the period March 2013-June 2014 (77%). The policies and procedures at Artesia allegedly violate the Immigration and Nationality Act (INA), the Convention Against Torture, the Foreign Affairs Reform and Restructuring Act of 1998, the Administrative Procedures Act and the Due Process Clause of the Fifth Amendment.

Plaintiffs also allege there are procedural obstacles to successful asylum claims: Artesia's isolated location; restricted telephone access; inadequate information about their legal rights; lack of near-by counsel; policies that restrict detainees' ability to meet with counsel; lack of privacy when detainees are able to meet with counsel; inadequate time for detainees to prepare

for credible fear interviews; lack of child care, which means mothers must present their credible fear claims to asylum officers in the presence of their children; no screening of children for independent asylum claims; and, policies that undermine the effective representation by counsel at credible fear hearings and subsequent reviews by IJs, such as not providing counsel with timely notice of their clients' hearings, rescheduling hearings without notifying counsel and preventing counsel from effectively participating in credible fear interviews and IJ reviews.

The complaint alleges that "[t]he asylum process at Artesia and its consequence—a dramatic drop in the number of families who are found eligible to apply for asylum—is the direct result of policies announced at the highest levels of our government," and includes quotations from President Obama, Vice President Biden and Secretary Johnson in support of that allegation.

Plaintiffs' counsel are the ACLU, the National Immigration Project of the National Lawyers Guild, the National Immigration Law Center, the American Immigration Council, Jenner & Block, and Van Der Hout, Brigagliano & Nightingale. Defendants, all in their official capacities, are Secretary Johnson, Attorney General Holder, PDAS Winkowski, USCIS Director Leon Rodriguez, CBP Commissioner R. Gil Kerlikowske, and AFOD (b)(6), (b)(7)(c) who is identified in the complaint as the Acting Director of Artesia.

5. **Case:** (b)(6), (b)(7)(c) *v. United States*, No. 13-0435 (D. Ariz. filed Mar. 1, 2013)

**Assigned Attorneys:** (b)(6), (b)(7)(c) DCLD; AUSA (b)(6), (b)(7)(c) USAO; District Judge H. Russel Holland

**Type of Action:** Federal Tort Claims Act (FTCA)

**Clients/Stakeholders:** HSI

**Decision Point:** Should ICE concur with the request of the U.S. Attorney's Office (USAO) for settlement authority of up to $400,000, to be paid from the Judgment Fund?

**Recommendation:** (b)(5)

**Updates:**

- This personal injury suit results from a June 10, 2010 motor vehicle accident in Yuma, Arizona in which SAC Phoenix Special Agent (SA) (b)(6), (b)(7)(c) rear-ended Plaintiffs' vehicle, which was stopped in traffic. (b)(5)
  (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)
  (b)(5)
- SA (b)(6), (b)(7)(c) was cited for "failure to control" under A.R.S. § 28-701A. He paid the citation and attended traffic school.

- (b)(5) recommendation.
- A settlement conference is set for September 11, 2014.

**Facts:** The Plaintiffs are (b)(6), (b)(7)(c) Ms (b)(6), (b)(7)(c) did not see a medical provider until six days after the accident. She complained of neck and collarbone pain along with neck stiffness, was treated with painkillers and a muscle relaxant and was referred to physical therapy. After attending several sessions, she developed paresthesia in her right arm. Arthroscopic surgery in September 2012 did not resolve her symptoms. Eventually she was diagnosed with Thoracic Outlet Syndrome (TOS) and was sent to the University of California-San Diego for surgery. A known complication of such surgery is that it might cause temporary or permanent weakness to the arm. Ms. Vanegas continues to have difficulty using her right hand (she is right-handed), numbness in her armpit down to her fingers, weakness in her arm and intermittent pain. Unfortunately, these problems appear to be permanent.

The government's medical expert disputes that the accident caused Ms. (b)(6), (b)(7)(c) injuries. He believes most if not all of Ms. (b)(6), (b)(7)(c) post-accident symptoms can be attributed to the progressive worsening of pre-existing complaints of right-sided neck shoulder and arm pain, reflecting the normal wear-and-tear associated with aging.

(b)(6), (b)(7)(c) (b)(5) Her treating neurosurgeon ave extensive experience treating patients with TOS. The neurosurgeon testified at his deposition that TOS symptoms can develop, as happened with Ms. (b)(6), (b)(7)(c) months or years after a motor vehicle accident. Ms. (b)(6), (b)(7)(c) retained medical expert also opined that accident-induced trauma caused her post-accident symptoms and necessitated her surgeries and other treatment. His opinions are based on an independent medical examination and his review of Mrs. (b)(6), (b)(7)(c) medical records and history, in which her pre-accident symptoms and physical limitations were much different than those that she reported after the accident. Moreover, she obtained substantial relief from the TOS surgery. (b)(5)

(b)(5)

Ms. (b)(6), (b)(7)(c) medical expenditures as billed totaled $140,000 in addition to the $3,000 claimed for lost wages and $6,909.72 in property damage for a total of $149,909.72 in hard damages. She is also claiming past and future pain, suffering and mental anguish. Her husband's claims are only for loss of consortium.

(b)(6), (b)(7)(c)

(b)(5)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

OPLA has provided its recommendation to HSI.

**From:** (b)(6), (b)(7)(c)
**To:**
**Subject:** FW: Read-Aheads for Meeting with DD Tomorrow
**Date:** Monday, January 26, 2015 4:35:46 PM
**Attachments:** D2 Litigation Report - 09-04-14.docx

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**From:** (b)(6), (b)(7)(c)
**Sent:** Wednesday, September 03, 2014 5:54 PM
**To** (b)(6), (b)(7)(c)
**Subject:** FW: Read-Aheads for Meeting with DD Tomorrow

(b)(6), (b)(7)(c) Hi

Who will be briefing the Matter of A-R-C-G- case at the Litigation meeting with DD tomorrow?
(b)(6), (b)(7)(c)

Thanks,

(b)(6), (b)(7)(c)
Senior Advisor to Principal Legal Advisor
Senior Advisor to Senior Counselor for International Policy
U.S. Immigration and Customs Enforcement • U.S. Department of Homeland Security
Desk: (202) 732 (b)(6), (b)(7)(c) Cell: (202) 276 (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)



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**From:** (b)(6), (b)(7)(c)
**Sent:** Wednesday, September 03, 2014 4:54 PM
**To** (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
**Cc:** Davis, Mike P; (b)(6), (b)(7)(c) Swendiman, Alan R; (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
**Subject:** Read-Aheads for Meeting with DD Tomorrow

All:

Please find attached the final read-ahead materials for our Litigation meeting with DD Ragsdale tomorrow at 4:00pm in 11018. Please feel free to pass on to the appropriate SMEs as necessary or anyone I may have missed.

Best Regards,

(b)(6), (b)(7)(c)
Senior Advisor to Principal Legal Advisor

Senior Advisor to Senior Counselor for International Policy
U.S. Immigration and Customs Enforcement • U.S. Department of Homeland Security
Desk: (202) 732-(b)(6), (b)(7)(c) Cell: (202) 27(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Pages 196 through 197 redacted for the following reasons:
- - - - - - - - - - - - - - - - - - - - - - - - - - -
(b)(5)

**From:**
**To:** (b)(6), (b)(7)(c)
**Subject:** FW: SWB/EA Briefing Document for D-1
**Date:** Monday, January 26, 2015 4:40:19 PM
**Attachments:** Significant Legal Issues and Litigation- Briefing Materials Oct 2014 (f....docx
Saldana briefing EA suits (MPD).docx
AD Meeting Agenda - 12-15-14.docx
D-1 EA-SWB Briefing Document for 01-05-15 (MPD 121814).docx
**Importance:** High

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**From:** Davis, Mike P
**Sent:** Thursday, December 18, 2014 5:01 PM
**To:** Cheng, Wen-Ting; (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
**Cc:** (b)(6), (b)(7)(c) Swendiman, Alan R;
(b)(6), (b)(7)(c)
**Subject:** SWB/EA Briefing Document for D-1
**Importance:** High

Team,

We need to put together a paper for Director Saldaña that encapsulates OPLA's work related to the SWB and EA. We have a lot of the pieces of this in place already, between the pre-confirmation materials that Michelle spearheaded, the write-up that DCLD prepared on the EA-related litigation and the OPLA bi-weekly read-ahead prepared for Mr. Winkowski earlier in the week (all attached). Our goal here is to have something tailored for our incoming Director and ready for her January 5 arrival. We should assume that she's still learning this stuff, so let's provide enough background to help give context and get her up to speed. I've roughed out a document (final attachment) that can be used for this purpose and have divided up parts of it for FLO, DCLD, EROLD, ILPD, and LELD to work on.

(b)(6), (b)(7)(c)

Could ECU please control/consolidate this and get a cleared version for my review NLT COB Tuesday, Dec. 30th?

Thanks!
Mike

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**Michael P. Davis**
Director of Enforcement and Litigation
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-732(b)(6), (b)(7)(c)

Cell: 202-904(b)(6), (b)(7)(c)
E-mail: (b)(6), (b)(7)(c)

## Significant Legal Issues and Litigation

Fairness of the Immigration Removal Process

(b)(5)

(b)(5) In one case, *Franco-Gonzalez v. Holder*, No. 10-2211 (C.D. Cal. filed Mar. 26, 2010), the American Civil Liberties Union (ACLU) filed a class action alleging that the current Department of Justice (DOJ) and Department of Homeland Security (DHS) regulations and practices with regard to immigration detainees with mental disabilities violate the Immigration and Nationality Act (INA), the Due Process Clause of the Fifth Amendment, and Section 504 of the Rehabilitation Act of 1973. http://www.clearinghouse.net/chDocs/public/IM-CA-0067-0002.pdf. On April 22, 2013, DHS and the DOJ released guidance on safeguards for unrepresented detainees with mental disorders, which are available at: https://www.ice.gov/doclib/detentionreform/pdf/11063.1_current_id_and_infosharing_detainess_mental_disorders.pdf and http://www.justice.gov/eoir/press/2013/SafeguardsUnrepresentedImmigrationDetainees.html. On April 23, 2013, the district court entered a wide-ranging permanent injunction requiring the government to provide mentally incompetent detainees with a qualified representative, and if detained for 180 days or more, with bond hearings before an immigration judge who must presumptively order their release. http://scholar.google.com/scholar_case?case=2047990532669020624&hl=en&as_sdt=6&as_vis=1&oi=scholarr. The case continues, as a court-appointed special master works with the parties to address outstanding issues and implementation of the injunction.

In a more recent case, advocacy organizations in the Pacific Northwest have brought a class action lawsuit seeking to enjoin immigration proceedings involving minor aliens unless the government ensures that all minors have legal representation. *See J.E.F.M. v. Holder*, No. 14-1026 (W.D. Wash. filed July 9, 2014), https://aclu-wa.org/sites/default/files/attachments/2014-07-09--Complaint%20and%20Ex.%20A.pdf. On September 29, 2014, the district court denied plaintiffs' motion for a preliminary injunction, and deferred ruling on class certification. A motion to dismiss the case is pending.

Challenges to ICE's Immigration Detention Authority

The INA contains several provisions mandating that certain aliens be detained during their removal proceedings. INA § 236(c), 8 U.S.C. §1226(c), provides for the mandatory detention of certain aliens on criminal-and terrorism-related grounds. This authority has come under attack on several fronts:

> Several class action lawsuits challenge ICE's ability to invoke this authority unless ICE takes immediate custody of the alien upon his or her release from criminal custody. *See, e.g.*, *Preap v. Johnson*, 2014 WL 1995064 (N.D. Cal. May 15, 2014), *appeal docketed*, No. 14-16326 (9th Cir. July 14, 2014), http://scholar.google.com/scholar_case?case=

10756082037759101353&hl=en&as_sdt=6&as_vis=1&oi=scholarr: *Khoury v. Asher*, 3 F. Supp. 3d 877 (W.D. Wash. 2014), *appeal docketed*, No. 14-35482 (9th Cir. June 5, 2014), http://scholar.google.com/scholar_case?case=10256755304585480758&hl=en&as_sdt=6&as_vis=1&oi=scholarr; *see also Castaneda v. Souza*, 2014 WL 4976140 (1st Cir. Oct. 6, 2014) (holding that INA § 236(c) requires ICE to detain within a reasonable time after release from criminal custody), http://media.ca1.uscourts.gov/pdf.opinions/13-1994P-01A.pdf.

- Several class action lawsuits challenge ICE's authority to continue to detain aliens under INA § 236(c) if the detention exceeds six month. *See*, *e.g.*, *Reid v. Donelan*, 2014 WL 2199780 (D. Mass. May 27, 2014), *appeal docketed*, No. 14-1803 (1st Cir. July 23, 2014), http://www.law.yale.edu/documents/pdf/Clinics/wirac_Reid_v_Donelan_142-opinion_order_14-0527.pdf; *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013), *appeal docketed*, No. 13-56755 (9th Cir. Sept. 30, 2013), http://cdn.ca9.uscourts.gov/datastore/opinions/2013/04/16/12-56734.pdf.

- A class action challenges the sufficiency of an alien's ability to challenge a determination that he or she is properly included within INA § 236(c). *See, e.g.*, *Gayle v. Johnson,* 2014 WL 1044074 (D.N.J. Mar. 14, 2014), http://www.leagle.com/decision/In%20FDCO%2020140317B84.

Challenges to ICE Detainer Authority

Immigration "detainers" are a long-established practice by which ICE requests that a state or local law enforcement agency (LEA) retain custody over a suspected criminal alien already arrested by the state or local agency for up to 48 hours following the time the individual would otherwise be released, in order to allow ICE to assume custody and process the alien for potential removal from the United States. Several class action lawsuits seek to restrict the ability of ICE to issue detainers. Among their demands, Plaintiffs seek: to require ICE to find probable cause that an alien is removable; individualized determinations of flight risk; and judicial determinations of probable cause within 48 hours of the issuance of the detainer. *See*, *e.g.*, *Gonzalez v. ICE*, No. 13-4416 (C.D. Cal. filed June 19, 2013), https://www.aclu.org/sites/default/files/assets/gonzalez_v._ice_amended_complaint.pdf; *Moreno v. Napolitano*, 2014 WL 4911938 (N.D. Ill. Sept. 30, 2014) (certified class action), http://scholar.google.com/scholar_case?case=5091065879035409744&hl=en&as_sdt=6&as_vis=1&oi=scholarr. The advocacy community has also filed lawsuits against state and local LEAs and mounted an extensive campaign to urge LEAs not to cooperate with ICE detainers. As a result, many of those LEAs no longer honor ICE detainers. http://immigrationimpact.com/2014/09/22/why-250-counties-have-stopped-honoring-local-ice-detainers/.

Litigation Involving the Current Influx of Aliens Along the Southwest Border

(b)(5)

(b)(5) In particular, pursuant to a stipulated settlement agreement entered into by the former Immigration and Naturalization Service in *Flores v. Reno*, No. 85-cv-4544 (C.D. Cal. 1997), alien juveniles in federal immigration custody are entitled to a number of significant safeguards, and class counsel has made a number of visits to facilities deployed by the government to respond to the crisis. https://www.aclu.org/sites/default/files/assets/flores_settlement_final_plus_extension_of_settlement011797.pdf. Also, a recent class action lawsuit takes issue with access to asylum on the part of alien families seeking asylum while detained at ICE's new family residential facility in Artesia, New Mexico. *See M.S.P.C. v. Johnson*, No. 14-1437 (D.D.C. filed Aug. 22, 2014), https://www.aclu.org/sites/default/files/assets/filed_complaint_1.pdf. Advocacy organizations also challenge family detention conditions and allege mistreatment in the facilities. http://www.maldef.org/assets/pdf/2014-09-30_Karnes_PREA_Letter_Complaint.pdf. http://www.cnn.com/2014/10/03/justice/texas-immigrant-detention-allegations/

On the other hand, a recent suit by a vocal critic of the Administration action seeks to require placing aliens in quarantine a period equal to the incubation period for serious illnesses before they are released from ICE custody. *See Taitz v. Johnson*, No. 14-0119 (S.D. Tex. filed July 14, 2014), http://www.orlytaitzesq.com/wp-content/uploads/2014/09/Taitz-v-Johnson-first-Amended-complaint-filed.pdf.

There have been numerous news articles on this border crisis. Highlighted below are some articles that address the challenges inherent in the crisis and a White House press release detailing the government's course of action:

- http://www.nytimes.com/2014/10/06/world/americas/a-smuggled-girls-odyssey-guatemala-migration-abduction.html?emc=eta1&_r=0
- http://www.washingtonpost.com/opinions/five-myths-about-the-border-crisis/2014/08/08/1ec90bea-1ce3-11e4-ab7b-696c295ddfd1_story.html
- http://www.cnn.com/2014/07/07/politics/5-things-immigration-reality-check/
- http://www.whitehouse.gov/the-press-office/2014/08/01/obama-administration-s-government-wide-response-influx-central-american-

Border Search Authority

(b)(5)

(b)(5)

of this issue is *United States v. Cotterman*, 709 F.3d 952 (9th Cir. 2013) (en banc), http://cdn.ca9.uscourts.gov/datastore/opinions/2013/03/08/09-10139.pdf, in which the Ninth Circuit held that a "forensic examination" of a subject's electronic devices that was conducted as part of a border search required reasonable suspicion, which the court concluded the government had. There have been several news articles addressing the impact of *Cotterman*, including the following: http://www.wired.com/2014/01/scotus-border-gadget-searches/ and http://online.wsj.com/news/articles/SB10001424127887323296504578397382773377250. ICE has its own directive on conducting border searches of electronic devices, which is available to the public here: https://www.dhs.gov/xlibrary/assets/ice_border_search_electronic_devices.pdf.

*The Relationship* Between Criminal Law and Civil Immigration Law

(b)(5)

(b)(5) The U.S. Supreme Court issued two decisions last year that involved the parameters of the categorical approach, *Descamps v. United States*, 133 S. Ct. 2276 (2013), http://www.supremecourt.gov/opinions/12pdf/11-9540_8m58.pdf, and *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013), http://www.supremecourt.gov/opinions/12pdf/11-702_9p6b.pdf. ICE has been working to address the impact of these cases in proceedings before the immigration courts. *Descamps* clarified the operation of the "categorical approach" which applies to many of the criminal grounds of removal, and depending on the law of the circuit, may limit the cases in which ICE can use the record of conviction to prove a removal charge. (b)(5)

(b)(5)

(b)(5) The Board of Immigration Appeals (BIA) has addressed the impact of these cases in several administrative decisions. *See Matter of Dominguez-Rodriguez*, 26 I&N Dec. 408 (BIA 2014) (holding that the categorical approach does not apply to the controlled substance removal ground exception for a single offense involving possession for one's own use of 30 grams or less of marijuana), http://www.justice.gov/eoir/vll/intdec/vol26/3814.pdf; *Matter of Chairez*, 26 I&N Dec. 349 (BIA 2014) (holding that the Supreme Court's analysis in *Descamps* applies to curtail the use of information from conviction records in establishing most criminal grounds of removability in immigration proceedings) http://www.justice.gov/eoir/vll/intdec/vol26/3807.pdf.

(b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c)
**Sent:** Monday, December 15, 2014 12:19 PM
**To:** Almeida, Corina E; (b)(6), (b)(7)(c)
**Subject:** RE: Draft answers ICE Liaison meeting
**Attachments:** 2014-11-19 ICE liaison minutes (draft) (b)(6), (b)(7)(c) edits).docx

I have attached my proposed edits.

(b)(6), (b)(7)(c)
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 78(b)(6), (b)(7)(c)
Fax: (303) 784-6566



**From:** Almeida, Corina E
**Sent:** Wednesday, December 10, 2014 1:18 PM
**To:** Longshore, John P; (b)(6), (b)(7)(c)
**Subject:** FW: Draft answers ICE Liaison meeting

John (b)(6), (b)(7)(c) :

Please review the DRAFT notes and provide your comments/corrections by NLT Tuesday, December 16, 2014.

Thanks,
Corina

**From** (b)(6), (b)(7)(c)
**Sent:** Wednesday, December 10, 2014 12:29 PM
**To:** Almeida, Corina E
**Subject:** Draft answers ICE Liaison meeting

Corina,

Still having growing pains in this job. I think I did pretty good with the answers (except for the last on on I-9's). Hopefully (b)(6), (b)(7)(c) doesn't mind cleaning that one up.

What happens now? Y'all "fix" the answers then I can distribute?

Also, I think I'm missing a person in attendence from y'all's side.

Regards, and Merry Christmas,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) **Law, Ltd**
**a U.S. Immigration Firm**
(b)(6), (b)(7)(c)
Denver, CO 80226
(303) 974 (b)(6), (b)(7)(c)
(303) 484-2967
(b)(6), (b)(7)(c)

-------- Original Message --------
Subject: Re: Questions for November meeting
From: (b)(6), (b)(7)(c)
Date: Mon, November 10, 2014 3:17 pm
To: "Almeida, Corina E" (b)(6), (b)(7)(c)

Corina,

Below are the original questions submitted previously for the cancelled 6/30 meeting, plus a couple others.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) Law, Ltd
a U.S. Immigration Law Firm

(b)(6), (b)(7)(c)
Denver, Colorado 80226
303-(b)(6), (b)(7)(c)ice
303-484-2967 Fax
(b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c) Law (b)(6), (b)(7)(c)
**Sent:** Wednesday, June 25, 2014 5:25 PM
**To:** Almeida, Corina E
**Subject:** Questions for 6/30

Corina,

1. Previously OCC indicated that it was working on a process to streamline cases identified as potentially "approvable cases." This included assigning cases to a particular trial attorney who would stay with the case for the duration. Has this been implemented? If so, how do we initiate this type of review. If not, are there still plans to implement this?

2. How is ICE handling military PIP applications and do they have a specific timeline for adjudication?

3. Upon submitting proposed motions to the motions box, several attorneys have received a response instructing them to submit the motion to the court and that ICE OCC would respond. This seems to defeat the purpose of the motions box. Is OCC still amenable to reviewing motions and indicating its position on motions submitted to the mailbox?

4. Who is the HSI contact now that (b)(6), (b)(7)(c) has retired?

5. Several AILA attorneys have indicated that clients they represent have been called in for a routine meetings with an ICE officer, and at these meetings the clients have been asked to take certain substantive actions. One specific example, attached, Ms. (b)(6), (b)(7)(c) was asked to sign an expedited order of removal without her attorney present even though the attorney had a G-28 on file and had actually spoken to the removal officer in person. Obviously such actions violate the client's right to counsel under INA section 292. What assurances can we have that such will not happen in the future.

6. Can ICE ERO provide an updated officer contact list?

7. Is there a procedure to appeal/ or ask for reconsideration of a denial of an I-246 Stay of Removal in the case where ICE may not have been able to consider evidence submitted in support of the I-246 ?

8. A few years ago ICE would periodically notify the public in a state or across the nation that it would begin I-9 inspections of 500 or 1,000 employers.

1. Has the agency continued to make such notices??
2. Can you tell us how many I-9 inspections has ICE initiated in Colorado and Wyoming in 2014? How many in 2013?
3. In order to better serve the public, can you tell us what are the main areas of employer noncompliance? What should we tell employers to do better?
4. Can you indicate any electronic systems ICE has found particularly beneficial for an employer's compliance with the regulations?
5. Given the newspaper articles on shortages of workers as the construction and other industries get busier, is anyone inside the agency providing information to Congress on the need to make more workers—whether already inside the U.S. or abroad—eligible to work through a legalization program, increased H-1B professional visas, increased H-2B seasonal visas, and a visa category for year-round lesser-skilled workers?

Thanks,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) Esq.

(b)(6), (b)(7)(c) Law, Ltd
a U.S. Immigration Law Firm

(b)(6), (b)(7)(c)
Denver, Colorado 80226
303-(b)(6), (b)(7)(c) Office
303-484-2967 Fax
(b)(6), (b)(7)(c)

**ICE (OCC, ERO, HSI) & CO AILA LIAISON MEETING MINUES**
**November 19, 2014**
**9:00 a.m. at the Jim Bailey Building**
**12445 E. Caley Ave**
**Centennial, CO 80111**

In attendance:

For the Office of Chief Counsel:

Corina Almeida

(b)(6), (b)(7)(c)

For Enforcement and Removal Operations:

John Longshore

For Homeland Security Investigations:

For the Colorado Chapter of AILA:

(b)(6), (b)(7)(c)

**1. Previously OCC indicated that it was working on a process to streamline cases identified as potentially "approvable cases." This included assigning cases to a particular trial attorney who would stay with the case for the duration. Has this been implemented? If so, how do we initiate this type of review. If not, are there still plans to implement this?**

(b)(5)

**2. How is ICE handling military PIP applications and do they have a specific timeline for adjudication?**

(b)(5)

**3. Upon submitting proposed motions to the motions box, several attorneys have received a response instructing them to submit the motion to the court and that ICE OCC would**

**respond. This seems to defeat the purpose of the motions box. Is OCC still amenable to reviewing motions and indicating its position on motions submitted to the mailbox?**

(b)(5)

(b)(5)

**4. Who is the HSI contact now that (b)(6), (b)(7)(c) has retired?**

(b)(6), (b)(7)(c) The deputy is (b)(6), (b)(7)(c) Assistant Special Agent in Charge is (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) Phone: (303)721-(b)(6), (b)(7)(c) **** unsure who's number this is and if you want it distributed****)

**5. Several AILA attorneys have indicated that clients they represent have been called in for a routine meetings with an ICE officer, and at these meetings the clients have been asked to take certain substantive actions. One specific example, attached, Client was asked to sign an expedited order of removal without her attorney present even though the attorney had a G-28 on file and had actually spoken to the removal officer in person. Obviously such actions violate the client's right to counsel under INA section 292. What assurances can we have that such will not happen in the future.**

(b)(5)

**6. Is there a procedure to appeal or ask for reconsideration of a denial of an I-246 Stay of Removal in the case where ICE may not have been able to consider evidence submitted in support of the I-246 ?**

(b)(5)

8. A few years ago ICE would periodically notify the public in a state or across the nation that it would begin I-9 inspections of 500 or 1,000 employers.

1. Has the agency continued to make such notices?
2. Can you tell us how many I-9 inspections has ICE initiated in Colorado and Wyoming in 2014? How many in 2013?
3. In order to better serve the public, can you tell us what are the main areas of employer noncompliance? What should we tell employers to do better?
4. Can you indicate any electronic systems ICE has found particularly beneficial for an employer's compliance with the regulations?
5. Given the newspaper articles on shortages of workers as the construction and other industries get busier, is anyone inside the agency providing information to Congress on the need to make more workers—whether already inside the U.S. or abroad — eligible to work through a legalization program, increased H-1B professional visas, increased H-2B seasonal visas, and a visa category for year-round lesser-skilled workers?

(b)(6), (b)(7)(c)

(b)(5)

(b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c)
**Sent:** Tuesday, October 14, 2014 10:52 AM
**To:** (b)(6), (b)(7)(c)
**Subject:** FW: Strategic Use of Expedited Removal Authority

FYI



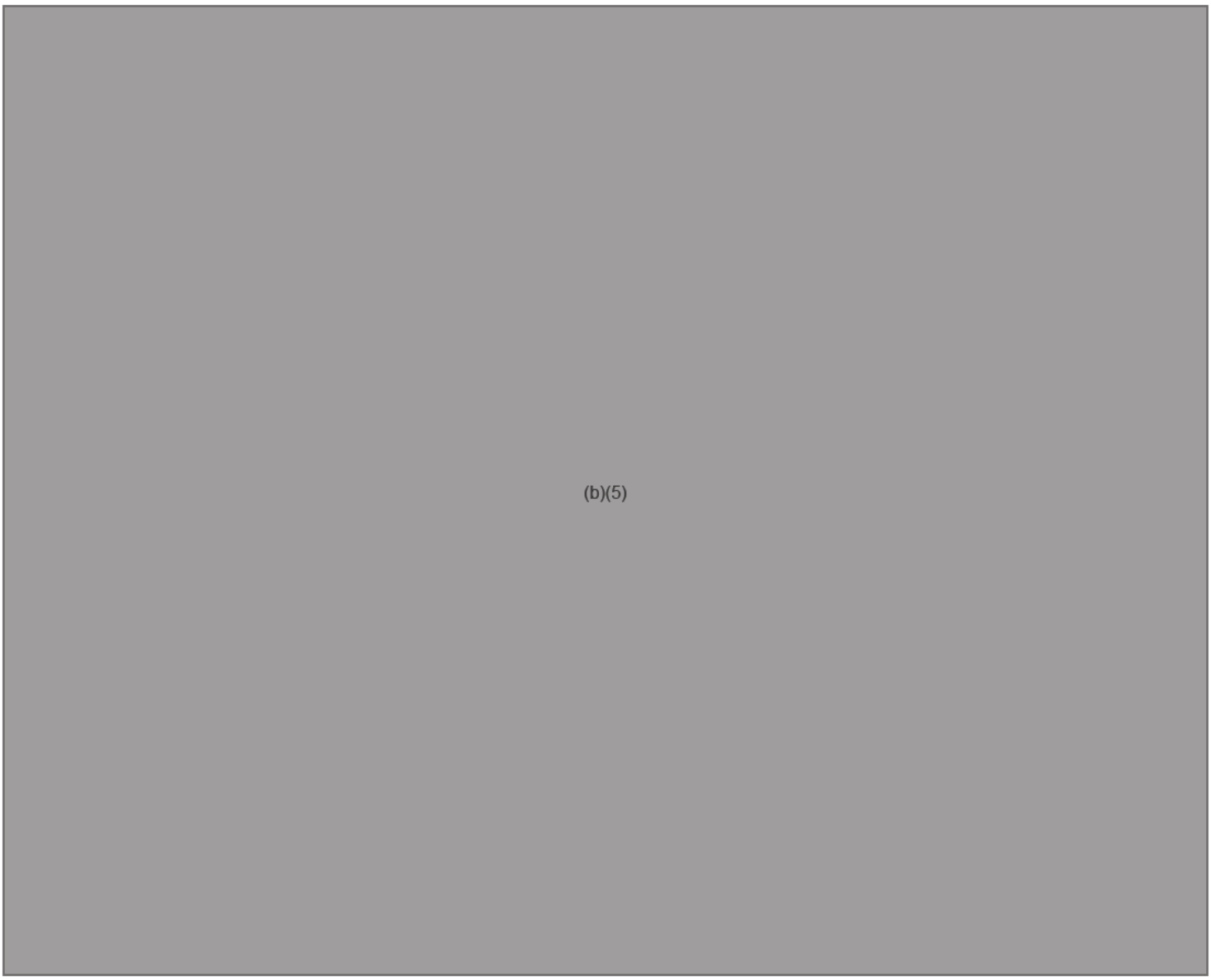
**From:** (b)(6), (b)(7)(c)
**Sent:** Tuesday, October 22, 2013 12:35 PM
**To:** Almeida, Corina E
**Cc:** (b)(6), (b)(7)(c)
**Subject:** RE: Strategic Use of Expedited Removal Authority

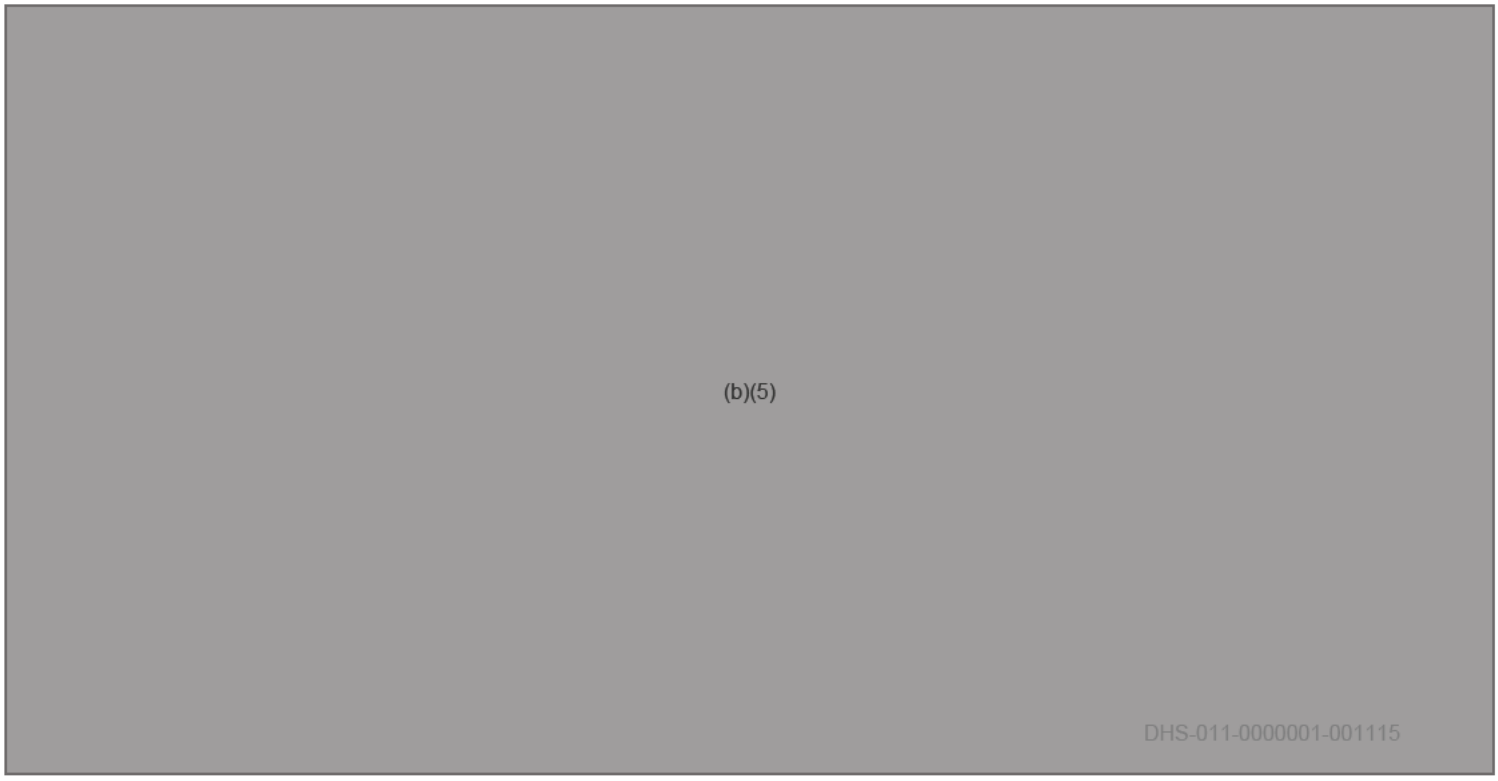
Corina,

Please forgive the long email, but I feel it's necessary to connect all of the dots on this issue. I can certainly edit for length, if need be.

(b)(5)

(b)(5)


(b)(5)


(b)(5)

Please let me know if you need additional information or clarification.

Thank you,
(b)(6), (b)(7)(c)



**From:** Almeida, Corina E
**Sent:** Monday, October 21, 2013 12:56 PM
**To:** (b)(6), (b)(7)(c)
**Cc:** (b)(6), (b)(7)(c)
**Subject:** RE: Strategic Use of Expedited Removal Authority

(b)(6), (b)(7)(c)
Please review the below and attachments and draft a proposed response from OCC Denver to DFOD Lynch. I will probably need to send our proposed response to FLO and EROLD *before* we issue it to Lynch.
Thx,
Corina



**From:** (b)(6), (b)(7)(c)
**Sent:** Monday, October 21, 2013 11:51 AM
**To:** Almeida, Corina E
**Cc:** (b)(6), (b)(7)(c)
**Subject:** FW: Strategic Use of Expedited Removal Authority

Corina

(b)(5)

(b)(5)

(b)(6), (b)(7)(c)
***Deputy Field Office Director***
***Denver Field Office***
***U. S. Immigration and Customs Enforcement***
***Enforcement & Removal Operations***
12445 E. Caley Avenue
Centennial, Colorado 80111
Desk: 720-87(b)(6), (b)(7)(c)
Cell: 303-3(b)(6), (b)(7)(c)

**From:** Adducci, Rebecca J
**Sent:** Friday, June 22, 2012 12:42 PM
**To** (b)(6), (b)(7)(c)
**Subject:** FW: Strategic Use of Expedited Removal Authority

Is this what you were looking for?

Rebecca Adducci
Field Office Director
Detroit Field Office
313-5(b)(6), (b)(7)(c)

**From:** ERO Taskings
**Sent:** Tuesday, April 12, 2011 1:56 PM
**Subject:** Strategic Use of Expedited Removal Authority

***The following message is being sent on behalf of David J. Venturella, Assistant Director for Field Operations:***

**To:** **Field Office Directors and Deputy Field Office Directors**

**Subject:** **Strategic Use of Expedited Removal Authority**

Pursuant to the statutory authorities outlined in section 235(b) of the Immigration and Nationality Act (INA or the Act), immigration officers, including Enforcement and Removal Operations (ERO) officers, are authorized to use Expedited Removal (ER) procedures to facilitate the removal of aliens from the United States. This authority extends to apprehensions made by immigration officers within 14 days of the alien's entry into the United States and within 100 air miles of the United States Border. Please see the *Strategic Use Of Expedited Removal Authority* memorandum signed by EAD Mead on April 5, 2011, for more information on our ER authorities.

If there are any questions regarding the scope of expedited removal authority, they may be directed to the local Office of Chief Counsel.

(b)(6), (b)(7)(c)

**From:** DEN Duty Attorney
**Sent:** Thursday, October 09, 2014 11:01 AM
**To:** (b)(6), (b)(7)(c)
**Cc:** (b)(6), (b)(7)(c)
**Subject:** RE: Expedited Removal inquiry

(b)(6), (b)(7)(c)

Thanks again for your inquiry. I had a chance to speak with D(b)(6), (b)(7)(c) on the procedural matter you raised below. In a nutshell, (b)(5)

(b)(5)

(b)(5)

Hope this helps.

Best regards,

- (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Assistant Chief Counsel
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
12445 East Caley Avenue
Centennial, CO 80111-6432
Ph: (303) 784-(b)(6), (b)(7)(c)
Fax: (303) 784-6566

**From:** (b)(6), (b)(7)(c)
**Sent:** Thursday, October 09, 2014 9:35 AM
**To:** DEN Duty Attorney
**Cc:** (b)(6), (b)(7)(c)
**Subject:** Expedited Removal inquiry

Good Morning,

(b)(5)

Thank you.

(b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c)
**Sent:** Thursday, October 09, 2014 10:14 AM
**To:** (b)(6), (b)(7)(c)
**Subject:** RE: Expedited Removal inquiry
**Attachments:** expedited_removal_authority 2011 guidance.pdf

(b)(5)

(b)(6), (b)(7)(c)
Deputy Chief Counsel
DHS/ICE/Denver, CO
12445 East Caley Avenue
Centennial, CO 80111-6432
TEL: (303) 784-(b)(6), (b)(7)(c)
Fax: (303) 784-6566



**From:** (b)(6), (b)(7)(c)
**Sent:** Thursday, October 09, 2014 9:46 AM
**To:** (b)(6), (b)(7)(c)
**Subject:** FW: Expedited Removal inquiry

That's not what I understood ...

Donal(b)(6), (b)(7)(c)
Deputy Chief Counsel
ICE/Denver
303-784-(b)(6), (b)(7)(c)

**From:** DEN Duty Attorney
**Sent:** Thursday, October 09, 2014 9:44 AM
**To:** (b)(6), (b)(7)(c)
**Cc:** (b)(6), (b)(7)(c)
**Subject:** RE: Expedited Removal inquiry

(b)(6), (b)(7)(c)
I am unaware of this change but let me check just to be sure.
Thanks,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Assistant Chief Counsel
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
12445 East Caley Avenue
Centennial, CO 80111-6432
Ph: (303) 78(b)(6), (b)(7)(c)
Fax: (303) 784-6566



**From:** (b)(6), (b)(7)(c)
**Sent:** Thursday, October 09, 2014 9:35 AM
**To:** DEN Duty Attorney
**Cc:** (b)(6), (b)(7)(c)
**Subject:** Expedited Removal inquiry

Good Morning,

(b)(5)

Thank you.

(b)(7)(e)

*Office of Enforcement and Removal Operations*

**U.S. Department of Homeland Security**
500 12th Street, SW
Washington, DC 20536

U.S. Immigration and Customs Enforcement

APR 5 2011

MEMORANDUM FOR: Field Office Directors
Deputy Field Office Directors

FROM: Gary Mead
Executive Associate Director

SUBJECT: Strategic Use of Expedited Removal Authority

Expedited removal (ER), authorized by section 235(b) of the Immigration and Nationality Act (INA), is a valuable enforcement tool that enhances the ability of immigration officers to make the best use of limited agency resources. Expedited removal may be used for two categories of aliens, as follows: (1) "arriving aliens," as defined by 8 C.F.R. § 1.1(q), which includes aliens paroled into the United States, and (2) "certain other aliens" designated by the Department of Homeland Security (DHS) who are present without admission or parole and are unable to establish continuous physical presence in the United States for the two years immediately preceding the determination of inadmissibility. To date, DHS has extended that designation to aliens who are present in the United States without having been admitted or paroled and are *encountered within 100 air miles of any international land border and cannot establish that they were present in the United States for more than 14 days prior to the encounter*. See 69 Fed. Reg. 48877 (Aug. 11, 2004) (emphasis added).

Consistent with the agency's enforcement priorities, Field Office Directors and their senior staff are encouraged to identify ways to use ER within their respective areas of responsibility. ERO personnel are reminded that they should not use ER on the following classes of aliens:

- Unaccompanied minors;
- Asylees, refugees, and lawful permanent residents;
- Crewmen or stowaways;
- Members of the class settlement in American Baptist Churches v. Thornburgh, 760 F. Supp. 796 (N.D. Cal. 1991);
- Aliens who may be eligible for cancellation of removal under section 240A of the Act; and
- Natives or citizens of Cuba.

Furthermore, ERO officers must refer aliens who assert to have a credible fear for a credible fear interview. This is true even if the alien initially denied a credible fear and asserts it later in the process.

ERO officers should screen incarcerated aliens to determine if ER is appropriate. The determination should include whether the incarcerated alien is an "arriving alien" or an alien present without admission or parole who was encountered by an immigration officer within 100 miles of an international land border within 14 days of the date they entered.

Finally, ERO officers should use ER for all arriving aliens paroled into the United States for prosecution, regardless of how long they have been present in the United States. However, ER should be used for an arriving alien paroled for reasons other than prosecution only if the parole has expired or been terminated and the alien has been continuously present in the United States for less than one year.

Questions concerning the scope of expedited removal authority may be directed to the local Office of the Chief Counsel.

(b)(6), (b)(7)(c)

**From:** Almeida, Corina E
**Sent:** Saturday, September 20, 2014 10:15 AM
**To:** (b)(6), (b)(7)(c)
**Subject:** Expedited Removal in A Nutshell
**Attachments:** Expedited%20Removal%20-%20English%20(17)[1].pdf

All,

I am trying to learn more about Expedited Removal and Credible Fear, and I found the attached document. Therefore, I decided to share it with you.

Thx,
Corina

## WHAT TO DO IF YOU ARE IN EXPEDITED REMOVAL OR REINSTATEMENT OF REMOVAL

**WARNING:** This booklet provides general information about immigration law and does not cover individual cases. Immigration law changes often, and you should try to consult with an immigration attorney or legal agency to get the most recent information. Also, you can represent yourself in immigration proceedings, but it is always better to get help from a lawyer or legal agency if possible.

This booklet was originally prepared in 2002 by the Florence Immigrant and Refugee Rights Project (Florence Project), a non-profit organization that provides free legal services to immigrants detained in Arizona. It was adapted in 2011 to provide more general information for immigrants detained across the country. It was not prepared by the Department of Homeland Security (DHS)/U.S. Immigration and Customs Enforcement (ICE) or Executive Office of Immigration Review (EOIR) but these agencies have reviewed its content

Immigration law, unfortunately, is not always clear, and the Florence Project's understanding of the law may not always be the same as DHS' interpretation of the law. The Florence Project believes that the information is correct and helpful, but the fact that this booklet is available in the libraries of detention centers for the use of detainees does not mean that DHS' interpretation of the law is the same as that expressed in the booklet.

We wrote this booklet for two reasons. One is to help you find out the kind of proceedings you are in. The second is to help you apply for any relief that you may be eligible foreither by yourself if you cannot get a lawyer to represent you, or to help you help your lawyer if you have one.

### Who was this pamphlet written for?

There are several legal procedures DHS can use to remove you from the United States. This pamphlet is for individuals who are in **Expedited Removal, Reinstatement of Removal or Administrative Removal**. It does not apply to people in regular removal, deportation, or exclusion proceedings. You can tell what type of proceedings you are in by the document you should have received from DHS that explains the reasons why you may be removed from the U.S.

- If DHS says that you were arrested at or near the border and you received **Form I-860 "Notice and Order of Expedited Removal" or Form M-444 "Information About Credible Fear Interview,"** then you are in **EXPEDITED REMOVAL.**
- If DHS says that you entered the United States illegally after having been deported or removed and you received a **Form I-871"Notice of Intent/Decision**

**to Reinstate Prior Order,"** then you are in **REINSTATEMENT OF REMOVAL.**

- If DHS says that you have been convicted of an aggravated felony and you do not have lawful permanent residence in the United States, and you received **Form 1-851 "Notice of Intent to Issue a Final Administrative Deportation Order,"** then you are in **ADMINISTRATIVE REMOVAL** proceedings.
- If you received a document called a **Form I-862 "Notice to Appear,"** then you are in regular **removal** proceedings.
- If you received a document called a **Form I-221 "Order to Show Cause,"** then you are in **deportation** proceedings.
- If you received a document, which is numbered at the bottom **"Form I-110"** and/or **"Form I-122,"** then you are in **exclusion** proceedings.

This pamphlet explains what will happen to people in **Expedited Removal, Reinstatementof Removal** and **Administrative Removal**. If you are in regular removal proceedings, please read the other materials available, which explain the removal process and each of the forms of relief from removal more thoroughly.

**This pamphlet explains what will happen to people in:**

- **Expedited Removal,**
- **Reinstatement of Removal, and**
- **Administrative Removal.**

**If you are in regular removal proceedings,**

☞ **read the material on removal and other forms of relief.**

## EXPEDITED REMOVAL

### What is Expedited Removal?

**"Expedited Removal"** is a process that DHS uses to remove people from the United States (U.S.) who attempt to enter the country without proper documents. When individuals try to enter the U.S. through a border checkpoint, international airport, or shipping port, DHS officers interview them to see if they have valid travel documents and if they are coming for the reasons stated in their documents. If the DHS officer believes that someone is trying to enter the country either by fraud or without proper documents, the officer can refuse the person's entry and order him or her immediately removed from the U.S. After being removed from the country through expedited removal, you are barred from returning to the U.S. for 5 years or longer, although in some cases exceptions may be possible. The DHS officer's decision is final and generally there is no right to speak with an Immigration Judge. In addition, expedited removal may be used for two

groups of individuals encountered within the United States: (1) individuals who arrived by sea and were encountered within two years, and (2) individuals who are encountered within 100 miles of an international land border and within 14 days of entering the country.

There are two situations when you will not be refused entry at the border and there will be some review of your request to enter the U.S. The first is if at the point of entry, you **expressed a fear** of returning to your home country or asked to apply for **asylum or protection under the Convention Against Torture** in the United States. In this situation, you will be given a chance to talk to an asylum officer who will determine whether you have a "credible fear" of returning to your home country. We will explain this process in more detail below.

The **second** is if you claim **some lawful status in the U.S.,** such as U.S. citizenship, lawful permanent residence, or refugee or asylee status in the U.S. In this case, the DHS officer should first try to find proof of your claim in immigration records. If the DHS officer finds proof of your claim to lawful status then he/she will decide if you can enter the country or if you should be placed in regular removal proceedings to have a judge review your case. If no proof is available, then first, you will be required to make a statement regarding your claim of legal status under oath; second, the DHS officer will give you an order of expedited removal; and third, you will have your case reviewed by an Immigration Judge. You will be detained until you speak with the judge. Although in some cases, for example if there is a medical emergency, you may ask DHS for release during this time. If the Immigration Judge affirms the DHS officer's order of expedited removal, you will be removed with no opportunity for further review or appeal.

**If you are in Expedited Removal, there will be some review of your request to enter the United States if:**

- ☞ **You fear being returned to your native country**

**OR**

- ☞ **You already have lawful status in the United States.**

**What happens next if I am someone seeking asylum or protection against torture?**
After expressing fear of returnto a DHS officer at the border, international airport or shipping port, you should have a screening interview called a "credible fear interview" during which you will be interviewed by an asylum officer about your fear of returning to your country. This may be because you either suffered persecution or torture in the past or you fear persecution or torture in the future if you return to your home country. At the credible fear interview, the asylum officer will try to determine whether you have a "credible fear" of being returned to your home country, in other words, whether you have

a significant chance of being granted asylum or protection under the Convention Against Torture.

**If you expressed a fear of returning to your country or the desire to seek asylum in the United States,**
**you will have a "credible fear interview" with an asylum officer.**

**What is asylum?**

Under the laws of the United States, people who flee their countries because they fear **persecution** can apply for asylum and may be allowed to stay in the United States. **Persecution** can be harm or threats of harm to you or your family or to people similar to you. A person also can get asylum if he or she has suffered persecution in his or her country in the past. You only can be granted asylum if at least one of the reasons someone harmed or may harm you is because of your race, religion, nationality, political opinion (or a political opinion someone thinks you have), or the fact that you are part of some particular group.This group could be a village, family, clan, union, political party, religious organization, student or human rights group, or some other threatened group such as homosexuals, people who are HIV positive, women who oppose certain practices in their home countries (such as genital mutilation), or people who oppose their government's policy on birth control and family planning.

However, if the only reason you left your country was to look for work and you do not have any fear of returning or have not been harmed in the past, then you probably do not qualify for asylum.

**If you are granted asylum**, you will be allowed to stay in the United States legally and to get a work permit. You may later apply to be a lawful permanent resident and, eventually, a U.S. citizen.

There also is protection available in the United States **if you are likely to be tortured by a government officialor someone at the government's request in your country for any reason.** The United States has signed a treaty promising that it will not return anyone who is likely to be tortured in their home country. You may have rights under this treaty if you have this fear. Tell the asylum officer and also your deportation officer if you fear you will be tortured in your home country.

This is just a brief summary of asylum and protection from torture. To learn more about the law and how to prepare your case, ask for another booklet called **"How to Apply for Asylum and Withholding of Removal."**

**Where and when will the credible fear interview take place?**

The interview will take place at the detention center, or, in some cases, at the DHS office, normally at least 48 hours after your arrival. It will last about one to two hours. After your interview, the asylum officer will call you back again, usually about a week after your interview, to give you his or her decision.

**What happens after the asylum officer makes his or her decision?**

> ☞ **If the asylum officer finds that you have a credible fear of returning to your home country, you will be allowed to stay in the U.S. to apply for asylum before a judge in Immigration Court.**

If the asylum officer determines that you have a credible fear, you have the right to apply for asylum in front of an Immigration Judge. The asylum officer should ask you whether you want to go to court right away or whether you need time to find a lawyer. Because immigration law is very complicated, it is much better to be represented by a lawyer when applying for asylum. If you do not have a lawyer or if you need extra time to get evidence to prove your asylum claim, you should ask for more time before you go to court. Normally you will be given ten days. **If you cannot afford a lawyer,** you can ask DHS for a list of free or low cost legal services organizations in the area where you are detained. To learn more about the law and how to prepare your case, ask for the booklet called **"How to Apply for Asylum or Withholding of Removal."**

> ☞ **If the asylum officer finds that you do <u>not</u> have a credible fear of returning to your home country, he or she will order you "removed" (deported) from the United States.**

If the asylum officer determines that you do not have a credible fear, you will be ordered removed from the United States. You can ask for an Immigration Judge to review your case. Within a week, a judge will interview you to decide whether or not the asylum officer made the right decision. This is not a full asylum hearing, only a review of the asylum officer's credible fear decision and interview notes. This review will either take place in person, or by telephone or video connection. You can ask for an interpreter to help you speak to the judge. You also can ask to have your attorney or legal representative at the hearing. However, he or she only can be with you as a consultant.

If the judge agrees with the asylum officer, you will be ordered removed. You are not allowed to appeal your case to another court. But, if the judge decides that you do have a

credible fear, you will be allowed to have a full asylum hearing before an Immigration Judge.

If you do not want to apply for asylum and you want to go back to your home country, you should tell the asylum officer. Ask him if you can withdraw your application for admission to the United States.

**Who can help me prepare for the credible fear interview?**

You should have received a **Form M-444"Information about Credible Fear Interview"** which explains the interview process and your rights. You have the following rights:

- **Outside Contacts:** While in detention, you have the right to contact family members and friends by telephone, usually by calling collect or at your own expense.
- **Consultation:** You may consult with any person that you choose before your interview with an asylum officer or before an Immigration Judge reviews your case. But the government will not provide legal assistance and the consultation cannot unreasonably delay the process.
- **Legal Assistance:** You should use the time before your interview to try to contact a legal representative to assist you. If you cannot afford a lawyer, ask a DHS officer for a list of free or low cost legal services groups in the area where you are detained. You also may want to contact the United Nations High Commissioner for Refugees in Washington, D.C. (toll free) at: 1-888-272-1913, Monday, Wednesday, or Friday from 2:00 to 5:00 p.m. (Eastern Standard Time).

**What happens at the credible fear interview?**

To establish a credible fear, you have to convince the asylum officer that you have a significant chance of being granted asylum. It is very important that you tell the officer your whole story. First, answer all the officer's questions. Then, if there are parts of your story that the officer did not ask about, tell the officer about those things.

**Can someone go with me to the interview?**

Anyone you consulted with about your asylum claim can be present at the interview. They also can make a statement on your behalf at the end of the interview.

**Is the interview private?**

You have the right to have your interview in a private area. If you feel uncomfortable talking to the asylum officer because other people can hear you, you should tell the asylum officer.

**Will I have an interpreter at the interview?**

If you do not speak English, you should ask for an interpreter. DHS must provide one for you. The interpreter will either be at your interview or, more likely, will be connected to you by a speaker phone on the desk next to you. If you understand some English, you should listen carefully to hear whether the interpreter makes mistakes, and you should correct any mistakes. You also can ask for another interpreter if you are not satisfied with the one assigned to you.

**How much detail about myself should I tell the asylum officer?**

It is very important that you do not leave anything out, even if you do not like to talk about it. DHS must keep the information that you give them confidential.

If you need to tell the asylum officer information that is very personal and difficult to talk about, you may request a female officer and female interpreter or a male officer and male interpreter. You also can ask to speak with the asylum officer alone, without your family, if you wish.

It is important to answer all of the asylum officer's questions truthfully. If you do not tell the truth, it can be used against you now or in the future to deny your claim.

**Do I have to stay in detention if I am determined to have a credible fear of return?**

You usually have to stay in detention at least until you have your interview with an asylum officer. However, if you are determined to have credible fear, then you may be able to get released from detention on what is called "parole." You should be given a form by DHS called "Parole Advisal and Scheduling Notification,"which tells you the date your request for parole will be considered and the evidence you may present in support of your parole request.To be released on parole you need to have a family member or friend who lives in the U.S. who will allow you to live with him or her. This person should be a lawful permanent resident (have a green card) or a U.S. citizen. If you have such a friend or relative, they should write a sworn statement (called an "affidavit") to DHS promising to support you.

DHS makes the decision about whether you can be released. If you are released, you can go to your immigration court hearings and apply for asylum outside of detention. If you are determined to have a credible fear but you are not released, you can still apply for asylum from inside the detention center.

## REINSTATEMENT OF REMOVAL

**What is Reinstatement of Removal?**

**Reinstatement of Removal** is a process used by DHS to quickly remove people from the U.S. who have been deported or removed in the past and have reentered the U.S. without permission. It also applies to people who left the United States on their own while under an order of deportation or removal. You are in this type of proceeding if you have been given a document called a **Form I-871"Notice of Intent to Reinstate Prior Order."**

In Reinstatement of Removal, DHS has the power to remove you from the country based on your previous order of deportation or removal. You will not be able to speak with an Immigration Judge.

A DHS officer will make a decision based on DHS records and other documents. A DHS officer will first investigate your case to:

- determine whether you had a **prior order of exclusion, deportation or removal**;
- **confirm your identity** (in some cases, the DHS officer may take your fingerprints to compare with DHS records); and
- **determine whether you illegally reentered the United States.** You should tell the DHS officer if you believe that you entered legally. The officer then can check the relevant entry records.

If the DHS officer decides that you should be put into Reinstatement proceedings, the officer will give you a written notice called **Form I-871 "Notice of Intent/Decision to Reinstate Prior Order."** You have the right to dispute DHS' decision, either by writing down your argument or by talking to the DHS officer. The officer will then make a final decision after reviewing your arguments.

If you are afraid to return to your country or if you want to apply for asylum, you will be given a chance to talk to an asylum officer to determine whether you qualify for an asylum hearing in removal proceedings before an Immigration Judge. If the asylum officer decides that you do not have a reasonable fear of persecution, you may ask that an Immigration Judge review that decision. Otherwise, the decision of the DHS or asylum officer is final. You will not be able to appeal this decision to an Immigration Judge.

Depending on the jurisdiction your immigration case is in, you may be able to challenge your prior removal order in the federal Circuit Court of Appeal if you believe the removal order was issued in error. You may also be able to challenge the DHS officer's finding on any of the three issues listed above. Filing an appeal in federal court is complex and is not covered in this material. You will need a lawyer to assist you, but you must act quickly. You only have 30 days to file an appeal in federal court from the date of the Reinstatement Order.

**When do I have the right to challenge reinstatement of removal?**

You can challenge the reinstatement of removal in two extremely limited situations.

**First, if you fear you will be harmed or tortured if you return to your home country or if you have suffered harm there in the past, you should tell DHS**. You will be given a chance to have an interview with an asylum officer who will determine whether you have a "reasonable fear" of persecution or torture. If the asylum officer determines that you have established that there is a reasonable possibility that you will be persecuted or tortured if removed from the United States, you will be placed in regular "removal" proceedings before an Immigration Judge. You will then be allowed to apply for two different types of protection from removal from the United States. These forms of protection are called withholding of removal and protection under the Convention Against Torture. For more information about the court process, applying for these forms of protection and preparing your case, ask for another booklet called **"How to Apply for Asylum and Withholding of Removal."**

If the asylum officer decides that you do NOT have a "reasonable fear" of persecution or torture, you have the right to ask that an Immigration Judge review the asylum officer's decision. If the judge agrees with the asylum officer, your case will go back to the DHS for removal from the United States. You cannot appeal the Judge's decision in this situation. But, if the Immigration Judge disagrees with the asylum officer and thinks your fear is reasonable, you will be allowed to apply for withholding of removal and protection under the Convention Against Torture before the Immigration Judge. Again, for more information about the court process, applying for these forms of protection and preparing your case, ask for another booklet called **"How to Apply for Asylum and Withholding of Removal."**

**Second, you also have the right to challenge DHS's claim that you should be in reinstatement proceedings in any of the following situations:**

**You believe that you are a U.S. citizen**. There are various ways to be a U.S. citizen besides being born in the U.S. To learn more about whether you are a U.S. citizen and how to present your claim, ask for the booklet called **"Are You a United States Citizen?"**

**You believe that DHS has the wrong information about you**. If you think that DHS has mistakenly put you into Reinstatement proceedings based on incorrect information it has about you - for example, it has mistaken you for someone else by the same name - tell the DHS officer. It is important to provide as much detailed information as possible to prove the mistake.

**You have a visa ready for you**. If one of your family members has already applied for a visa for you and the visa is both a) approved and b) immediately available, you should try to find a lawyer to assist you and quickly file an Application for Permission to Reapply for Admission Into the U.S. After

Deportation or Removal (**Form I-212**). Depending on which jurisdiction you are in, there may be an argument that you should be able to apply for your lawful permanent residency and permission to reenter the United States. This is a complicated argument, and may require going to a federal court. We are not able to explain this process in this booklet and if you are in this situation, try to get advice and assistance from an experienced immigration lawyer. For more information, you can ask for a booklet called **"How to Get Legal Status Through a Family Member."**

**You are from Nicaragua, Cuba Guatemala, El Salvador, Haiti, or certain countries in Eastern Europe and you are eligible to apply for relief under theNicaraguan Adjustment and Central American Relief Act (NACARA) orunder the Haitian Refugee Immigration Fairness Act (HRIFA).** Originally, the NACARA and HRIFA laws did not apply to individuals who were subject to reinstatement of removal (i.e. they entered the United States illegally after a prior deportation order). However, a law enacted on December 21, 2000, allowed eligible individuals to apply for relief under NACARA or HRIFA even though they had prior deportation orders. Certain Nicaraguans, Cubans, or Haitians may have been able to file a motion to reopen no later than June 19, 2001, if they originally failed to apply for NACARA or HRIFA because they were subject to reinstatement of removal

Also, if you are from Haiti and have been granted Temporary Protected Status (TPS), or have lived in the United States since January 12, 2011, have not been convicted of certain crimes, and applied for TPS by November 15, 2011, DHS may not be able to remove you.

If you are from El Salvador, Guatemala, or certain Eastern European countries, you may be eligible for NACARA even if you are subject to reinstatement. If you have been placed in reinstatement proceedings and you believe that you are eligible for NACARA, you should contact the DHS immediately, as DHS policy is against reinstating an order if the applicant is eligible for NACARA. To learn more about these laws and whether you qualify ask for another booklet called **"How to Apply for Three or Ten Year Cancellation of Removal."**

**You believe that you reentered the U.S. legally**. If you believe that you reentered the United States legally after being inspected by an immigration officer, tell DHS. Again, provide as much detailed information as possible, such as how and where you entered, the date and time of entry, and any documentation you may have shown the immigration official when you entered the country.

**You left the U.S. under an order of voluntary departure**. Reinstatement of Removal only applies to people who reenter the United States after an order of deportation or removal. If you left the country with a voluntary departure order

and then returned illegally, you should not be in reinstatement. Tell DHS. If it can verify that you left through voluntary departure, you will be moved to regular Removal proceedings and you will have the opportunity to speak with a judge.

If any of the above apply to you, tell a DHS officer immediately. Give as much detailed information and proof about your case as possible. Reinstatement proceedings take place very quickly. If you do not have a basis for challenging the reinstatement, you will be removed. If you fear returning to your country, or if you believe that you have been incorrectly put into reinstatement proceedings, you must act fast if you want to find legal assistance or to fight the charges on your own. You should try to contact a lawyer or legal services organization to help you. If you cannot afford a lawyer, you can ask DHS for a list of free or low cost legal services, which may be available near where you are detained.

**If you believe that you can challenge the reinstatement of your removal, tell a DHS Officer and look for an attorney immediately to represent you.**

## ADMINISTRATIVE REMOVAL

### What Is Administrative Removal?

No matter how long you have been in this country, if DHS believes that you have been convicted of an aggravated felony and that you do not have lawful permanent resident status in this country, DHS may put you into a special proceeding called **Administrative Removal**. If you are in this type of proceeding, you will be given **Form I-851 "Notice of Intent to Issue Final Administrative Removal Order."**

In Administrative Removal, you will not see an Immigration Judge. Instead, DHS will decide whether you should be ordered removed based on evidence that you have an aggravated felony conviction and that you do not have lawful permanent residence in the U.S. It will make its decision based on its records and other documents.

You should be given information about the charges against you in the Form I-851. You are allowed to review the evidence that DHS uses to make its decision, and you have the right to bring in other information, including documents, written sworn statements ("affidavits"), or other specific materials to challenge the charges. If you disagree with the charge, you will be given 10 days from the date DHS gave you the information (or 13 days if it was mailed to you) to respond to them in writing. In the event you are to be removed, you may indicate in writing the country to which you choose to be deported.

If the DHS officer finds that removability is clearly established by the evidence, the officer shall serve you with a Final Administrative Removal Order. If the officer finds there is not sufficient evidence for a removal order, DHS will terminate Administrative

Removal proceedings and serve a Notice to Appear to begin regular removal proceedings before an Immigration Judge.

In any event, DHS must maintain a record of the Administrative Removal proceeding in case you want to challenge the final Administrative Removal Order in the federal Circuit Court of Appeal. As stated above, appealing your case in federal court is complex and is not discussed here. To appeal to a federal court, you should get legal assistance.

**Do I have the right to challenge administrative removal?**

Yes. You have the right to challenge DHS' determination that you should be administratively removed. The two main issues that you can challenge are:

- Whether you, in fact, do have lawful permanent residence or are a U.S. citizen; and
- Whether you have been convicted of an aggravated felony.

**What is an aggravated felony?**

Immigration law is not the same as criminal law. Many crimes can be aggravated felonies. The crime does not have to be a felony in the state where you were convicted. Often misdemeanors and minor crimes are considered aggravated felonies under immigration law. In the next box are some of the most common aggravated felonies. For the complete list, see volume 8, section 101(a)(43) of the United States Code, or section 10l(a)(43) of the Immigration and Nationality Act.

**SOME CRIMES THAT ARE AGGRAVATED FELONIES**

- rape
- sexual abuse of a minor
- murder
- firearms offenses, including possession of prohibited firearms
- felony alien smuggling (unless it was your first alien smuggling crime and you were helping only your husband, wife, child, or parent)
- fraud or income tax evasion, if the victim lost over $10,000
- money laundering (of over $10,000)

Certain drug crimes or trafficking in firearms, explosive devices or drugs. Drug trafficking includes:

- transportation, distribution, importation;
- sale and possession for sale;
- **certain cocaine possession offenses** (depending on what circuit court of appeals jurisdiction your case is in);

- **certain simple drug possession offenses**

Certain crimes for which you received a sentence of one year or more, (whether you served time or not) including any of these:

- theft (including receipt of stolen property)
- burglary
- a crime of violence (including anything with a risk that force will be used against a person or property, even if no force was used)
- document fraud (including possessing, using, or making false papers) – unless it was a first offense and you did it only to help your husband, wife, child, or parent
- obstruction of justice, perjury, bribing a witness
- commercial bribery, counterfeiting, forgery, trafficking in vehicles with altered identification
- gambling offenses, for which a term of imprisonment of one year or longer *may* be imposed;
- failure to appear if you were convicted of (1) missing a court date on a felony charge for which you could have been sentenced to at least 2 years (even if you were not sentenced to 2 years) or (2) not showing up to serve a sentence for a crime for which you could have been sentenced to 5 years

You are also an aggravated felon if your conviction was for **attempt or conspiracy** to commit one of the crimes listed above.

If you have been convicted of an aggravated felony and can get assistance from an immigration lawyer, ask your lawyer to review your conviction carefully. Sometimes an immigration lawyer has an argument that your conviction is not an aggravated felony. Also, in some cases, a criminal defense lawyer might be able to reopen your conviction to change the sentence or the nature of your conviction.

It is difficult to reopen criminal cases once you have been convicted of a crime and only certain ways of changing your conviction in criminal court will change your conviction for immigration purposes. DHS may oppose a change to your conviction or sentence if the change is made only to avoid being removed from the United States. To find out more about this, you will need to talk to an experienced immigration lawyer.

### Are there other ways to challenge administrative removal?

There are two other situations in which you may be able to challenge your administrative removal.

**You may be able to challenge your removal from the United States if:** ☞
**1. you have an approved visa through a family petition and the visa is immediately available; OR**
**2. you fear you will be harmed if returned to your home country.**

**First if one of your family members has already applied for a visa for you** and the visa is both a) approved and b) immediately available, you should tell DHS. You can argue that you should not be put in Administrative Removal because it was not intended for people in this situation. Instead you should ask to be put into regular Removal proceedings where you will have an opportunity to talk to the judge about your visa and whether any of your criminal convictions prevent you from obtaining the visa.

**Second if you fear you will be harmed if you return to your home country** or if you have suffered harm there in the past, tell DHS. You should be referred to an asylum officer for a reasonable fear determination and ask to apply for "**withholding of removal**" in front of an Immigration Judge. This is a form of protection similar to asylum. See page 4 above for a more complete description of asylum. You also can ask for another booklet called "**How to Apply for Asylum or Withholding of Removal**," which explains withholding of removal in greater detail and how to prepare your case. If you want to apply for withholding, ask to see a judge or an asylum officer.

Also, **if you fear that you will be tortured by a government official** if returned to your home country, you might qualify for relief from removal to that country. The United States has signed a treaty promising that it will not return anyone to a country where they might be tortured. Tell your deportation officer if you fear you will be tortured in your home country.

The administrative removal procedure is complicated. If you fear returning to your country or if you believe that you have been incorrectly put into administrative removal, you should try to contact an attorney or legal services organization to help you. If you cannot afford an attorney, you can ask DHS for a list of free or low cost legal services, which may be available near where you are detained. This procedure takes place very quickly so you must act fast if you want to find legal assistance or to fight the charges on your own.

**If you believe that you can challenge DHS' decision to remove you from the United States,**
☞ **tell an Immigration Officer and look for an attorney immediately to represent you.**

If you do not want to fight the charges and you are willing to accept administrative removal, you should tell DHS. In some cases, you can leave quickly instead of waiting 14 days for the review period to finish.

## CONCLUSION

We hope this information is helpful to you and we wish you luck with your case.

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This pamphlet was written by Andrea Black, Eloy Representative and edited by Elizabeth Dallam, former Director of the Florence Immigrant and Refugee Rights Project. Funding was provided by the Ford Foundation, the National Association of Public Interest Law, and the Berkeley Law Foundation.

We are grateful to Mary McClenahan of Catholic Legal Immigration Network (CLINIC) for use of her materials on expedited removal as well as her editorial assistance. We also wish to thank Dan Kesselbrenner, Director of the National Immigration Project of the National Lawyers Guild, and Regina Germain, Senior Legal Counselor, the United Nations High Commissioner for Refugees, for their editorial assistance. Any mistakes are the author's own.

(b)(6), (b)(7)(c)

**From:** Longshore, John P
**Sent:** Thursday, June 26, 2014 8:40 AM
**To:** (b)(6), (b)(7)(c) Almeida, Corina E; (b)(6), (b)(7)(c)
**Subject:** RE: AILA on when right to counsel attaches

"page not found" on my computer.....

**From:** (b)(6), (b)(7)(c)
**Sent:** Thursday, June 26, 2014 8:38 AM
**To:** Longshore, John P; (b)(6), (b)(7)(c) Almeida, Corina E; (b)(6), (b)(7)(c)
**Subject:** AILA on when right to counsel attaches

www.legalactioncenter.org/sites/.../lac/**Right-to-Counsel**-Article.pdf

FYI -- Note the arguments (not established law) that they are floating here in the expedited removal context.

(b)(6), (b)(7)(c)
Deputy Chief Counsel
ICE/Denver
303-7(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

**From:** Almeida, Corina E
**Sent:** Thursday, June 26, 2014 8:20 AM
**To:** (b)(6), (b)(7)(c)
**Subject:** RE: Questions for 6/30

Thanks (b)(6), (b)(7)(c)

-----Original Message-----
**From:** (b)(6), (b)(7)(c)
**Sent:** Thursday, June 26, 2014 10:19 AM Eastern Standard Time
**To:** Longshore, John P; Almeida, Corina E; (b)(6), (b)(7)(c)
**Subject:** RE: Questions for 6/30

(b)(6), (b)(7)(c)

(b)(5)

If they have examples of "substantive actions" in other contexts we'd be glad to take a look.

(b)(6), (b)(7)(c)
Deputy Chief Counsel
ICE/Denver
303-7(b)(6), (b)(7)(c)

***** Warning *** Attorney/Client Privilege *** Attorney Work Product *****

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**From:** Longshore, John P
**Sent:** Thursday, June 26, 2014 7:39 AM
**To:** Almeida, Corina E; (b)(6), (b)(7)(c)
**Subject:** RE: Questions for 6/30

(b)(5)

(b)(5)

**From:** Almeida, Corina E
**Sent:** Wednesday, June 25, 2014 5:30 PM
**To:** Longshore, John P; (b)(6), (b)(7)(c)
**Subject:** FW: Questions for 6/30

FYI.



**From:** (b)(6), (b)(7)(c)
**Sent:** Wednesday, June 25, 2014 5:25 PM
**To:** Almeida, Corina E
**Subject:** Questions for 6/30

Corina,

Sorry for the last minute submission, but as the meeting was on then off then on, I needed to give folk time. Looks like this meeting will be light—a great platform for you to unveil the e-filing. Of course, if you want to get that porcedure to me earlier so folk can show up with thoughts/comments, that would work too.

Also, a gentle reminder to send me the OCC email list.

Without further ado:

1. Previously OCC indicated that it was working on a process to streamline cases identified as potentially "approvable cases." This included assigning cases to a particular trial attorney who would stay with the case for the duration. Has this been implemented? If so, how do we

initiate this type of review. If not, are there still plans to implement this?

2. How is ICE handling military PIP applications and do they have a specific timeline for adjudication?

3. Upon submitting proposed motions to the motions box, several attorneys have received a response instructing them to submit the motion to the court and that ICE OCC would respond. This seems to defeat the purpose of the motions box. Is OCC still amenable to reviewing motions and indicating its position on motions submitted to the mailbox?

4. Who is the HSI contact now that (b)(6), (b)(7)(c) has retired?

5. Several AILA attorneys have indicated that clients they represent have been called in for a routine meetings with an ICE officer, and at these meetings the clients have been asked to take certain substantive actions. One specific example, attached, Ms. (b)(6), (b)(7)(c) was asked to sign an expedited order of removal without her attorney present even though the attorney had a G-28 on file and had actually spoken to the removal officer in person. Obviously such actions violate the client's right to counsel under INA section 292. What assurances can we have that such will not happen in the future.

6. Can ICE ERO provide an updated officer contact list?

Thanks,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) Esq.

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(b)(6), (b)(7)(c)

**From:** Almeida, Corina E
**Sent:** Saturday, June 14, 2014 10:13 AM
**To:** Longshore, John P; (b)(6), (b)(7)(c) Feeley, Thomas E; (b)(6), (b)(7)(c)
**Cc:** (b)(6), (b)(7)(c)
**Subject:** FW: ICE AILA Liaison Meeting Questions and FINAL Answers - Spring 2014.docx
**Attachments:** ICE AILA Liaison Meeting Questions and FINAL Answers - Spring 2014.docx

John, (b)(6), (b)(7)(c) Tom, and (b)(6), (b)(7)(c)

Attached please find ICE's final DRAFT answers to AILA's questions raised at the ICE/AILA Spring Liaison Meeting (April 10, 2014). AILA raised 31 questions, and ICE Leadership provided responses to each question, including questions re: PD, credible fear interviews, DACA, Parental Rights Directive, deferred action/stays of removal, housing of detainees "hundreds of miles from their legal representatives," U-visas, Risk Classification Assessment Tool, detainers, detainee transfers, phone calls in detention, orders of supervision, classification of courthouses as "Sensitive Locations," DOMA, facilitating the return of lawfully removed aliens, biometrics and security checks in removal proceedings, and STEM/OPT.

You may have already received this document from your chain; however, if you haven't, here it is.

Thx,
Corina



**From:** Almeida, Corina E
**Sent:** Tuesday, June 10, 2014 6:27 PM
**To:** (b)(6), (b)(7)(c)
**Subject:** ICE AILA Liaison Meeting Questions and FINAL Answers - Spring 2014.docx

FYI.
~Corina

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U.S. Immigration and Customs Enforcement

# ICE / AILA Spring 2014 Liaison Meeting Agenda
**April 10, 2014 – Washington, DC**

## I. Access to Credible Fear Interviews

1. At the December 2013 AILA ICE Liaison Committee meeting, AILA raised concerns regarding access to credible fear interviews by noncitizens fleeing their countries and crossing the southern border without inspection. AILA provided ICE with a list of example cases in which the individuals were not given an opportunity to discuss their fear or were coerced into signing statements that indicated they had no fear of returning to their home country. ICE kindly agreed to follow up with Customs and Border Protection (CBP) regarding these cases. Please advise as to ICE's conversation with CBP generally regarding these concerns and more specifically about the individual cases provided.

   **ERO ANSWER:** ERO has reviewed each case that AILA provided. According to this review, ERO determined that each alien was appropriately processed and screened, and none had expressed a credible fear of returning to their country of citizenship prior to execution of their expedited removal order. However, some did claim fear *subsequent to their release* from ERO or CBP custody. Where such an individual claims fear in these circumstances, ERO will refer the case to USCIS to conduct a credible fear interview in accordance with the regulations. In light of concerns raised by AILA, ERO has reminded its field offices of this requirement.

## II. Prosecutorial Discretion

2. AILA appreciates that members have been able to raise problematic denials of prosecutorial discretion with ICE Headquarters. Can ICE share the statistics on how many such cases have been raised with headquarters, the type of problems encountered, and how many denials have been overturned? Please also explain the review process, how long a review generally takes, who performs the review and what materials are reviewed in order to reach a decision. Based on the requests ICE has received, AILA would appreciate any thoughts or suggestions or our membership to better present prosecutorial discretion requests at the local level.

   **OPLA (FLO) ANSWER**: Because each case is reviewed for prosecutorial discretion at many points throughout the proceedings and because each prosecutorial discretion review is a decidedly case specific review, ICE does not keep records that would allow for a count of the cases you mention. However, ICE would encourage all requests for prosecutorial discretion at any level to include as much detail and supporting documentation as possible.

U.S. Immigration and Customs Enforcement

3. Members report that some ICE Offices of Chief Counsel (OCC) take the position that administrative closure where the respondent is prima facie eligible for a provisional unlawful presence waiver is discretionary. However, ICE Headquarters advised AILA at the AILA ICE liaison meeting on May 2, 2013 that such cases should be administratively closed. Have ICE OCCs been specifically instructed that such cases should be administratively closed? Where this is not occurring, how should AILA members raise the issue?

   **OPLA (FLO) ANSWER**: The current guidance to all OCCs is that these cases should be administratively closed. If there are issues with this, please contact the local Chief Counsel, then raise to (b)(6), (b)(7)(c) Deputy Director of Field Legal Operations or Jim Stolley, Director of Field Legal Operations.

4. AILA members continue to report instances of OCCs strictly adhering to the November 17, 2011 guidance issued by Principle Legal Advisor Peter Vincent (hereinafter Vincent Guidance) when considering requests for prosecutorial discretion.[1] A number of OCCs take the position that a case must fall squarely within one of the eight "low priority categories" set forth in the Vincent Guidance to merit prosecutorial discretion. This position has been taken despite express language in the Vincent Guidance saying that it does not supersede the June 17, 2011 guidance issued by ICE Director John Morton (hereinafter Morton Memo), which provides that attorneys should consider the full range of factors.[2] The Vincent Guidance specifically notes that the Morton Memo "remains the cornerstone for assessing whether prosecutorial discretion is appropriate in any circumstance." There are definite situations when a case may not fall squarely within 1 of the 8 "low priority categories" yet merit an exercise of discretion. Can ICE comment on the practice? Can ICE remind the field that the Morton Memo is the cornerstone by which prosecutorial discretion requests must be analyzed and the full range of factors must be considered?

   **OPLA (FLO) ANSWER**: Because each case is reviewed for prosecutorial discretion at many points throughout the proceedings and because each prosecutorial discretion review is a decidedly case specific review, OPLA HQ continuously discusses Prosecutorial Discretion with the field. There has been no change in practice on how prosecutorial discretion reviews are done at any point throughout the proceedings.

5. During the AILA ICE liaison meeting in May 2013, AILA inquired as to ICE's position regarding joint motions to reopen for individuals who are prima facie eligible for a provisional waiver but who have final orders of removal. At the time, ICE indicated that it is

[1] *Guidance to ICE Attorneys Reviewing Cases before EOIR*, AILA Doc. No. 11111762, http://www.aila.org/content/default.aspx?docid=37681 (posted 11/17/11).
[2] *ICE Memo on Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities*, AILA Doc. No. 11061734, http://www.aila.org/content/default.aspx?docid=35942 (posted 6/17/2011).

generally unlikely to join in such motions, pointing out that USCIS was clear that a provisional waiver is not available to persons with final orders of removal. However, ICE has stated in meetings and on AILA panels that it will continue to consider requests for joint motions to reopen that fit within the factors identified in the various prosecutorial discretion memoranda. Though we recognize that the issue has previously been addressed, we respectfully request that the issue be revisited for the following reasons:

- ***Blanket policy:*** There is a concern that the response provided during the May 2013 meeting suggests that there is a blanket policy against joining in such motions to reopen. Presumably, ICE attorneys have the discretion to consider and join any motion to reopen on a case-by-case basis, including those cases where the respondent is prima facie eligible for a provisional waiver.

- ***Reopening is a better use of ICE resources:*** Allowing individuals who are eligible for relief to obtain lawful status ultimately lightens ERO's docket for non-enforcement priority individuals. Individuals with final orders of removal who remain in the United States are often placed on supervised release. Those who can demonstrate prima facie eligibility for a provisional waiver, including the fact that a qualifying relative will suffer extreme hardship if they are separated from the respondent, should not be treated as civil enforcement priorities pursuant to the prosecutorial discretion memoranda. Rather than maintaining such individuals on supervised release, it would be a better use of ICE resources, particularly in the long-term, to reopen and administratively close meritorious cases to allow the respondent the opportunity to apply for a provisional waiver. If the waiver is granted, proceedings could then be terminated and the person could depart the U.S. and obtain an immigrant visa.

For the above reasons, AILA respectfully suggests that the issue be reconsidered. We look forward to discussing this issue with ICE once again.

**OPLA (FLO) ANSWER:** The guidance from USCIS was clear that a provisional waiver is not available to persons with final orders of removal. Given that position, ICE's position regarding joining in Joint Motions to Reopen in those situations has not changed.

6. AILA members represent many individuals with compelling equities which would make them eligible for cancellation of removal if they were placed in proceedings. A number of local offices do issue Notices to Appear (NTA) at the request of attorneys in such cases. Consistent with the memoranda on prosecutorial discretion, ICE has the authority to issue NTAs in "low priority" matters and we very much appreciate the positive exercise of discretion for cancellation-eligible individuals. Can ICE advise as to how we can obtain NTAs in jurisdictions that seem to have set a blanket policy against issuing NTAs in these cases?

**ERO ANSWER:** On March 2, 2011, former ICE Director John Morton issued a policy memorandum which outlined the civil immigration enforcement priorities of ICE as they relate to the apprehension, detention, and removal of aliens. While ICE has the authority to issue NTAs for lower priority cases, ICE field offices must efficiently manage limited enforcement resources and ensure the focus remains on higher priority cases to the maximum extent possible. Such considerations include the enforcement, litigation, and court resources that must be applied to cases throughout the immigration lifecycle, which in many cases may be years in duration. ICE Field Office Directors (FODs) will continue to exercise discretion by weighing these factors. Consequently, there may be cancellation-eligible individuals for whom an NTA will not be issued.

**OPLA (FLO) ANSWER**: While OPLA sympathizes, OPLA is not seeking to add any cases to the Immigration Court dockets.

7. Penn State Law's Center for Immigrants' Rights released a report titled "To File or Not to File a Notice to Appear: Improving the Government's Use of Prosecutorial Discretion" in October 2013, prepared for the ABA Commission on Immigration. The report addressed the use of prosecutorial discretion in the context of NTA issuance and filing. Is ICE considering implementing any of the recommendations contained within the report, including review of all NTAs for legal sufficiency and prosecutorial discretion by an attorney before filing? Is ICE considering changes to the NTA form and/or relevant databases in order to better track the numbers and types of cases in which an NTA was issued but not filed with the court? If ICE already has a policy on any of these recommendations, please explain.

**OPLA (FLO) ANSWER**: We do not anticipate any changes to NTA issuance outside of the prosecutorial discretion context.

8. AILA members represent DACA-eligible individuals with past orders of removal/deportation, who have reentered the United States. A number have been arrested and charged with illegal re-entry despite their eligibility for DACA. What is ICE guidance when a DACA-eligible noncitizen has a final removal/deportation order and a re-entry that does not affect continuous physical presence and is referred for federal prosecution? Will ICE agree to release them on an order of supervision and not refer them for prosecution?

**ERO ANSWER:** ICE screens all of its arrests for DACA eligibility and exercises prosecutorial discretion as appropriate. ICE handles such matters on a case-by-case basis and thus, is unable to categorically refrain from referring aliens, who have illegally reentered, for prosecution or to categorically release such individuals. Proposed

prosecutions are reviewed by Assistant United States Attorneys to ensure the applicable and appropriate prosecutorial guidelines have been followed and that decisions to proceed with a prosecution are made in consultation with the U.S. Department of Justice (DOJ).

9. AILA members continue to express concern that ICE targets individuals based on the perceived ethnicity of their surnames. Similarly, members report that individuals with only minor traffic offenses or with no criminal history remain enforcement priorities, despite clear language to the contrary in the June 17, 2011 Morton Memo. What measures are being taken to ensure ICE officers comply with the enforcement priorities set forth in the memo? What are the repercussions for those ICE officers who do not comply with the Morton memo?

   **ERO ANSWER:** ICE is focused on sensible, effective immigration enforcement that prioritizes the removal of those individuals who pose a risk to public safety and national security. ICE has clear civil enforcement priorities that apply to all ICE enforcement activities: aliens who pose a threat to national security or public safety, recent illegal entrants, and aliens who are fugitives or otherwise obstruct immigration controls.

   In fiscal year (FY) 2013, out of the 133,551 removals of individuals apprehended in the interior of the U.S., 82 percent were previously convicted of a criminal offense. Further, out of the 360,313, total removals for FY 2013, 98 percent met one or more of ICE's stated civil immigration enforcement priorities.

   ICE does not target illegal aliens indiscriminately. ICE takes accusations of racial profiling very seriously and investigates such accusations accordingly. ICE has expressly adopted DOJ's "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies," issued in June 2003. Pursuant to this policy, consideration of race and ethnicity is permitted only to the extent granted by the Constitution and our nation's laws. This guidance is covered in ICE mandatory training for all ERO law enforcement officers.

## III. Parental Interests Directive

10. ICE released a new directive in August 2013 titled "Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities."[3] The directive details ICE procedures addressing the placement, monitoring, accommodation, and removal of noncitizen parents or

[3] *ICE Memo with Policies and Procedures Addressing Alien Parents and Legal Guardians of Minor Children*, AILA Doc. No. 13082642, http://www.aila.org/content/default.aspx?docid=45545 (posted 8/26/13). *See also ICE FAQs on the Parental Interests Directive*, AILA Doc. No. 13102249, http://www.aila.org/content/default.aspx?docid=46211 (posted 10/22/13).

legal guardians of minor children. What training and guidance has ICE HQ provided to local offices on implementation of the parental interest memo?

Additionally, it would be helpful for AILA members with clients who fall under the directive to have greater clarity on the ICE procedures and criteria used to evaluate these cases, including how ICE makes decisions on where the noncitizen will be detained. How is a case flagged for consideration under the directive? What steps are taken to see that the case is properly reviewed, not only for possible release of the noncitizen, but also for facilitating contact visits, maintaining parent/child communication, assisting detainees with case worker or family court contact, and facilitating family court appearances?

**ERO ANSWER:** All ERO FODs, Deputy FODs, and other members of field management received thorough training on the provisions of the Directive upon its issuance. Also, pursuant to the Directive, ICE named an ERO Parental Rights Coordinator (PRC), assigned to ICE Headquarters/ERO Field Operations Division. The PRC and/or PRC staff hold monthly conference calls with trained parental rights points of contact in ERO's 24 field offices to discuss new resources, training, cases, and inquiries pertaining to parental interests. The ERO PRC also responds to case-specific inquiries concerning parental interests on a regular basis.

Additionally, ICE developed a website dedicated to answering frequently asked questions about the Parental Interests Directive, available at http://www.ice.gov/about/offices/enforcement-removal-operations/ero-outreach/faqParentalInterest.htm. Our website also has information on how to contact field POCs. ICE also created a PowerPoint slide deck for external stakeholders, and is actively engaged in other future initiatives to promote better understanding of ICE's policy and practice on parental interests.

The Directive states that ICE shall keep detained alien parents in the area of responsibility (AOR) of apprehension if their children or family court/child welfare proceedings are within that AOR. This requirement is subject to the exceptions listed in ICE's Transfer Directive (e.g., safety and security considerations, individual risk factors, facility overcrowding, etc.). The Directive also states that ICE shall initially place the detained alien parent as close as practicable to the alien's child(ren) and/or to the location of the alien's family court or child welfare proceedings.

As noted by the Directive, ICE may receive information that identifies an alien as a parent or legal guardian of a USC or LPR minor, or as a primary caretaker of a minor, at any time

during the alien's arrest, in-take, or detention. If deemed credible, field offices are guided to reevaluate any custody determination for the alien in accordance with applicable law and policy. ICE records information about an alien's parental status in multiple locations, including the Risk Classification Assessment tool and the ENFORCE Alien Removal Module.

Although the Directive provides significant guidance, it is intended to complement the immigration enforcement priorities and prosecutorial discretion memoranda. The Directive creates no private right, and is discretionary in nature.

## IV. Deferred Action/Stays of Removal

11. AILA members have reported that some ICE field offices have limited non-DACA deferred action to exceptionally narrow circumstances, under the theory that it is an administrative remedy of last resort. ICE has used this "last resort" reasoning to deny deferred action to individuals whose cases have been administratively closed and who cannot otherwise obtain employment authorization, even in cases where the individuals have compelling equities that weigh in their favor. This "last resort" position appears contrary to the June 17, 2011 John Morton memo on prosecutorial discretion, which lists deferred action as one of many discretionary enforcement decisions available to ICE. Please describe the factors ICE will weigh when considering a request for non-DACA deferred action.

**OPLA (EROLD) ANSWER:** Deferred action is merely an act of administrative convenience by which ICE may prioritize the use of its immigration enforcement resources. Deferred action is not an immigration benefit, and there is no "application" for deferred action. Of course, an alien or his/her attorney may request that the local FOD consider his/her case for deferred action. There is, however, no formalized process.

In an ICE memorandum dated June 14, 2005, Wesley J. Lee, former Acting Director, described the appropriate implementation of deferred action authority. "Formal administrative devices such as parole, statutorily restricted extensions of voluntary departure and stays of removal are to be the primary administrative relief vehicle." Deferred action is to be the administrative remedy of last resort, and as such, all appropriate administrative relief should be exhausted before considering deferred action."

This guidance is consistent with the Morton Memo, as the manner and extent to which ICE can exercise prosecutorial discretion is limited by our statutory authority and the circumstances of an individual's case. ICE does not grant deferred action while an alien is

in removal proceedings as the alien's status is subject to the jurisdiction of the Executive Office for Immigration Review (EOIR). Deferred action does not operate to cure any defect in status under any section of the Immigration and Nationality Act for any purpose, such as employment authorization. Since Deferred Action is not an immigration status, no alien has the right to obtain it.

12. AILA members report that at least one ICE ERO office takes the position that deferred action is an internal mechanism that may only be initiated by ICE *sua sponte*. Thus, neither counsel nor a noncitizen can initiate a deferred action request with ICE. Please remind local offices that a deferred action request may be initiated by a noncitizen or his/her counsel on the noncitizen's behalf. Please also describe the procedures for making a deferred action request.

**ERO & OPLA (EROLD) ANSWER:** While there is no "application" or formalized process to request deferred action because it is not an immigration benefit, an alien or his/her attorney may request that the local FOD consider his/her case for deferred action. Deferred action is merely an act of administrative convenience by which ICE may prioritize the use of its immigration enforcement resources. If there is a specific case in which deferred action was declined based solely upon the fact that ERO indicated it may only be initiated *sua sponte*, we are happy to look into the matter to determine if further action is appropriate.

13. Often, ICE detainees are housed hundreds of miles away from their legal representatives. In addition to the inability to obtain passports, our members report difficulty in obtaining timely signatures from detainees. What is the recommended process for a legal representative filing an Application for Stay of Deportation or Removal (Form I-246) when the applicant is detained?

**ERO ANSWER:** The process for a legal representative filing an Application for Stay of Deportation or Removal, Form I-246 is the same for both detained and non-detained aliens. The process is included in the instructions that are attached to the Form I-246 and are also available on-line here: http://www.ice.gov/doclib/news/library/forms/pdf/i246.pdf. If a legal representative is unable to travel to the location of a detained alien, they might consider corresponding via mail or enlisting the assistance of a local representative.

14. A number of ICE offices require a detained noncitizen to provide a passport prior to accepting an application for stay of removal along with the required fee. It is nearly impossible to obtain a passport for a detained individual from the Embassy of his or her home country. A number of ICE ERO offices understand this and do not require a passport. The lack of a passport does not interfere with the government's ability to remove many

individuals from the United States as their consulates ultimately cooperate with ICE. Given that a passport is not needed to affect an individual's departure from the United States, can ICE instruct all field offices to accept applications for stays of removal without a passport where the client is detained?

**ERO ANSWER:** Failure to submit a passport may be the basis for the denial of a Form I-246. While, in many cases, ICE is able to ultimately obtain a travel document from detained aliens' consulates/embassies, this does not relieve the stay applicant from making every effort to comply with the passport submission requirement. ICE offices are able to, and generally assist detainees in obtaining passports by, for example, facilitating telephonic/in-person consular interviews and by providing necessary passport-style photos or passport applications.

FODs have discretion to approve or deny applications submitted without passports or travel documents on a case-by-case basis. Please direct questions about specific cases to the local ERO field office.

15. AILA members regularly represent noncitizen victims of crimes and seek U visas on their behalf. AILA is aware of a number of stay applications filed on behalf of such individuals with final orders of removal that have been denied by ICE. Deporting a person who has been recognized by state or federal authorities as a cooperating witness runs contrary to the intent of the statute – to protect victims and investigate crimes. Additionally, given the large number of high priority cases on the ICE docket, targeting such individuals appears contrary to guidance on enforcement priorities. Finally, even if a victim of crime has a criminal record, Congress created a generous waiver for many eligible U visa applicants which are adjudicated by USCIS. What factors does ICE take into account in adjudicating a stay application for a noncitizen victim of crime who has been issued a U certification confirming that he or she is or has been cooperating with the authorities?

**ERO ANSWER:** On December 11, 2013, USCIS announced that the agency had approved the statutory maximum of 10,000 petitions for U visas for fiscal year 2014. During a Vermont Service Center stakeholder teleconference that same day, USCIS advised that the agency would notify waitlisted applicants and their qualified family members that they had been found eligible for the U visa and that they are receiving deferred action and should apply for a work permit on that basis.

OPLA has advised all Chief Counsels that they should dismiss pending removal proceedings, with limited exceptions, where USCIS has determined that an alien and his/her derivatives are eligible for a U visa. Accordingly, once the matter is dismissed and

no longer pending before EOIR, aliens in ERO custody will most likely be released. USCIS will be conducting background checks prior to issuing any available visa, and if derogatory information arises, USCIS may decline to grant the visa and will determine whether removal proceedings should recommence. Concerns about individual cases should be brought to the attention of the local ERO Field Office or the local OCC.

## V. Receipt of Board of Immigration Appeals (BIA) decisions

16. Members continue to report that ICE often has knowledge of BIA decisions before the attorney for the respondent is notified. A few members have reported that ICE officers have told attorneys that they have access to a website or database through the BIA which allows ICE to obtain information on pending matters before the Board. Can ICE confirm whether this is true? If this is not true, can ICE explain how it seems to have almost instant notification when the Board has issued a decision on an appeal or motion?

**OPLA (ILPD) & ERO ANSWER**: It is true that ICE has access to the BIA Inquiry System. This database indicates whether a decision has been reached in a pending case, and it includes the date of any decision along with a three letter code indicating the nature of the decision, e.g., REM for remand or SUS if the appeal is sustained. This is the same information that the Board provides via its case status telephone line (1-800-898-7180), which is available to all parties. When the Board's decision results in a final removal order, ICE does not execute the order either until it has received the full written decision or until the passage of seven days.

## VI. Risk Classification Assessment Tool

17. The Risk Clarification Assessment (RCA) tool has now been implemented in all ICE offices throughout the country. Can ICE please provide an update on the statistics relating to custody determinations based upon the use of the RCA tool? On average, how many custody determinations are overturned by a supervisor? Specifically, when the assessment recommends against custody, how many times has a supervisor overturned such decision and detained the individual? On average, how many times as the supervisor overturned the assessment's recommendation to detain the individual? Have there been any updates on the criteria used by the RCA to make custody determinations?

**ERO ANSWER:** The scoring criteria RCA utilizes to make custody determinations was updated in January 2014.

Nationwide deployment of the RCA tool was completed in January 2013. The below table reflects the number of custody determinations based upon the use of the Risk Classification Assessment tool, or RCA, through January 2014:

| Detain/Release Decisions | Final Decision | |
|---|---|---|
| | Count | % |
| Detain in the Custody of this Service | 21299 | 83.0% |
| Detain, Eligible for Bond | 2672 | 10.4% |
| Release on Community Supervision | 1688 | 6.6% |
| **Total** | **25,659** | |

Additionally, please note:

- To date, less than 9 percent of all RCA recommendations have been overridden by a Supervisor.
- Between January 12, 2014 and February 28, 2014, the following statistics have been recorded:
  - 24.5 percent of RCA's "Release" recommendations were overridden to "Detain in the custody of this service" (1.3 percent of all decisions).
  - 52 percent of RCA's "Detain, Eligible for Bond" recommendations were overridden to "Detain in the custody of this service" (4.6 percent of all decisions).
  - 0.9 percent of RCA's "Detain in the Custody of this Service" recommendations were overridden to "Release" (0.6 percent of all decisions).
  - 0.9 percent of RCA's "Detain in the custody of this service" recommendations were overridden to "Detain, Eligible for Bond" (0.6 percent of all decisions).

## VII. Detainers

18. Many state and local law enforcement agencies no longer comply with all ICE detainer requests. Does ICE consider state or local detainer policies when deciding whether to issue a detainer?

**ERO ANSWER:** No. Pursuant to the ICE Policy No. 10086.1, *Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems* (Dec. 21, 2012) issued by former Director John Morton, ICE issues detainers regardless of the state or local detainer policies, provided the individual is subject to a detainer under agency policies.

As set forth in this policy, ICE agents and officers should issue detainers in the federal, state, local, or tribal criminal justice systems against an individual only where (1) they have reason to believe the individual is an alien subject to removal from the United States and (2) the alien falls within one or more discretionary categories. The decision to issue a detainer is a discretionary determination based upon consideration of a totality of the circumstances on a case-by-case basis.

19. The Form I-247, Immigration Detainer – Notice of Action, lists the conditions that should be present in a case before ICE issues a detainer. However, AILA members report that some local ICE offices continue to issue detainers in inappropriate situations. For example, a local ICE office may file a detainer with the "other" box checked and the only explanation given is "field request," even in cases where a foreign national does not fit the listed criteria for a hold and does not appear to be properly subject to a detainer. Where local offices do not provide any further information, it is impossible to determine whether a detainer is properly issued. How can AILA members raise concerns when a detainer is issued by a local ICE office in cases that do not fall under the guidelines specified in the December 2012 guidance on the use of detainers?[4]

**ERO ANSWER**: ERO HQ management is aware of instances where the "other" box was checked on detainers. In an effort to improve accountability, ERO HQ conveyed to ERO field offices the importance of checking the correct box on detainer forms and instructed that the field offices should take corrective action to ensure employees do not continue to check the box marked "other (specify)" on form I-247 when a more appropriate reason for lodging a detainer is available.

In cases where AILA members feel that a detainer was improperly issued, they can address their concerns with either the local field office that issued the detainer OR contact the Community and Detainee Helpline via phone by dialing 888-351-(b)(6), (b)(7)(c) email at (b)(6), (b)(7)(c)

20. Pursuant to the settlement of a class action lawsuit, ICE has agreed to not restrain detained respondents at bond or merits hearings in the San Francisco court. *See* *De Abadia-Peixoto v. U.S. Dept. of Homeland Security*, No. 3:11-cv-4001 RS (N.D. Cal. Jan. 30, 2014). We understand that respondents are usually not restrained in many other courts with a detained docket. Will ICE employ the policy of not restraining detained respondents in bond or merits hearings nationwide?

[4] ICE *Memo on New National Detainer Guidance for Civil Immigration Enforcement*, AILA Doc. No. 12122149, http://www.aila.org/content/default.aspx?docid=42594 (posted 12/21/12).

**OPLA (DCLD & EROLD) ANSWER:** ICE is committed to treating all individuals in our custody with dignity and respect, and is committed to courtroom security. The varying nature of the security available in the many immigration court settings prevents the application of a one size fits all solution. While most detainees appear at bond and merits hearings without restraints, there are situations where restraints are necessary given local security conditions.

21. On December 21, 2012, ICE issued a memorandum on the use of detainers.[5] The memo states:

> "ICE Field Office Directors, Chief Counsel, and Special Agents in Charge should closely evaluate the implementation and effect of this guidance in their respective jurisdictions for a period of six months from the date of this memorandum. Based on the results of this evaluation, ICE will consider whether modifications, if any are needed."

At our December 2013 meeting, ICE indicated it was extending the evaluation period, which remained ongoing. Has the evaluation been completed yet? If not, when does ICE plan to conclude the evaluation? If the evaluation is complete, when can we expect to receive the data from ICE on the implementation and effect of the detainer memo?

**OPLA (EROLD) & OFFICE OF POLICY ANSWER:** ICE has solicited input from the various components involved within ICE regarding the implementation and impact of this policy (ICE Policy No. 10086.1). With the recent leadership changes, ICE continues to evaluate this information in consideration of whether modification of the policy is necessary.

## VIII. Detainee Transfers

22. AILA respectfully asks ICE to revisit its policy of not releasing information regarding the details of detainee transfers, including date/time and location of transfers. In the past, ICE has asserted that such information cannot be disclosed due to "security" concerns. Can ICE elaborate on what specific security concerns are present? This information is required for attorneys to effectively represent their detained clients and to counsel their clients' families in terms of the law and the best course of action.

[5] *Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local and Tribal Criminal Justice Systems*, AILA Doc. No. 12122149, http://www.aila.org/content/default.aspx?docid=42594 (posted 12/21/12).

**ERO ANSWER:** ICE Detainee Transfer Policy 11022.1 indicates that ICE will ensure that all necessary notifications are made to detainees and their attorneys when detainees are transferred. ICE is not required to notify family members or other third parties of a transfer.

If a detainee has an attorney of record (Form G-28 on file), the sending field office will notify the attorney that the detainee is being transferred, and will include the reason for the transfer and the name, location, and telephone number of the new facility as soon as practicable on the day of the transfer, but in no circumstances later than twenty four (24) hours after the transfer occurs.

Prior to the transfer, detainees are notified by the sending office and the detainee is informed in a language or manner that he/she can understand, that he/she is being transferred to another facility and is not being removed (if applicable).

To ensure the safety of ICE personnel, detention facility employees, and members of the public, ICE is unable to discuss specific plans and time schedules with detainees. These important safety measures prevent any potential inmate escape and protect the safety of the transporting officers and the community. While a majority of detainee transports are accomplished without incident, there have been situations where detainees have escaped, threatened or injured officers, or placed other detainees and members of the public at risk. Accordingly, ICE will not alter existing policy.

As a reminder, individuals wishing to locate a detainee may do so by checking the Online Detainee Locator System (ODLS) at (b)(7)(e) While ODLS does not provide information about transfers that are planned or in progress, ICE policy requires that systems be updated within eight hours of the release, removal, or transfer of detainees.

## IX. Phone Calls in Detention

23. Many practitioners are unclear as to whether detention facilities record phone calls, including attorney conversations. What is ICE's policy on recording detainees' telephone conversations? AILA understands that in-person meetings with attorneys should not be recorded, while family visits may be recorded. Could you please confirm if this is an accurate statement? If the policy depends on the facility, could you please inform us what the policies are at each facility?

**ERO ANSWER:** ICE does NOT support monitoring of phone calls between detainees and their legal representatives. Currently, there are three separate ICE detention standards documents that serve to communicate ICE policy for the monitoring of detainees' legal telephone conversations:

- The 2000 NDS Telephone Standard requires that "Even if the facility is generally limited to collect calls, the facility shall permit the detainee to make direct calls to legal service providers, in pursuit of legal representation or to engage in consultation concerning his/her expedited removal case." The standard prohibits recording by stating, "Facility staff shall not electronically monitor detainee phone calls on their legal matters, absent a court order."
- The 2008 PBNDS Telephone Access guidance states, "A detainee's call to a court, a legal representative, OIG, or DHS Civil Rights and Civil Liberties (CRCL), or for the purposes of obtaining legal representation, may not be electronically monitored without a court order."
- The 2011 PBNDS Telephone Access Standard 5.6 states in part, "A detainee's call to court, a legal representative, DHSOIG, CRCL or for the purposes of obtaining legal representation may not be electronically monitored without a court order."

In addition, the DTS phone system at ICE service processing centers, contract detention facilities, and dedicated IGSA facilities have recording and monitoring capabilities that open with an announcement at the beginning of each call that states that certain calls are subject to recording. However, attorney calls are NOT recorded. Attorney numbers are noted in a database, and blocked from any recording. In addition, all pro bono service numbers, which are made available to detainees at all ICE facilities, are NOT recorded.

At the IGSA facilities that do not use DTS, but instead rely on a local facility inmate telephone vendor, recordings are usually determined by the IGSA facility. However, the inmate telephone industry, as a whole, does NOT record attorney calls.

The Detention Reporting and Information Line, which provides a direct channel for agency detainees to communicate directly with ERO to answer questions and resolve concerns regarding detention, does not have the capability to record calls received.

## X. Orders of Supervision

24. AILA members in some areas state that clients reporting for Orders of Supervision are taken into custody and removed without an opportunity to prepare for their removal with their

family, employer, etc. For example, one client, who was under a long-term order of supervision, appeared for his appointment with his young child. ICE immediately detained him and placed him on a flight soon after without an opportunity to prepare luggage and make necessary arrangements with his family regarding his departure. What is ICE ERO's protocol for removing persons with Orders of Supervision?

**ERO ANSWER:** The removal of aliens with a final order of removal that have been released by ICE on an Order of Supervision is no different than an alien with a final order of removal that remains in ICE custody.

In response to AILA's concern about a specific incident, ERO would require additional details in order to determine what transpired and what steps, if any, ICE should take to correct this issue. At this time, ICE does not have any policies in place that specifically outline the time period ICE must provide an alien to prepare for departure upon their arrest.

## XI. Classification of Courthouses as "Sensitive Locations"

25. Can ICE provide its current policy on targeting individuals for enforcement at courthouses? Is there a distinction between targeting individuals inside courthouses or in nearby areas outside the courthouse, such as parking lots? Does ICE make any distinction based upon the type of court proceeding, e.g. criminal, civil, or domestic?

Such behavior has been widely reported and has a chilling effect on communities, as it makes individuals afraid to go to courthouses to attend to their legal obligations, such as testifying in a court proceeding; paying a fine; or even seeking a domestic violence protection order or guardianship/custody order for a minor. For example, AILA members in Kentucky have reported that suspected undocumented individuals have been targeted by ICE at domestic/juvenile hearings when they are petitioning the court for legal custody or guardianship of minor children. In Kern County, California, ICE announced it would stop the practice of arresting people at courthouses; however, ICE continues to arrest people who access the Kern County court by waiting just outside the courthouse grounds. Individuals need to be able to seek protection and comply with their legal obligations at local courthouses regardless of their current immigration status. As such, will ICE consider adding courthouses to the list of "sensitive locations" enumerated in the October 24, 2011 memorandum issued by ICE Director John Morton?[6]

[6] *ICE Memo on Enforcement Actions At or Focused on Sensitive Locations*, AILA Doc. No. 12101748, http://www.aila.org/content/default.aspx?docid=41756 (posted 10/17/12).

**ERO ANSWER:** ICE makes every effort to handle immigration enforcement fairly, professionally, and in accordance with the law. It is ICE's responsibility to enforce our nation's immigration laws in furtherance of the DHS's national security and public safety mission. As part of our commitment to sensible, effective immigration enforcement, ICE focuses its limited resources on the following priorities: aliens who pose a threat to national security or public safety, recent illegal entrants, and aliens who are fugitives or otherwise obstruct immigration controls. In exercising its immigration enforcement authority, ICE leverages various information sources, including law enforcement and criminal justice databases, to identify and pursue priority individuals such as those listed above. ICE conducts these activities in a manner consistent with the agency's stated policies and procedures. Furthermore, ICE's enforcement policies and procedures are designed to be mindful of any potential state and local impact; therefore, all priority arrests planned on courthouse grounds are coordinated beforehand with appropriate authorities, to include court personnel, and are consistent with the protection of the public.

## XII. DOMA Issues

26. Where a respondent was ordered removed pre-*Windsor*, notwithstanding the existence of a lawful, bona fide same-sex marriage to U.S. citizen, will ICE agree to a joint motion to reopen to allow the respondent to pursue newly available relief such as adjustment of status or cancellation of removal? Will ICE agree to joint motions to reopen where the respondent entered into a lawful, bona fide same-sex marriage after having been ordered removed? Would ICE be willing to work with attorneys and accredited representatives to establish clear guidelines for requesting joint motions in these cases?

    **OPLA (FLO) ANSWER:** Please follow the current guidance on submitting Motions to Reopen and Joint Motions to Reopen on these cases, including submitting as much detail and supporting documentation as possible. They will be handled similarly to any other case in which the person was eligible for relief or becomes eligible for relief.

27. Where ICE determines that an individual should remain in detention, the detainee may nonetheless be eligible for relief (such as adjustment of status or cancellation of removal) if allowed to marry a long-term partner. Unfortunately, LGBT individuals detained in a state that does not recognize marriage equality would be barred from seeking relief. In cases where the bona fides of the relationship are not in question and there is prima facie eligibility for relief, would ICE consider transferring the detainee to a state that allows same-sex marriage?

**ERO ANSWER:** Requests for transfer can be made to the local ERO Field Office, and will be reviewed on a case-by-case basis considering numerous factors consistent with appropriate custody considerations.

When weighing whether an exercise of prosecutorial discretion may be warranted for a given alien, ICE officers, agents, and attorneys should consider all relevant factors, including, but not limited to whether the person has a U.S. citizen or permanent resident spouse, which may be impacted by the marriage laws in the state in which they are detained. Relatedly, when considering transfer of a detainee under any circumstances, including requests pertaining to marriage laws in particular states, safety and security considerations, individual risk factors, facility overcrowding, and other operational factors will be accounted for in the case-by-case review of such requests.

## XIII. Return to the U.S. After Successful Litigation

28. On February 24, 2012, ICE released the memorandum, *Facilitating the Return to the United States of Certain Lawfully Removed Aliens* which describes ICE policy on facilitating the return of individuals whose petitions for review have been granted by the federal courts.[7] The memo indicates that ERO, HSI and OPLA supervisors must fully coordinate at the local, international, and headquarters level to effectuate the policy. How many individuals who have prevailed on petitions for review and requested reentry to the U.S. pursuant to the memo have been returned under this policy?

**ERO ANSWER:** ERO, HSI, and OPLA fully coordinate at all levels in order to properly comply with this policy. The numbers and data are used internally, but ICE is tracking properly.[8]

Please be advised that all requests for return of certain lawfully removed aliens must be sent to (b)(6), (b)(7)(c) in order for requests to be properly monitored and adjudicated. Additional information on this topic can be found on ICE's website under the ERO Community Outreach section: http://www.ice.gov/about/offices/enforcement-removal-operations/ero-outreach/faq.htm.

[7] *ICE Policy Memo on Facilitating the Return of Certain Removed Aliens*, AILA Doc. No. 12030260, http://www.aila.org/content/default.aspx?docid=38729 (posted 3/2/12).

[8] Between April 2012 and March 2014, ICE received a total of 91 petitions for individuals to return under this policy. Of the petitions received: 48 individuals have been returned under the policy, 20 cases have been determined to initially meet policy guidelines or are pending return to the U.S., and 23 were determined to not meet policy guidelines or the request was ceased by the requestor. Petition data tracked for internal purposes only.

U.S. Immigration and Customs Enforcement

## XIV. Biometrics and Security Checks in Removal Proceedings

29. AILA practitioners report that the biometric system currently in place to perform security checks has systemic problems that create confusion and delays in removal proceedings. Practitioners report that the system currently in place for initial biometrics coordinated between TSC and USCIS field offices or ERO detention facilities is relatively smooth. However, processing for follow up biometrics across the country is problematic. Procedures are inconsistent, lack transparency, and are often cumbersome and involve unreasonable delays.

- ***Follow up biometrics for non-detained cases***: Practitioners report that in some districts OCC and USCIS have created complex and difficult procedures to obtain follow-up biometrics in non-detained cases. For example, OCC issues a letter instructing respondents to make an INFOPASS appointment with USCIS to capture biometrics. Respondents are then required to go to the INFOPASS appointment and present the OCC letter, which will then trigger the scheduling of a follow-up biometrics appointment at the USCIS Application Support Center. However, obtaining the letter from OCC in a timely fashion can be difficult because of ICE OCC heavy caseloads and responsibilities. INFOPASS appointments at some USCIS offices are booked out 2-3 weeks. Scheduling the biometrics appointment between the INFOPASS officer and the ASC staff can also be further delayed because some districts do not have personnel capacity to perform same-day biometrics appointments.

  **OPLA (FLO) ANSWER:** The scheduling of biometrics appointments has been and is currently entirely within USCIS's authority. OPLA is not involved in this process, other than in some detained settings.

- ***USCIS limits appointments***: Practitioners also report that some USCIS offices are limiting access to follow-up biometrics appointments to avoid unnecessary duplication. Thus, these offices only permit follow up biometrics appointments 60-days before the individual hearing. This fails to take into account the fact that immigration courts need current biometrics available at different phases in removal proceedings to make discretionary determinations on motions submitted by the parties.

  **OPLA (FLO) ANSWER:** Similarly as above, ICE is unable to issue biometric notices or schedule biometric appointments for USCIS.[9] However, AILA could raise this issue with USCIS.

[9] While this should not be stated explicitly, some OCCs (specifically in some detained settings) have issued biometric appointments.

What instructions are given to ICE field offices regarding biometrics for respondents? Where there are continued delays and difficulties that local offices are unable to resolve, who should an attorney contact? Please provide the current validity periods for biometrics and fingerprints. AILA understands there is a distinct validity period within which the fingerprints simply need to be "refreshed" and a period within which a person needs to present for new fingerprints.

AILA requests that OCC participate in an interagency meeting with EOIR, ERO and USCIS with the aim of making follow up biometrics/fingerprints easier to obtain.

**OPLA (FLO) ANSWER:** ICE field offices are given the same instructions regarding biometrics from USCIS that USCIS provides to persons in proceedings. Those instructions can be found on their website at, www.uscis.gov/files/article/PreOrderInstr.pdf. If there are delays and difficulties in obtaining biometric appointments, please reach out to USCIS to resolve those delays. Please refer to USCIS for the validity periods for biometrics and fingerprints.

30. Practitioners report additional delays in removal proceedings in both detained and non-detained cases because ERO limits the number of staff to run name checks for respondents in removal proceedings. In some districts, ICE ERO assigns one clerk to run security checks on one specific day to resolve security checks for all cases in proceedings in a given month. As a result, there are backlogs that create unnecessary delays in resolving cases in proceedings. What is ICE policy on running name checks for respondents in proceedings? Where there are continued delays and difficulties relating to security checks that local offices are unable to resolve, who should an attorney contact?

**ERO & OPLA (FLO) ANSWER:** Background checks have been required and run in all OCCs for many years. ERO has designated staff to run these checks for the OCCs. ICE is unaware of any delays in removal proceedings in any jurisdiction due to security checks. Please reach out to HQ if there is a specific jurisdiction or office that is having difficulties. Alternatively, attorneys may contact the Community and Detainee Helpline via phone by dialing 888-351 (b)(6), (b)(7)(c) email at (b)(6), (b)(7)(c)

## XV. STEM/OPT

31. Please describe the process by which ICE determines which degree programs should be on the STEM Designated Degree Programs List. Although a number of medical, pharmaceutical, and veterinary degree programs are on the STEM list, those for pharmacists,

dentists, physicians, and veterinarians are not.[10] Please explain why those degree programs have not been included.

**OPLA (EROLD) ANSWER:** ICE's Student and Exchange Visitor Program (SEVP) amends the STEM Designated Degree Program List ("List") in consultation with relevant offices within the DHS, including the DHS Office of Policy, and in accordance with the process outlined in the 2008 Interim Final Rule (IFR) announcing the 17-month STEM extension of OPT. As explained in the IFR, the List is based on the "Classification of Instructional Programs," which was developed by the U.S. Department of Education's National Center for Education Statistics. SEVP consults with interested parties to evaluate the degrees that qualify for inclusion on the List and to ensure that the extension is limited to F-1 students with a degree in an eligible technical field where there is a shortage of qualified, highly-skilled U.S. workers essential to the country's technological innovative competitiveness.

The List has been extensively amended twice since its 2008 publication, once in May 2011 and again in May 2012. ICE welcomes comments on the List and any recommendations for additions or deletions to it. To suggest a change, write to sevis.source@dhs.gov, with "STEM Code Change Request" in the subject line. Please include your name, phone number, organizational affiliation, the code(s) you would like to see added or deleted and the rationale for the change. Requests will be reviewed by ICE in conjunction with the Department of Education and other interested government agencies.

[10] See www.ice.gov/sevis/stemlist.htm.

(b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c)
**Sent:** Thursday, December 11, 2014 10:19 AM
**To:** (b)(6), (b)(7)(c)
**Cc:** Almeida, Corina E
**Subject:** FW: Emailing: R43798.pdf
**Attachments:** R43798.pdf

In case you have not seen this.

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**From:** (b)(6), (b)(7)(c)
**Sent:** Thursday, December 11, 2014 10:15 AM
**To:** Almeida, Corina E; (b)(6), (b)(7)(c)
**Subject:** FW: Emailing: R43798.pdf

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# The Obama Administration's November 2014 Immigration Initiatives: Questions and Answers

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Legislative Attorney

November 24, 2014

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R43798

**CRS REPORT**
Prepared for Members and
Committees of Congress

# Summary

On November 20, 2014, President Obama delivered a televised address wherein he broadly described the steps that his administration is taking to "fix" what he has repeatedly described as a "broken immigration system." Following the President's address, executive agencies made available intra-agency memoranda and fact sheets detailing specific actions that have already been taken, or will be taken in the future. These actions generally involve either border security, the current unlawfully present population, or future legal immigration.

The most notable of these actions, for many commentators, are the initiatives to grant "deferred action"—one type of relief from removal—to some unlawfully present aliens who were brought to the United States as children and raised here, or who have children who are U.S. citizens or lawfully permanent resident (LPR) aliens. Previously, in June 2012, then Secretary of Homeland Security Janet Napolitano announced a program—commonly known as Deferred Action for Childhood Arrivals (DACA)—whereby unlawfully present aliens who had been brought to the United States as children and met other criteria could receive deferred action and, in many cases, employment authorization. The eligibility criteria for DACA expressly excluded unlawfully present aliens who were over 31 years of age, or who had entered the United States on or after June 15, 2007. However, aliens who are over 31 years of age, or entered between June 15, 2007, and January 1, 2010, could receive deferred action as part of the 2014 initiative.

Similarly, unlawfully present aliens who have children who are U.S. citizens or LPRs could also receive deferred action and employment authorization pursuant to the November 2014 initiatives, provided they meet specified criteria. These criteria include "continuous residence" in the United States since before January 1, 2010; physical presence in the United States both on the date the initiative was announced and on the date when they request deferred action; and not being an enforcement priority (e.g., not a threat to national or border security).

The announced executive actions—particularly the granting of deferred action and employment authorization to unlawfully present aliens—have revived debate about the President's discretionary authority over immigration like that which followed the announcement of DACA in 2012. In the case of DACA, some argued that the initiative violates the Take Care Clause of the U.S. Constitution, runs afoul of specific requirements found in the Immigration and Nationality Act (INA), or is inconsistent with historical precedents. Others, however, asserted that DACA involves a valid exercise of the executive's prosecutorial or enforcement discretion, is consistent with the INA, and has ample historical precedent. Similar arguments will likely be made as to the November 2014 actions, which affect a significantly larger number of aliens than DACA.

Legal challenges to DACA have generally failed on standing grounds, because the plaintiffs bringing these challenges were not seen as the proper parties to seek judicial relief from a federal court. The one exception to this—the litigation in *Crane v. Napolitano*—resulted in the reviewing federal district court finding that DACA runs afoul of provisions in Section 235 of the INA which some assert require the executive to place unlawfully present aliens in removal proceedings. However, this same federal district court subsequently found that it lacked jurisdiction because the plaintiff immigration officers alleged that they faced discipline by their employer, DHS, if they refused to implement DACA, and such claims are within the jurisdiction of the Merit Systems Protection Board (MSPB), not the court.

The 113th Congress has also considered legislation to defund DACA (e.g., H.R. 5272, H.R. 5316).

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## Contacts

On November 20, 2014, President Obama delivered a televised address wherein he broadly described the steps that his administration is taking to "fix" what he has repeatedly described as a "broken immigration system."[1] Following the President's address, executive agencies made available intra-agency memoranda and fact sheets detailing specific actions that have already been taken, or will be taken in the future.[2] These actions generally involve either border security, the current unlawfully present population, or future legal immigration.

The announced executive actions—particularly the granting of deferred action and employment authorization to some unlawfully present aliens, discussed below (see "Unlawfully Present Population")—have revived debate about the executive's discretionary authority over immigration like that which followed the Administration's June 2012 announcement of the Deferred Action for Childhood Arrivals (DACA) initiative.[3] DACA has permitted some unlawfully present aliens who were brought to the United States as children and raised here to obtain temporary relief from removal and, in many cases, employment authorization. Some have argued that DACA constitutes an abdication of the executive's duty to enforce the laws and runs afoul of specific requirements found in the Immigration and Nationality Act (INA),[4] among other things. Others, however, have maintained that the DACA initiative is a lawful exercise of the discretionary authority conferred on the executive by the Constitution and federal statute.[5] Similar arguments will likely be made as to the November 2014 actions, which affect a significantly larger number of aliens than DACA.

This report provides the answers to key legal questions related to the various immigration-related actions announced by the Obama Administration on November 20, 2014. Because the various documents outlining these actions have been available for a limited period of time, and additional information is expected to be released in the future, these answers are necessarily preliminary. It is anticipated that the report will be updated to reflect further developments.

Other reports discuss related issues, including CRS Report R43782, *Executive Discretion as to Immigration: Legal Overview*, by Kate M. Manuel and Michael John Garcia; CRS Report

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[1] For a transcript of the President's address, see http://www.whitehouse.gov/issues/immigration/immigration-action# (last accessed: Nov. 22, 2014).

[2] *See generally* Dep't of Homeland Security (DHS), Fixing Our Broken Immigration System Through Executive Action - Key Facts, Nov. 21, 2014, *available at* http://www.dhs.gov/immigration-action?utm_source=hp_feature&utm_medium=web&utm_campaign=dhs_hp; Dep't of Labor (DOL), Immigration Fact Sheets, *available at* http://www.dol.gov/dol/fact-sheet/immigration/ (last accessed: Nov. 21, 2014).

[3] *See* DHS Secretary Janet Napolitano, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children*, June 15, 2012 (copy on file with the author).

[4] *See, e.g.*, Crane v. Napolitano, Amended Complaint, No. 3:12-cv-03247-O, filed Oct. 10, 2012 (N.D. Tex.) (lawsuit challenging DACA and arguing that the initiative is, among other things, contrary to specific provisions of the INA and the Executive's constitutional responsibility to "take care" that the laws are faithfully executed); Robert J. Delahunty & John C. Yoo, *Dream On: The Obama Administration's Nonenforcement of Immigration Laws, the DREAM Act, and the Take Care Clause*, 91 TEX. L. REV. 781 (2013) (arguing that the DACA initiative is inconsistent with the Executive's constitutional duties, and that the President may not purposefully refrain from enforcing federal statutes against broad categories of persons "in ordinary, noncritical circumstances").

[5] *See, e.g.*, Shoba Sivaprasad Wadhia, *In Defense of DACA, Deferred Action, and the DREAM Act*, 91 TEX. L. REV. 59 (2013) (asserting that DACA is a constitutionally justified attempt by the Executive "to enforce congressionally mandated priorities" by focusing limited resources on the removal of aliens designated as a "high-priority" for removal); David A. Martin, *A Defense of Immigration-Enforcement Discretion: The Legal and Policy Flaws of Kris Kobach's Latest Crusade*, 122 YALE L.J. ONLINE 167 (2012) (arguing that DACA is consistent with the INA and with previous exercises of enforcement discretion by immigration officials).

R42924, *Prosecutorial Discretion in Immigration Enforcement: Legal Issues*, by Kate M. Manuel and Todd Garvey; CRS Report R43708, *The Take Care Clause and Executive Discretion in the Enforcement of Law*, by Todd Garvey; and CRS Report R43747, *Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions*, by Andorra Bruno.

## What actions are being taken by the Obama Administration?

Following the President's televised speech, executive branch agencies and, in two cases, the White House announced dozens of specific actions as to immigration. These actions can be broadly divided into the same three categories noted by the President in his speech: (1) border security, (2) the current unlawfully present population, and (3) future legal immigration.

### *Border Security*

Among the Administration's actions is "implement[ing] a Southern Border and Approaches Campaign Strategy to fundamentally alter the way in which we marshal resources to the border."[6] This will involve the Department of Homeland Security (DHS) commissioning three task forces made up of various law enforcement agencies. These task forces will focus on the southern maritime border, the southern land border and West Coast, and investigations to support the other two task forces. Among the objectives of the new strategy are increasing the perceived risk of engaging in or facilitating "illegal transnational or cross-border activity" (a term which could include the migration of persons); interdicting people who attempt to enter illegally between ports of entry; and preventing the "illegal exploitation of legal flows" (which could include things such as alien smuggling at ports of entry).[7]

### *Unlawfully Present Population*

The Administration also proposes several actions affecting the current population of unlawfully present aliens, which is widely estimated to include some 11 million persons.[8] Arguably the most notable of these actions are the initiatives to grant deferred action—one type of relief from removal—to some unlawfully present aliens who were brought to the United States as children and raised here, or who have children who are U.S. citizens or lawfully permanent resident (LPR) aliens.[9] Previously, in June 2012, then-Secretary of Homeland Security Janet Napolitano announced a program—commonly known as Deferred Action for Childhood Arrivals (DACA)—whereby unlawfully present aliens who had been brought to the United States as children and met other criteria could receive deferred action and, in many cases, employment authorization.[10] The

[6] DHS Secretary Jeh Charles Johnson, Memorandum, *Southern Border and Approaches Campaign*, Nov. 20, 2014, at 1 (copy on file with the author).

[7] *Id.* at 2.

[8] *See, e.g., Unauthorized Immigrants: How Pew Research Counts Them and What We Know about Them*, Pew Research Center, Apr. 17, 2013, *available at* http://www.pewresearch.org/2013/04/17/unauthorized-immigrants-how-pew-research-counts-them-and-what-we-know-about-them/.

[9] DHS Secretary Jeh Charles Johnson, Memorandum, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Whose Parents* [sic] *Are U.S. Citizens or Permanent Residents*, Nov. 20, 2014 (copy on file with the author).

[10] *See* DHS Secretary Janet Napolitano, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children*, June 15, 2012, at 2 (copy on file with the author).

eligibility criteria for DACA expressly excluded unlawfully present aliens who were over 31 years of age, or who had entered the United States on or after June 15, 2007.[11] However, aliens who are over 31 years of age, or entered the United States between June 15, 2007, and January 1, 2010, could receive deferred action as part of the November 2014 initiative.[12] The 2014 initiative would also extend the duration of grants of deferred action (and work authorization) received by DACA beneficiaries from the current two years, to three years.[13]

In addition, unlawfully present aliens who have children who are U.S. citizens or LPRs will also be eligible for deferred action (and employment authorization) pursuant to the November 2014 initiatives, provided they meet specified criteria.[14] These criteria include (1) "continuous residence" in the United States since before January 1, 2010; (2) physical presence in the United States both on the date the initiative was announced (i.e., November 20, 2014) and when they request deferred action; (3) not being an enforcement priority under the Administration's newly announced priorities, discussed below; and (4) "present[ing] no other factors that, in the exercise of discretion, makes the grant of deferred action inappropriate."[15]

Aliens granted deferred action pursuant to these initiatives—or otherwise[16]—are eligible for employment authorization upon showing "an economic necessity for employment."[17]

Other notable actions as to the current population of unlawfully present aliens include

- revising DHS's priorities for civil immigration enforcement by, among other things, narrowing the scope of aliens who are considered "highest priority" for removal.[18] Under the revised priorities, aliens without legal immigration status who have been in the United States since 2013, and who have not engaged in specified criminal activity or violated a prior order of removal, seem unlikely to be considered a removal priority.
- ending the Secure Communities program and replacing it with another program, known as the Priority Enforcement Program (PEP).[19] PEP will resemble Secure Communities in that Secure Communities also utilized information sharing between various levels and agencies of government to identify potentially

[11] *Id.*

[12] *Exercising Prosecutorial Discretion*, *supra* note 9. *See also* DHS, USCIS, *Executive Actions on Immigration*, last updated: Nov. 20, 2014, *available at* http://www.uscis.gov/immigrationaction.

[13] *Id.* The Administration has, however, noted that a grant of deferred action through DACA could be revoked. *See* U.S. Citizenship & Immigr. Servs. (USCIS), *Consideration of Deferred Action for Childhood Arrivals Process: Frequently Asked Questions*, last updated Oct. 23, 2014, *available at* http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions.

[14] *Exercising Prosecutorial Discretion*, *supra* note 9.

[15] *Id.*

[16] *See* DHS, ICE, *How to Seek Prosecutorial Discretion from ICE*, *available at* http://www.ice.gov/immigrationaction (last accessed: Nov. 21, 2014).

[17] 8 C.F.R. §274a.12(c)(14). Under these regulations, the "basic criteria" for establishing economic necessity are the federal poverty guidelines. *See* 8 C.F.R. §274a.12(e).

[18] DHS Secretary Jeh Charles Johnson, Memorandum, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, Nov. 20, 2014 (copies on file with the author). Two earlier memoranda by then-Director of ICE John Morton articulating civil immigration enforcement priorities were expressly rescinded and superseded. *Id.*

[19] DHS Secretary Jeh Charles Johnson, Memorandum, *Secure Communities*, Nov. 20, 2014 (copies on file with the author).

removable aliens.[20] However, unlike Secure Communities, PEP will focus on aliens who have been convicted of felonies or "significant" misdemeanors, and generally will not entail states and localities holding aliens after they would have otherwise been released for the state or local offense that prompted their initial arrest so that DHS can take custody of them.[21]

- ensuring uniform recognition of grants of "advance parole" by immigration agencies, so that aliens without legal status who depart the United States for another country pursuant to a grant of advance parole are not excluded from the United States upon their return on the grounds that they "departed" the United States and, thus, triggered the 3- and 10-year bars upon the admission of aliens who have accrued more than 180 days of unlawful presence in the United States, discussed below.[22] (Parole is a device which permits an alien to enter the United States without satisfying the criteria for admissibility set forth in INA §212(a). With advance parole, an alien without legal status who is present in the United States is effectively granted a limited assurance, prior to departing the United States for another country, that s/he will be permitted to re-enter the United States upon his/her return.)
- granting "parole in place" or deferred action to some immediate relatives of U.S. citizens and LPRs who "seek to enlist in the Armed Forces," instead of just to qualifying relatives of active Armed Service personnel, the standing Reserves, or veterans of the Armed Services or standing Reserves.[23] (While parole is typically granted to aliens outside the United States who are ineligible for admission under INA §212(a), parole in place entails granting parole to unlawfully present aliens within the United States.)[24]

## *Legal Immigration*

In addition, the Obama Administration announced several actions which it characterizes as "support[ing] our county's high-skilled businesses and workers."[25] Included among these actions

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[20] *Cf.* DHS, ICE, *Secure Communities: The Basics*, *available at* http://www.ice.gov/secure_communities (last accessed: Nov. 23, 2014).

[21] The primary means that DHS had relied upon to request such holds by states and localities—so-called "immigration detainers" (Form I-247)—have recently been the subject of extensive litigation. In March 2014, the U.S. Court of Appeals for the Third Circuit ruled that federal law does not require states and localities to hold aliens who are subject to immigration detainers, and that any attempt to require states and localities to do so would run afoul of the "anti-commandeering" principles of the Tenth Amendment. *See* Galarza v. Szalczyk, 745 F.3d 634 (3d Cir. 2014). More recently, in April 2014, a federal district court found that states and localities must have probable cause to hold an alien pursuant to a detainer; the mere filing of a detainer does not provide the requisite legal authority for such holds. *See* Miranda-Olivares v. Clackamas County, No. 3:12-cv-02317-ST, 2014 U.S. Dist. LEXIS 50340 (D. Or., Apr. 11, 2014). For more information, see generally CRS Report R42690, *Immigration Detainers: Legal Issues*, by Kate M. Manuel.

[22] DHS Secretary Jeh Charles Johnson, Memorandum, *Directive to Provide Consistency Regarding Advance Parole*, Nov. 20, 2014, *available at* http://www.dhs.gov/sites/default/files/publications/14_1120_memo_arrabally.pdf.

[23] DHS Secretary Jeh Charles Johnson, Memorandum, *Families of U.S. Armed Forces Members and Enlistees*, Nov. 20, 2014 (copy on file with the author).

[24] A grant of parole in place could potentially entitle such aliens to other types of relief from removal. *See, e.g.*, INA §245(a), 8 U.S.C. §1255(a) (permitting adjustment to LPR status for certain aliens who have been admitted or paroled).

[25] DHS Secretary Jeh Charles Johnson, Memorandum, *Policies Supporting U.S. High-Skilled Businesses and Workers*, Nov. 20, 2014, at 1 (copy on file with the author). The memorandum also directs USCIS to continue with the promulgation of a proposed rule extending work authorization to the spouses of H-1B visa holders who have been (continued...)

are as yet-to-be-determined steps to ensure that all immigrant visas authorized by Congress for issuance in a particular year are issued (assuming demand).[26] Previously, delays in processing applications for immigrant visas resulted in some visas going unused (less than 5% of all available immigrant visas in recent years).[27] This, in turn, prompted calls for Congress or the executive to "recapture" unused visas (i.e., to identify unused visa numbers from earlier years and make them available for current use).[28] The Obama Administration's November 20, 2014, action does not purport to recapture previously unused visas. However, it can be seen as an attempt to avoid the perceived need for visa recapture in the future by ensuring that all immigrant visas available for issuance in a year are used. Relatedly, the Administration proposes as-yet-unspecified steps to "improve the system for determining when immigrant visas are available to applicants during the fiscal year," as well as consideration of "other regulatory or policy changes" to "better assist and provide stability" to be beneficiaries of employment-based immigrant visa petitions, including by ensuring that visa petitions remain valid when the alien beneficiary of the petition seeks to change employers or jobs.[29]

Another action involves expanding the duration of any "optional practical training" (OPT) engaged in by foreign nationals studying science, technology, engineering, and mathematics (STEM) fields at institutions of higher education in the United States on non-immigrant F-1 student visas, as well as "expand[ing] the degree programs" eligible for OPT.[30] Foreign nationals studying in the United States on F-1 visas have long been able to request an additional 12 months of F-1 visa status for temporary employment—known as OPT—in their field of study.[31] Regulations promulgated in 2008 permitted students in STEM fields to request an additional 17 months of OPT, for a total of 29 months of OPT.[32] However, only students in STEM fields are eligible for this 17 month extension, and these students can participate in OPT for no more than 29 months. Because any expansion of OPT can be seen, at least by some, as affecting employment opportunities for U.S. persons,[33] the Administration also proposes to "improve" the

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approved for an employment-based immigrant visa, as well as the development of proposed guidance to "strengthen and improve" processing of various employment-based non-immigrant visas. *Id.*

[26] *Id.* at 2. Ways to ensure that all available immigrant visas are used each year are also to be explored by the newly established interagency task force on modernizing and streamlining the immigrant visa system, discussed below. *See* President Barack Obama, Memorandum, *Modernizing and Streamlining the U.S. Immigrant Visa System for the 21st Century*, Nov. 21, 2014 (copy on file with the author).

[27] *See, e.g.*, USCIS, *Responding to Your Comments on Visa Numbers, Preference Categories, and Spillover*, Mar. 30, 2010, *available at* http://blog.uscis.gov/2010/03/visa-numbers.html.

[28] *See, e.g.*, Patrick Thibodeau, *Obama's Options for Tech Immigration Take Shape*, COMPUTERWORLD, Aug. 20, 2014, *available at* http://www.computerworld.com/article/2598332/technology-law-regulation/obama-s-options-for-tech-immigration-take-shape.html. The INA provides that any unused employment-based immigrant visas from one year are available for use as family-based immigrant visas the following year, and vice versa. INA §201(c) & (d), 8 U.S.C. §1151(c) & (d). Thus, some have questioned the significance of "recapture" proposals. *See, e.g.*, Numbers USA, Visa "Recapture," *available at* https://www.numbersusa.com/content/files/pdf/Fact%20Sheet%20Visa%20Recapture.pdf (last accessed: Nov. 22, 2014).

[29] *Policies Supporting U.S. High-Skilled Businesses and Workers*, *supra* note 25, at 2.

[30] *Id.* at 3.

[31] *See, e.g.*, Immigration and Naturalization Service (INS), Nonimmigrant Classes: F-1 Academic Students, 52 Fed. Reg. 13223 (Apr. 22, 1987).

[32] *See* DHS, ICE, Extending Period of Optional Practical Training by 17 Months for F-1 Nonimmigrant Students With STEM Degrees and Expanding Cap-Gap Relief for All F-1 Students With Pending H-1B Petitions, 73 Fed. Reg. 18944 (Apr. 8, 2008).

[33] *See* cases discussed *infra* note 125 and accompanying text.

OPT program by requiring "stronger ties" to degree-granting institutions, and "tak[ing] steps" to ensure that OPT employment is consistent with U.S. labor market protections.[34]

Other actions announced by the Obama Administration include

- making greater use of provisions in INA §203(b)(2)(B), which permit aliens with advanced degrees or "exceptional ability" to obtain an immigrant visa without a sponsoring employer—as is generally required for immigrants who are not sponsored by family members—if their admission is in the "national interest."
- using the authority granted to the Executive in INA §212(d)(5)(A) to "parole" aliens into the United States when there is a "significant public benefit" to permit some inventors, researchers, and founders of start-up enterprises to enter and lawfully remain in the United States without a visa (or counting against the visa caps).[35]
- clarifying and standardizing the meaning of "specialized knowledge" for purposes of the L-1B visa program, which allows companies to transfer certain employees who are executives or managers, or have "specialized knowledge" of the company or its processes, to the United States from the company's foreign operations.
- clarifying what is meant by the "same or similar job" for purposes of INA §204(j), which provides that employment-based immigrant visa petitions remain valid when the alien employee changes jobs or employers so long as the new job is in the "same or similar occupational classification" as the job for which the petition was filed.
- reviewing the so-called PERM program, whereby the Department of Labor (DOL) certifies that the issuance of an employment-based immigrant visa will not displace U.S. workers, or adversely affect the wages or working conditions of similarly employed U.S. workers, to identify methods for aligning domestic worker recruitment requirements with demonstrated occupational shortages and surpluses.
- DOL "certifying"[36] applications for nonimmigrant T visas for aliens who have been victims of human trafficking, as well as certifying applications for nonimmigrant U visas for eligible victims of extortion, forced labor, and fraud in foreign labor contracting that DOL detects in the course of its workplace investigations.

[34] *Policies Supporting U.S. High-Skilled Businesses and Workers*, *supra* note 25, at 2.

[35] While the Executive has generally based determinations as to whether to parole aliens into the United States on "urgent humanitarian reasons," also noted in INA §212(d)(5)(A), there have instances when the Executive considered labor-related factors when granting parole. *See* "A Brief History of the Executive Branch's Parole of Aliens into the United States," in CRS Report R43782, *Executive Discretion as to Immigration: Legal Overview*, by Kate M. Manuel and Michael John Garcia.

[36] The issuance of U visas is generally conditioned, in part, on a designated law enforcement agency "certifying" or corroborating that aliens who are victims of specified criminal offenses have assisted law enforcement or other government officials in the investigation or prosecution of those crimes. Such certification is not required with T visas, but can be helpful in obtaining a T visa.

- establishing an interagency working group to "streamline" the immigrant visa system, in part, by improving services and reducing employers' burdens.[37]

### *Other*

Other announced actions do not neatly fall into any of the foregoing categories or, in one case, could be said to involve multiple categories. Arguably key among these is the expansion of a preexisting Obama Administration program that provides for "provisional waivers" of the 3- and 10-year bars on the admission of aliens who have accrued more than 180 days of unlawful presence in the United States. Initially, this program reached only spouses, sons, or daughters of U.S. citizens. It will now be expanded to include qualifying relatives of LPRs.[38]

As a general matter, unlawfully present aliens whose spouses or parents are U.S. citizens or LPRs may be eligible for an immigrant visa and adjustment to legal status. Obtaining such an immigrant visa typically requires the alien to leave the United States so that his/her visa application can be processed by U.S. consular officers overseas.[39] However, leaving the country generally triggers the application of the 3- and 10-year bars if the alien has been unlawfully present in the United States for more than 180 days (as most unlawfully present aliens have been).[40] These bars can be waived if denial of the alien's admission would result in "extreme hardship" to the alien's spouse or parents.[41] However, the time required to obtain a waiver after leaving the country and triggering the bar has historically kept many unlawfully present aliens who could "legalize their status" under current law (see "Does granting deferred action to unlawfully present aliens legalize their status?") from doing so. In 2013, the Obama Administration began allowing spouses or children of U.S. citizens to request and obtain provisional waivers of the 3- and 10-year bars to their admission while they are in the United States (they generally still must travel outside the United States for processing).[42] However, the spouses and children of LPRs were ineligible for such provisional waivers until the 2014 actions.

Other actions announced in November 2014 include certain personnel reforms involving immigration and customs officers;[43] promoting naturalization by eligible LPRs;[44] establishing an

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[37] *See generally Policies Supporting U.S. High-Skilled Businesses and* Workers, *supra* note 25; *Modernizing and Streamlining the U.S. Immigrant Visa System for the 21st Century*, *supra* note 26; DOL Secretary Thomas E. Perez, Fact Sheet, *Department of Labor to Pursue Modernized Recruitment and Application Requirements for the PERM Program* (copy on file with the author); DOL Secretary Thomas E. Perez, Fact Sheet, *The Department of Labor's Wage and House Division Will Expand Its Support of Victims of Human Trafficking and Other Crimes Seeking Immigration Relief from DHS* (copy on file with the author).

[38] DHS Secretary Jeh Charles Johnson, Memorandum, *Expansion of the Provisional Waiver Program*, Nov. 20, 2014 (copy on file with the author).

[39] *See generally* CRS Legal Sidebar WSLG385, Provisional Waivers of the Three- and Ten-Year Bars to Admissibility to Be Granted to Certain Unlawfully Present Aliens, by Kate M. Manuel.

[40] INA §212(a)(9)(B)(i)(I)-(II), 8 U.S.C. §1182(a)(9)(B)(i)(I)-(II). The 3-year bar applies to aliens who have been unlawfully present for more than 180 days but less than 1 year. The 10-year bar applies to aliens who have been unlawfully present for 1 year or longer. Longer or permanent bars could apply to certain aliens, depending upon their circumstances. *See, e.g.*, INA §212(a)(9)(A), 8 U.S.C. §1182(a)(9)(A) (certain aliens barred from entry for 20 years).

[41] INA §212(a)(9)(B)(v), 8 U.S.C. §1182(a)(9)(B)(v).

[42] *See* DHS, USCIS, Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives, 78 Fed. Reg. 536, 542 (Jan. 3, 2013) (noting that DHS initially limited eligibility for provisional waivers to immediate relatives of U.S. citizens "not only because the immigrant visas for this category are always available, but also because it is consistent with Congress' policy choice to prioritize family reunification of immediate relatives of U.S. citizens").

[43] DHS Secretary Jeh Charles Johnson, Memorandum, *Personnel Reforms for Immigration and Customs Enforcement* (continued...)

interagency task force on "New Americans" to "increase meaningful engagement" between immigrants and the communities where they settle;[45] and establishing an interagency working group to address the interplay of immigration and employment law.[46]

## Did the President issue an executive order?

As of November 24, 2014, the President has not issued an executive order regarding these immigration-related actions; nor has he given any indication that he will issue such an order. With the exception of several specific actions announced in two presidential memoranda,[47] all other actions to date—including the granting of deferred action to some unlawfully present aliens—have been announced in intra-agency memoranda or fact sheets made available by executive agencies after the President's televised address. This is arguably consistent with prior actions in the field of immigration and, particularly, prior exercises of discretion in enforcing federal immigration law. For example, the 1990 "Family Fairness" program, discussed below—which gave certain unlawfully present aliens temporary relief from deportation (later known as removal)—was announced in a memorandum from the head of the Immigration and Naturalization Service (INS) to regional officials.[48] Similarly, President Clinton relied on a memorandum to the Attorney General when authorizing deferred enforced departure (DED)—another type of temporary relief from removal—for some unlawfully present aliens from Liberia.[49]

The fact that these actions were announced by means other than an executive order generally would not affect their permissibility. In other words, whether the deferred action initiatives, for example, are permissible depends upon whether the executive has the legal authority to grant this relief, not whether the initiatives were announced by means of an executive order or a memorandum from the Secretary of Homeland Security.

## What is the legal authority for the Administration's actions?

Although each specific Administration action involves somewhat different legal authorities, three broad types of legal authority can be said to underlie all these actions: (1) prosecutorial or enforcement discretion; (2) express delegations of authority to the executive by Congress; and (3)

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*Officers*, Nov. 20, 2014 (copy on file with the author).

[44] DHS Secretary Jeh Charles Johnson, Memorandum, *Policies to Promote and Increase Access to U.S. Citizenship*, Nov. 20, 2014 (copy on file with the author) (directing USCIS to begin accepting credit cards for paying naturalization fees; consider the feasibility of partial waivers of naturalization fees in its next biennial fee study (currently only total waivers are granted); and launch a "comprehensive media campaign" to promote naturalization).

[45] President Barack Obama, Memorandum, *Creating Welcoming Communities and Fully Integrating Immigrants and Refugees*, Nov. 21, 2014 (copy on file with the author).

[46] DOL Secretary Thomas E. Perez, Fact Sheet, *Establishment of Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws* (copy on file with the author).

[47] *See supra* notes 26 and 45 and accompanying text.

[48] *See* INS, Office of the Commissioner, Memorandum, *Family Fairness: Guidelines for Voluntary Departure under 8 C.F.R. 242.5 for the Ineligible Spouses and Children of Legalized Aliens*, Feb. 2, 1990 (copy on file with the author).

[49] *See* President William J. Clinton, Memorandum for the Attorney General, *Measures Regarding Certain Liberians in the United States*, Sept. 28, 2000 (copy on file with the author).

the executive's discretion in interpreting and applying immigration law when congressional enactments are "silent or ambiguous" on specific issues.

### *Prosecutorial or Enforcement Discretion*

The judicial and executive branches have repeatedly recognized that the determination as to whether to grant deferred action to an individual alien is a matter of prosecutorial or enforcement discretion.[50] Such discretion has generally been seen as an independent attribute of the executive branch, and does not arise from—or require—an express delegation of authority by Congress.[51] Thus, the fact that Congress has not authorized the executive to grant deferred action to aliens in the circumstances contemplated here (i.e., unlawfully present aliens brought to the United States as children or whose children are U.S. citizens or LPRs) does not, in itself, make such a grant impermissible.[52]

Prosecutorial discretion is generally seen as affording the executive wide latitude in determining when, against whom, how, and even whether to prosecute apparent violations of federal law.[53] However, the Constitution or federal statutes could potentially impose certain constraints upon this discretion, as discussed below (see "Are there constitutional or related constraints upon the executive's discretionary authority over immigration enforcement?" and "What other legal issues might be raised by the Administration's actions?").

### *Express Delegations of Statutory Authority*

In other cases, Congress has expressly granted certain authority to the executive that the Obama Administration would appear to rely upon for specific actions. For example, the definition of *unauthorized alien* in INA §274A(h)(3) has historically been seen to give the executive the authority to grant employment authorization documents (EADs) to aliens who are not expressly authorized to work by the INA. Section 274A(h)(3)'s definition describes an unauthorized alien as an alien who is not "authorized to be ... employed ... by the Attorney General [currently, the

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[50] *See, e.g.*, Hotel & Rest. Employees Union Local 25 v. Smith, 846 F.2d 1499, 1510-11 (D.C. Cir. 1988); Barahona-Gomez v. Reno, 236 F.3d 1115, 1119 n.3 (9th Cir. 2001); Johnson v. INS, 962 F.2d 574, 579 (7th Cir. 1992); Carmona Martinez v. Ashcroft, 118 Fed. App'x 238, 239 (9th Cir. 2004); *Matter of* Yauri, 25 I. & N. Dec. 103 (BIA 2009); *Matter of* Singh, 21 I. & N. Dec. 427 (BIA 1996); *Matter of* Luviano-Rodriguez, 21 I. & N. Dec. 235 (BIA 1996); *Matter of* Quintero, 18 I. & N. Dec. 348 (BIA 1982); ICE Director John Morton, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens*, June 17, 2011, at 2-3; ICE Director John Morton, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, Mar. 2, 2011, at 3; ICE Director John Morton, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs*, June 17, 2011, at 2; ICE Principal Legal Advisor William J. Howard, *Prosecutorial Discretion*, Oct. 24, 2005, at 2; INS Commissioner Doris Meissner, *Exercising Prosecutorial Discretion*, Nov. 7, 2000, at 2. (Copies of all of these memoranda are on file with the author).

[51] For further discussion as to the basis for the Executive's prosecutorial discretion, see the section titled "Prosecutorial Discretion Generally," in CRS Report R42924, *Prosecutorial Discretion in Immigration Enforcement: Legal Issues*, by Kate M. Manuel and Todd Garvey.

[52] The INA uses the phrase "deferred action" three times, but only in very specific contexts, none of which are relevant to DACA or the November 20, 2014, initiatives. *See* 8 U.S.C. §1151 note (addressing the extension of posthumous benefits to certain surviving spouses, children, and parents); INA §204(a)(1)(D)(i)(IV), 8 U.S.C. §1154(a)(1)(D)(i)(IV) ("Any [victim of domestic violence] described in subclause (III) and any derivative child of a petition described in clause (ii) is eligible for deferred action and work authorization."); INA §237(d)(2), 8 U.S.C. §1227(d)(2) (denial of a request for an administrative stay of removal does not preclude the alien from applying for deferred action).

[53] *See generally* U.S. Department of Justice, *United States Attorneys' Manual*, §9-27.110(B) (2002).

Secretary of Homeland Security]."[54] The immigration agencies have relied upon this definition in promulgating regulations that permit aliens granted deferred action to receive EADs upon showing "an economic necessity for employment."[55]

Other actions that would appear to involve express delegations of statutory authority include (but are not limited to) (1) paroling into the United States some inventors, researchers, and founders of start-up enterprises on public interest grounds (INA §212(d)(5));[56] (2) granting provisional waivers of the 3- and 10-year bars upon the admissibility of aliens who have accrued more than 180 days of unlawful presence in the United States (INA §212(a)(9)(B)(v)); and (3) permitting aliens with advanced degrees or "exceptional ability" to obtain an immigrant visa without a sponsoring employer if their admission is in the "national interest" (INA §203(b)(2)(B)).

Any exercise of delegated authority must be consistent with the terms of the delegation, as discussed below (see "What other legal issues might be raised by the Administration's actions?"). Questions could also be raised about whether particular exercises of authority are consistent with historical practice, other provisions of the INA, or congressional intent.[57]

### *Executive Discretion When Statutes Are "Silent or Ambiguous"*

In yet other cases, the Obama Administration would appear to be relying upon the deference generally given to the executive in interpreting and applying statutes in taking certain actions. As the Supreme Court articulated in its 1984 decision in *Chevron U.S.A. v. Natural Resources Defense Council*, when "Congress has directly spoken to the issue, ... that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."[58] However, where a statute is "silent or ambiguous with respect to a specific issue," courts will generally defer to an agency interpretation that is based on a "permissible construction

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[54] INA §274A(h)(3), 8 U.S.C. §1324a(h)(3).

[55] 8 C.F.R. §274a.12(c)(14). Under these regulations, the "basic criteria" for establishing "economic necessity" are the federal poverty guidelines. *See* 8 C.F.R. §274a.12(e). When first promulgated in 1987, these regulations were challenged through the administrative process on the grounds that they exceeded the INS's authority. *See* INS, Employment Authorization; Classes of Aliens Eligible, 52 Fed. Reg. 46092 (Dec. 4, 1987). Specifically, the challengers asserted that the statutory language referring to aliens "authorized to be … employed by this chapter or by the Attorney General" did not give the Attorney General authority to grant work authorization "except to those aliens who have already been granted specific authorization by the Act." *Id.* Had this argument prevailed, the authority of the INS and, later, DHS to grant work authorization to beneficiaries of deferred action would have been in doubt, because the INA does not expressly authorize the grant of EADs to such persons. However, the INS rejected this argument on the grounds that the

> only logical way to interpret this phrase is that Congress, being fully aware of the Attorney General's authority to promulgate regulations, and approving of the manner in which he has exercised that authority in this matter, defined "unauthorized alien" in such fashion as to exclude aliens who have been authorized employment by the Attorney General through the regulatory process, in addition to those who are authorized employment by statute.

[56] It should be noted, however, that the determination as to whether to grant parole to individual aliens has sometimes been characterized as an act of prosecutorial discretion. *See, e.g.*, Assa'ad v. U.S. Attorney General, 332 F.3d 1321, 1339 (11th Cir. 2003); *Matter of* Artigas, 23 I. & N. Dec. 99 (BIA 2001) (Filppu, J., dissenting).

[57] For further discussion of constraints based on historical precedent and other factors, see CRS Report R43782, *Executive Discretion as to Immigration: Legal Overview*, by Kate M. Manuel and Michael John Garcia.

[58] 467 U.S. 837, 842-43 (1984).

of the statute,"[59] on the grounds that the executive branch must fill any "gaps" explicitly or implicitly left by Congress in the course of administering congressional programs.[60]

Among the gaps that Congress could be said to have left in the INA for the executive to fill are (1) what constitutes "extreme hardship" for purposes of the 3- and 10-year bars upon the admission of aliens who have accrued more than 180 days of unlawful presence in the United States; (2) the duration of any OPT for F-1 student visas holders; (3) what steps are to be taken to ensure that all immigrant visas available for issuance in a given year are used; and (4) what constitutes "specialized knowledge" for purposes of the L-1B visa program. The Obama Administration's November 20, 2014, actions can be seen to address all of these "gaps," as well as others not specifically noted here.

Any construction advanced by the executive must, however, constitute a "permissible" and "reasonable" interpretation of the underlying statute in order to be afforded deference by the courts, as previously noted. Also, the executive has no discretion in interpreting or applying the law where Congress has spoken to the precise question at issue.[61]

## Are there constitutional or related constraints upon the executive's discretionary authority over immigration enforcement?[62]

The Constitution confers upon the President the responsibility and obligation to "take Care that the Law is faithfully executed."[63] Some of the Obama Administration's immigration actions—including the identification of particular categories of aliens as priorities for removal, and the expanded use of deferred action to afford certain unlawfully present aliens with temporary relief from removal—are primarily premised upon executive assertions of independent constitutional authority.[64] As previously noted, the executive branch is understood to have substantial

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[59] *Id.* at 843.

[60] *See, e.g.*, Morton v. Ruiz, 415 U.S. 199, 231 (1974) ("The power of an administrative agency to administer a congressionally created and funded program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress."). The degree of deference afforded to particular executive branch interpretations can vary depending upon the facts and circumstances of the case, including whether the interpretation is a "formal" one adopted through notice-and-comment rulemaking or case-by-case adjudication. *See, e.g.*, Christensen v. Harris County, 529 U.S. 576, 587 (2000) ("Interpretations such as those in opinion letters - like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law - do not warrant *Chevron*-style deference."). Instead, such "informal" interpretations may be afforded a lesser degree of deference that depends upon various factors including "the degree of the agency's care, its consistency, formality, and relative expertness, and … the persuasiveness of the agency's position," as well as the "writer's thoroughness, logic, and expertise, its fit with prior interpretations, and any other source of weight." United States v. Mead Corp., 533 U.S. 218, 228, 235 (2001); *see also* Skidmore v. Swift, 323 U.S. 134 (1944).

[61] *See infra* note 88 and accompanying text.

[62] CRS Legislative Attorney Michael John Garcia authored this section of the report, and questions about it should be directed to him. For a more extensive analysis of the parameters of executive discretion in the enforcement federal law, see CRS Report R43708, *The Take Care Clause and Executive Discretion in the Enforcement of Law*, by Todd Garvey.

[63] U.S. Const., Art. II, §3.

[64] DOJ, Office of Legal Counsel, *The Department of Homeland Security's Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others*, Nov. 20, 2014 (copy on file with the author) (characterizing components of the Administration's immigration initiative primarily as an exercise of the Executive's independent discretionary authority). It should be noted, however, that certain actions taken with respect to persons granted deferred action are based on express statutory authority, as previously discussed. *See* "What is the legal authority for the Administration's actions?".

discretionary authority to determine when and whether to pursue sanctions against apparent violators of federal law, an authority generally referred to as prosecutorial or enforcement discretion.[65] Prosecutorial discretion is most closely associated with executive enforcement of federal criminal law.[66] But the concept of prosecutorial or enforcement discretion is often applicable in civil contexts as well, including with respect to immigration officers' decisions regarding whether to seek the removal of aliens who have entered or remained in the United States in violation of federal immigration law.[67]

A decision not to pursue sanctions against a particular individual is generally understood to be largely shielded from judicial review.[68] Nonetheless, there are recognized limitations to the scope of this discretionary authority.[69] As an initial matter, a general enforcement policy that is promulgated by an agency may not enjoy the same degree of immunity from judicial review as individual determinations not to pursue sanctions in a particular case.[70] Moreover, courts have recognized that agency action must be consistent with congressional objectives underlying the statutory scheme it administers. When adopting a general enforcement policy, an agency may not rely on factors "which Congress has not intended it to consider"[71] and substitute its own policy judgment for that which has been made by Congress. In particular, a general policy of non-

[65] *See generally* DOJ, *United States Attorneys' Manual*, §9-27.110(B) (2002).

[66] *See, e.g.*, Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978) ("In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion."); *U.S. Attorneys' Manuel*, *supra* note 65 (discussing prosecutorial discretion in the criminal context and citing numerous court rulings recognizing the Executive as possessing broad discretionary authority in deciding whether to pursue criminal charges).

[67] *See* Arizona v. United States, 132 S. Ct. 2492, 2498 (2012) ("A principal feature of the removal system is the broad discretion entrusted to immigration officials."); Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471, 490 (1999) (finding that the various prudential concerns that prompt deference to the executive branch's determinations as to whether to prosecute criminal offenses are "greatly magnified in the deportation context"). *See also* United States *ex rel.* Knauff v. Shaughnessy, 338 U.S. 537, 543 (1950) (noting that immigration is a "field where flexibility and the adaptation of the congressional policy to infinitely variable conditions constitute the essence of the program").

[68] *See* Heckler v. Chaney, 470 U.S. 821, 831 (1985) (finding that agency's non-enforcement decision was committed to agency discretion and not reviewable under the Administrative Procedure Act, and observing that "This Court has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion....This recognition of the existence of discretion is attributable in no small part to the general unsuitability for judicial review of agency decisions to refuse enforcement."). A court's determination that agency action is not subject to judicial review does not necessarily constitute an endorsement of the lawfulness of executive action, but may simply be due to the court finding that it lacks a manageable standard or is otherwise ill-equipped to assess the propriety of the action. *See* CRS Report RL30352, *War Powers Litigation Initiated by Members of Congress Since the Enactment of the War Powers Resolution*, by Michael John Garcia (discussing instances where courts have dismissed on procedural grounds legal challenges to military action conducted without statutory authorization).

[69] *See, e.g., Heckler*, 470 U.S. at 831-833 (identifying factors informing the scope of enforcement discretion available to the Executive); Smith v. Meese, 821 F.2d 1484, 1492 n.4 (11th Cir. 1987) ("[T]he exercise of prosecutorial discretion, like the exercise of Executive discretion generally, is subject to statutory and constitutional limits enforceable through judicial review ...") (*quoting* Nader v. Saxbe, 497 F.2d 676, 679 n.19 (D.C. Cir.1974)); *OLC Opinion on Executive Immigration Action*, *supra* note 64, at 4 ("Immigration officials' discretion in enforcing the laws is not, however, unlimited. Limits on enforcement discretion are both implicit in, and fundamental to, the Constitution's allocation of governmental powers between the two political branches.").

[70] *See* Crowley Caribbean Transport, Inc. v. Pena, 37 F.3d 671, 677 (D.C. Cir. 1994) (distinguishing the non-reviewability of a "*single-shot* non-enforcement decision" from a "*general enforcement* policy," which may be reviewable in some contexts).

[71] Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

enforcement by an agency could potentially be reviewable by a court and found to be an impermissible "abdication" of the agency's statutory responsibilities.[72]

Whether the Obama Administration's November deferred action initiatives constitute a permissible exercise of enforcement discretion will be the subject of heated debate. This debate will likely center upon the Administration's identification of large numbers of unlawfully present aliens as non-priorities for removal, as well as the expansion of its earlier deferred action initiative to additional aliens.[73] On one hand, it could be argued that aspects of these initiatives functionally constitute a blanket policy of non-enforcement of federal immigration statutes, and that this non-enforcement policy represents an abdication of DHS's statutory responsibilities to enforce federal immigration law.[74] The INA contains several grounds of removal which are potentially applicable to aliens who may receive deferred action under the Administration's initiative.[75] Moreover, while federal statute grants immigration authorities the power to provide some unlawfully present aliens with relief from removal, these statute-based forms of relief are limited in scope.[76] It could be argued that the Administration's decision to focus enforcement resources almost exclusively on certain categories of removable aliens, while declining to pursue the removal of a substantial portion of the unauthorized population which does not fall within those categories, constitutes an abdication of its responsibilities under the INA. It might also be argued that, by enabling a sizeable portion of the unlawfully present population to request deferred action (a form of relief that is not expressly authorized by federal statute, except in narrow circumstances[77]) and work authorization, the executive branch is impermissibly substituting its own judgment as to whom should be legally allowed to remain in the United States for that of Congress.

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[72] *See Heckler*, 470 U.S. at 833 n.4 (distinguishing agency non-enforcement decisions which are presumed to be shielded from judicial review from those where "the agency has 'consciously and expressly adopted a general policy' that is so extreme as to amount to an abdication of its statutory responsibilities," and suggesting that judicial review of the latter type of actions could be available under the Administrative Procedure Act because such a decision had not been committed to agency discretion) (*quoting* Adams v. Richardson, 480 F.2d 1159, 1162 (D.C. Cir. 1973) (en banc)).

[73] *See OLC Opinion on Executive Immigration Action*, *supra* note 64, at 30 (Administration officials estimating that nearly 4 million unlawfully present alien parents of U.S. citizens or LPRs could receive deferred action under the new initiative); Alicia Patterson, *Graphic: What Is President Obama's Immigration Plan?*, N.Y. TIMES, *available at* http://www.nytimes.com/interactive/2014/11/20/us/2014-11-20-immigration.html?_r=0 (last accessed Nov. 23, 2014) (citing 2012 data from the Migration Policy Institute, and estimating that 4.5 million unlawfully present aliens could be eligible for deferred action under the Administration's new initiative, in addition to 1.2 million persons already eligible to obtain deferred action under DACA).

[74] *See, e.g.*, Crane v. Napolitano, Amended Complaint, No. 3:12-cv-03247-O, filed Oct. 10, 2012 (N.D. Tex.) (lawsuit challenging DACA and arguing that the initiative is contrary to certain provisions of the INA and the Executive's constitutional responsibility to that the laws are faithfully executed); *Dream On*, *supra* note 4 (arguing that the DACA initiative is inconsistent with the Executive's constitutional duties, and that the President may not purposefully refrain from enforcing federal statutes against broad categories of persons "in ordinary, noncritical circumstances").

[75] INA §§212(a)(6)(A), 8 U.S.C. §1182(a)(6)(A) (aliens present without admission or parole are generally removable; INA §237(a)(1), 8 U.S.C. §§ 1182(a)(6)(A), 1227(a)(1) (aliens who obtained admission through fraud or misrepresentation, or who overstay or otherwise violate the terms of a nonimmigrant visa, are removable).

[76] For example, under INA §240A, certain removable aliens may obtain cancellation of removal and adjust immigration status if their removal would cause "exceptional and extremely unusual hardship" to certain family members who are U.S. citizens or LPRs. No more than 4,000 aliens may be granted such relief in any fiscal year. 8 U.S.C. §1229b. Some inadmissibility grounds may be waived on account of "hardship" caused to immediate family members who are U.S. citizens or LPRs. *See generally* CRS Report R43782, *Executive Discretion as to Immigration: Legal Overview*, by Kate M. Manuel and Michael John Garcia, at "Waivers of Grounds of Inadmissibility."

[77] *See supra* note 52.

On the other hand, it could be argued that resource constraints preclude DHS from pursuing the removal of all unlawfully present aliens in the United States,[78] and that the decision to focus resources primarily upon the removal of those who have engaged in criminal activity, pose a threat to public safety, or recently entered the United States is consistent with applicable statutory enactments.[79]Additionally, while the Administration's initiative would grant some unlawfully present aliens legal permission to remain in the United States for a specified period, it would not provide them with legal immigration status, or enable them to acquire benefits they are statutorily barred from receiving.[80] The executive might further dispute arguments that the initiative constitutes a blanket policy of non-enforcement, and note that immigration officers retain ultimate discretion to grant deferred action on a case-by case basis, and that they are not barred from seeking the removal of unlawfully present aliens who have not been identified by DHS as enforcement priorities.[81] It might also be argued that, particularly in light of the long-standing executive practice of granting deferred action and other forms of relief from removal, that Congress has implicitly signaled its approval or acquiescence to the executive's use of these forms of administrative relief, and the INA should not be interpreted to preclude the executive from granting such relief in certain instances.[82] Accordingly, it could be argued that the executive branch's action, while affecting a substantial number of unlawfully present aliens, does not constitute a legally impermissible abdication of its statutory duties.

## What other legal issues might be raised by the Administration's actions?

In some cases, specific actions taken by the Obama Administration could potentially be seen to run afoul of the provisions of the INA, in which case the executive action could be found to be impermissible (provided a plaintiff with standing to challenge the executive action were found (see "Who has standing to challenge the Administration's initiatives?")).[83] For example, one federal district court recently found that DACA is contrary to three purportedly "interlocking

[78] *See OLC Opinion on Executive Immigration Action*, *supra* note 64, at 1, 9 (noting that DHS claims to have the resources to remove fewer than 400,000 unlawfully present aliens—out of a population of approximately 11 million—from the United States each year).

[79] *Id.* at 10-11 (characterizing DHS's announced enforcement priorities as consistent with various provisions of the INA, as well as with recent funding measures, including a provision of the Department of Homeland Security Appropriations Act, 2014, which directs DHS to "prioritize the identification and removal of aliens convicted of a crime by the severity of that crime.").

[80] *See supra* "What is the legal authority for the Administration's actions?" (discussing, among other things, DHS's statutory authority to grant work authorization to aliens present in the United States without legal immigration status).

[81] The memorandum outlining the expanded deferred action initiative expressly states that, although "immigration officers will be provided with specific eligibility criteria for deferred action, ... the ultimate judgment as to whether an immigrant is granted deferred action will be determined on a case-by-case basis." *Exercising Prosecutorial Discretion*, *supra* note 9, at 5. Similarly, the memorandum outlining DHS's enforcement priorities does not prohibit enforcement action against aliens not categorized as priorities for removal. *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, *supra* note 18, at 4 ("Nothing in this memorandum should be construed to prohibit or discourage the apprehension, detention, or removal of aliens unlawfully in the United States who are not identified as priorities herein.").

[82] *See OLC Opinion on Executive Immigration Action*, *supra* note 64, at 12-20 (discussing historical use of deferred action and claiming that "Congress has long been aware of the practice of granting deferred action, including in its categorical variety, and of its salient features; and it has never acted to disapprove or limit the practice"). *See also* Dames & Moore v. Regan, 453 U.S. 654, 686 (1981) ("Past practice does not, by itself, create power, but 'long-continued practice, known to and acquiesced in by Congress, would raise a presumption that the [action] had been [taken] in pursuance of its consent.... '") (*quoting* United States v. Midwest Oil Co., 236 U.S. 459, 474 (1915)).

[83] *See supra* notes 58-60 and accompanying text.

provisions" in INA §235 which some assert require that unlawfully present aliens be placed in removal proceedings.[84] These provisions state that

1. any alien present in the United States who has not been admitted *shall* be deemed an applicant for admission;
2. applicants for admission *shall* be inspected by immigration officers; and
3. in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained for removal proceedings.[85]

Thus, the district court concluded that DACA runs afoul of the INA because many of the aliens granted deferred action through DACA had never been placed in removal proceedings as required, in the court's view, by INA §235. (This same court, however, later ruled that it lacked jurisdiction over the case.[86] That decision has been appealed, and it is presently unclear whether and how the court's earlier decision construing INA §235 could be seen to restrain any future grants of deferred action.[87])

Similar statutory constraints could potentially be also be implicated in other Obama Administration actions, particularly as executive agencies take action to clarify the meaning and application of certain statutory language. For example, INA §212(a)(9)(B)(v) would appear to preclude DHS—in issuing guidance regarding waivers of the 3- and 10-year bars upon the admission of aliens who have been unlawfully present in the United States for more than 180 days—from granting waivers based on mere "hardship," as opposed to "extreme hardship," or from considering hardship to U.S. citizen or LPR children, as opposed to U.S. citizen or LPR spouses or parents. This is because INA §212(a)(9)(B)(v) expressly refers to waivers

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[84] Crane v. Napolitano, No. 3:12-cv-03247-O, 2013 U.S. Dist. LEXIS 57788, *27-*39 (N.D. Tex., Apr. 23, 2013). Others, however, have argued that this interpretation misreads Section 235 and misunderstands the legislative history of these provisions of the INA. *See A Defense of Immigration-Enforcement Discretion*, *supra* note 5. DHS has also attempted to counter this view by noting the Executive has historically not construed Section 235 in this way. Both DOJ/DHS and those who claim it lacks discretion construe the first two provisions of Section 235—aliens present without admission being deemed applicants for admission, and applicants for admission being inspected—as applying to both (1) "arriving aliens" at a port-of-entry and (2) aliens who are present in the United States without inspection. However, DOJ/DHS have differed from proponents of the view that DHS lacks discretion in that DOJ/DHS have construed the third provision—regarding detention for removal proceedings—as applying only to arriving aliens, not aliens who are present without inspection. *See generally* INS, Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10357 (Mar. 6, 1997) (codified at 8 C.F.R. §235.3(c)); INS, Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 444, 444-46 (Jan. 3, 1997). This difference appears to have arisen, in part, because the agencies have emphasized the phrase "aliens seeking admission" in the third provision, and reasoned that only arriving aliens at ports-of-entry can be said to seek admission.

[85] *See* INA §235(a)(1), (a)(3), & (b)(2)(A), 8 U.S.C. §1225(a)(1), (a)(3), & (b)(2)(A). *Shall* has been construed to indicate mandatory agency action in some cases. *See, e.g.*, Lopez v. Davis, 531 U.S. 230, 241 (2001) ("Congress' use of the permissive 'may' in §3621(e)(2)(B) contrasts with the legislators' use of a mandatory 'shall' in the very same section."). However, in other cases, agencies have been seen to have discretion in determining whether to enforce particular statutes that use the word *shall*. *See, e.g.*, *Heckler*, 470 U.S. at 835 (describing a statute which stated that certain food, drugs, or cosmetics "shall be liable to be proceeded against" as "framed in the permissive").

[86] *Crane v. Napolitano*, No. 3:12-cv-03247-O, 2013 U.S. Dist. LEXIS 187005 (July 31, 2013).

[87] Moreover, even if the district court's interpretation were adopted, an argument could be made that the provisions of the INA discussed by the district court require only that arriving aliens be placed in removal proceedings, not that removal proceedings be pursued to a decision on the merits or until the alien is removed, if s/he is found removable.

> in the case of an immigrant who is the *spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence*, if it is established ... that the refusal of admission to such [an] alien would result in extreme hardship to the *citizen or lawfully resident spouse or parent* of such alien.[88]

## Does granting deferred action to unlawfully present aliens legalize their status?

A grant of deferred action does not constitute "legalization," as that term is generally understood. In the immigration context, the term *legalization* is widely used to describe a process whereby persons who are unlawfully present are able to acquire legal status, typically as LPRs.[89] LPRs may generally acquire U.S. citizenship after a period of time if certain conditions are met.[90]

Aliens granted deferred action are generally seen as "lawfully present" for purposes of federal law.[91] This means that they do not acquire additional unlawful presence for application of the 3- and 10-year bars on the admissibility of aliens who have been unlawfully present in the United States for more than 180 days. Aliens granted deferred action may also be eligible for certain things—like the issuance of driver's licenses—that are made available, pursuant to federal, state, or local law, to persons who are "lawfully present" (or "legally residing") in the United States.[92] (See "Will aliens granted deferred action be eligible for public benefits?").

However, lawful presence is not the same as lawful status, and aliens granted deferred action lack lawful status.[93] As such, a grant of deferred action, in itself, will not result in an alien obtaining LPR status, a "green card," or citizenship, or the ability to sponsor family members for immigration benefits. Aliens granted deferred action could potentially have their status legalized by Congress in the future, though, as happened with earlier "groups" of aliens granted temporary relief from removal.[94]

## Will aliens granted deferred action be eligible for public benefits?

As a general matter, aliens granted deferred action are not eligible for federal, state, or local public benefits because of the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, as amended.[95] PRWORA established a definition of

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[88] 8 U.S.C. §1182(a)(9)(B)(v) (emphases added).

[89] *Cf.* Merriam-Webster Online, Legalize, *available at* http://www.merriam-webster.com/dictionary/legalize (last accessed: Nov. 22, 2014).

[90] *See* INA §311, 8 U.S.C. §1422.

[91] *See, e.g.*, *Frequently Asked Questions*, *supra* note 13 ("An individual who has received deferred action is authorized by DHS to be present in the United States, and is therefore considered by DHS to be lawfully present.").

[92] *See generally* CRS Report R43452, *Unlawfully Present Aliens, Driver's Licenses, and Other State-Issued ID: Select Legal Issues*, by Kate M. Manuel and Michael John Garcia; CRS Legal Sidebar WSLG1057, *9th Circuit Decision Enables DACA Beneficiaries—and Other Aliens Granted Deferred Action—to Get Arizona Driver's Licenses*, by Kate M. Manuel.

[93] *See Frequently Asked Questions*, *supra* note 13 ("[D]eferred action does not confer lawful status ... ").

[94] *See, e.g.*, Cuban Refugees Adjustment of Status Act, P.L.89-732, 80 Stat. 1161 (Nov. 2, 1966) (providing for certain Cuban parolees to become LPRs); Hungarian Refugees Relief Act, P.L. 85-559, 72 Stat. 419 (July 25, 1958) (similar).

[95] P.L. 104-193, tit. IV, §§401-435, 110 Stat. 2261-2276 (Aug. 22, 1996) (generally codified, as amended, in 8 U.S.C. §§1601-1646). For more on PRWORA, see generally CRS Report R43221, *Noncitizen Eligibility for Public Benefits:* (continued...)

*qualified alien* that does not include aliens granted deferred action,[96] and generally barred aliens who are not qualified aliens from receiving federal, state, and local public benefits.[97]

Nonetheless, aliens granted deferred action could potentially be eligible for certain benefits—or things sometimes perceived as benefits—because aliens granted deferred action are seen as "lawfully present" (or "legally residing") in the United States. This is, in part, because one Congress cannot bind future Congresses.[98] Thus, despite PRWORA's restrictions upon the receipt of public benefits by aliens who are not included within its definition of "qualified aliens," subsequent Congresses have enacted legislation that provides for aliens' receipt of public benefits that is inconsistent with—and does not use the language of—PRWORA. For example, Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) gives states the option to provide Medicaid and Children's Health Insurance Program (CHIP) coverage to otherwise eligible children and pregnant women "who are lawfully residing in the United States,"[99] a phrase which has been taken to include aliens granted deferred action.[100] The Patient Protection and Affordable Care Act (ACA) of 2010 similarly permits persons who are "lawfully present" to participate in certain health care programs established under the act.[101] However, while *lawfully present* for purposes of ACA has generally been construed in the same way as *lawfully residing* for purposes of CHIPRA,[102] those granted deferred action through DACA have been deemed ineligible for certain benefits under ACA.[103] (As of the date of this report, the Administration does not appear to have formally addressed how aliens granted deferred action through the November initiatives will be treated for purposes of ACA.)

Another reason why aliens granted deferred action may be eligible for state and local benefits, in particular, is that PRWORA expressly contemplates states enacting legislation, subsequent to PRWORA's enactment, that "affirmatively provides" for "unlawfully present aliens" to receive

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[96] *See* 8 U.S.C. §1641(b)(1)-(7) (defining *qualified alien* to encompass: LPRs; aliens granted asylum; refugees; aliens paroled into the United States for a period of at least one year; aliens whose deportation is being withheld; aliens granted conditional entry; and Cuban and Haitian entrants). Certain aliens who have been subject to domestic violence are also treated as qualified aliens for purposes of PRWORA. *See* 8 U.S.C. §1641(c).

[97] *See* 8 U.S.C. §1611(a) (federal public benefits); 8 U.S.C. §1621(a) (state and local public benefits).

[98] *See* United States v. Winstar Corp., 518 U.S. 839, 872 (1996) (quoting, in support of the proposition "that one legislature may not bind the legislative authority of its successors," 1 W. Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND 90 (1765) ("Acts of parliament derogatory from the power of subsequent parliaments bind not.... Because the legislature, being in truth the sovereign power, is always of equal, always of absolute authority: it acknowledges no superior upon earth, which the prior legislature must have been, if it's [sic] ordinances could bind the present parliament.").

[99] P.L. 111-3, §214(a), 123 Stat. 56 (Feb. 4, 2009) (codified at 42 U.S.C. §1396b(v)(4)(A)-(B)).

[100] Centers for Medicare & Medicaid Services, *Medicaid and CHIP Coverage of "Lawfully Residing" Children and Pregnant Women*, July 1, 2010 (copy on file with the author).

[101] *See, e.g.*, P.L. 111-148, §1101(d)(1), 124 Stat. 142 (Mar. 23, 2010) (temporary high risk health insurance pools for uninsured individuals with preexisting conditions); *id.*, at §1312(f)(3), 124 Stat. 184 (health care exchanges).

[102] *See, e.g.*, Department of the Treasury, Health Insurance Premium Tax Credit: Final Regulations, 77 Fed. Reg. 30377, 30387 (May 23, 2012) ("Lawfully present has the same meaning as in 45 CFR 155.20."). Section 155.20 of Title 45, in turn, defines *lawfully present* as qualified aliens; nonimmigrants who have not violated the terms of their status; certain aliens paroled into the United States; and aliens granted deferred action or deferred enforced departure, among others.

[103] *See, e.g.*, Department of Health & Human Servs., Center for Medicaid & CHIP Servs., *Individuals with Deferred Action for Childhood Arrivals*, Aug. 28, 2012 (copy on file with the author).

state and local public benefits.[104] Numerous states have exercised this authority to enact legislation that makes at least some state or local public benefits available to either unlawfully present aliens or aliens who are not qualified aliens for purposes of PRWORA.[105]

In addition, it is important to note that PRWORA's definition of *public benefit* is limited to

> (A) any grant, contract, loan, professional license, or commercial license provided by [a government] agency ... or by appropriated funds ...; and
>
> (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by [a government] agency ... or by appropriated funds.[106]

Given this definition, PRWORA has not been seen as barring the provision of certain benefits or services that some might characterize as public benefits—such as driver's licenses[107] or admission to public institutions of higher education[108]—but that are generally not seen as included within the definition of "public benefits" given by PRWORA.

## Who has standing to challenge the Administration's initiatives?

The feasibility of legal challenges to the Obama Administration's actions will depend, in part, upon which specific actions are challenged and the legal bases for the challenge. However, regardless of the specifics of individual cases, standing requirements seem likely to pose a significant barrier for any legal challenge.

Standing requirements are concerned with who is a proper party to seek judicial relief from a federal court. They derive from Article III of the Constitution, which confines the jurisdiction of federal courts to actual "Cases" and "Controversies."[109] The case-or-controversy requirement has long been construed to restrict Article III courts to the adjudication of real, live disputes involving parties who have "a personal stake in the outcome of the controversy."[110] Parties seeking judicial relief from an Article III court must generally show three things in order to demonstrate standing: (1) they have suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) the injury is likely to be redressed by a favorable decision.[111]

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[104] 8 U.S.C. §1621(d).

[105] *See, e.g.*, Pimentel v. Dreyfus, 670 F.3d 1096, 1101 (9th Cir. 2012) (Washington statute extending food stamp benefits to aliens who lost their eligibility for federal food stamps due to PRWORA); Ehrlich v. Perez, 908 A.2d 1220 (Md. 2006) (Maryland statute providing comprehensive medical care to qualified aliens who had not been present in the United States in that status for the requisite period of time to receive federal means-tested public benefits).

[106] U.S.C. §1611(c)(1) (federal public benefits); 8 U.S.C. §1621(c)(1) (state and local public benefits).

[107] *See* sources cited *supra* note 92.

[108] *See* CRS Report R43447, *Unlawfully Present Aliens, Higher Education, In-State Tuition, and Financial Aid: Legal Analysis*, by Kate M. Manuel.

[109] U.S. Const., art. III, §2, cl. 1.

[110] Baker v. Carr, 369 U.S. 186, 204 (1962).

[111] *See, e.g.*, Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). Additional requirements—involving so-called "prudential standing" could also present issues. These requirements are reflected in the rule that plaintiffs must be "within the 'zone of interests to be protected or regulated by the statute or constitutional guarantee'" that they allege (continued...)

### *"Taxpayer Standing"*

Those whose sole injury is the government's alleged failure to follow the law are generally found to lack standing because this injury is not personal and particularized.[112] This is so regardless of whether the plaintiff alleges that his/her "tax dollars" can be seen as helping to fund the government's allegedly improper action or inaction.

### *Government Personnel*

Government officers and employees, who have taken an oath to uphold the law, are generally found to lack standing so long as their only asserted injury is being forced to violate their oaths by implementing an allegedly unlawful policy or practice.[113] Instead, they must allege some separate and concrete adverse consequence that would flow from violating their oath, and courts have reached differing conclusions as to whether the possibility of being disciplined for obeying—or refusing to obey—allegedly unlawful orders suffices for purposes of standing, or whether such injury is "entirely speculative" and, therefore, lacking imminence.[114] In the case of the ICE officers who challenged DACA, the reviewing district court found that the plaintiffs had standing because of the possibility of such discipline. However, because such discipline constitutes an adverse employment action, the same court subsequently found that the plaintiffs' case is within the jurisdiction of the Merit Systems Protection Board (MSPB), not the court's.[115] (This decision has been appealed to the U.S. Court of Appeals for the Fifth Circuit, and it remains to be seen whether the district court's view as to jurisdiction is upheld.)

### *Members of Congress*

Individual Members of Congress are generally seen to lack standing to challenge executive actions. In *Raines v. Byrd*, the Supreme Court held that, in order to obtain standing, an individual Member must assert either a personal injury, like the loss of his/her congressional seat, or an

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to have been violated in order to be found to have standing. *See, e.g.*, Valley Forge Christian College v. Am. United for Separation of Church and State, 454 U.S. 464 (1982); Assoc. of Data Processing Serv. Orgs. v. Camp, 397 U.S. 150 (1970).

[112] *See, e.g.*, Lance v. Coffman, 549 U.S. 437, 439 (2007) ("A plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in [the] proper application of the Constitution and laws, and seeking relief that no more directly [or] tangibly benefits him than it does the public at large—does not state an Article III case or controversy.") (internal quotations omitted)); Lujan v. Defenders of Wildlife, 504 U.S. 555, 562 (1992) ("[W]hen the plaintiff is not himself the object of the government action or inaction he challenges, standing is not precluded, but is ordinarily 'substantially more difficult' to establish.").

[113] *See, e.g.*, Donelon v. La. Div. of Admin. Law *ex rel.* Wise, 522 F.3d 564 (5th Cir. 2008) (Louisiana Commissioner of Insurance lacked standing to challenge the constitutionality of a state law which he alleged violated the Constitution); Finch v. Miss. State Med. Ass'n, Inc., 585 F.2d 765, 773-75 (5th Cir. 1978) (governor of Mississippi lacked standing to challenge a state law whose enforcement, he believed, would cause him to violate his oath to uphold the federal and state constitutions).

[114] *Compare* Drake v. Obama, 664 F.3d 774, 780 (9th Cir. 2011) ("The notion that [the plaintiff] will be disciplined by the military for obeying President Obama's orders is entirely speculative. He might be disciplined for *disobeying* those orders, but he has an 'available course of action which subjects [him] to no concrete adverse consequences'—he can obey the orders of the Commander-in-Chief.") (emphasis in original)) *with Crane*, 920 F. Supp. 2d at 738-40 (finding that the ICE agents challenging DACA have "suffered an injury-in-fact by virtue of being compelled to violate a federal statute upon pain of adverse employment action," and otherwise satisfy the requirements for standing).

[115] *Crane*, 2013 U.S. Dist. LEXIS 187005.

"institutional injury" that cannot be addressed by an extant legislative remedy.[116] It is presently unclear what might constitute the requisite "institutional injury," as discussed in CRS Report R43712, *Article III Standing and Congressional Suits Against the Executive Branch*, by Alissa M. Dolan.

### *State Governments*

In several prior cases, states sought to challenge the federal government's alleged failure to enforce immigration law on the grounds that this "failure" imposes costs upon the states, which must provide public benefits and services to aliens who, under this argument, would not have been present within the state had the federal government enforced the INA.[117] Some of these challenges have been rejected on standing grounds.[118] In other cases, the court either "presumed" or did not address the standing requirements,[119] but found that states' challenges presented a nonjusticiable political question.[120] (The political question doctrine embodies the notion that courts should refrain from deciding questions that the Constitution has entrusted to other branches of government.[121])

### *Economic Competitors*

An argument has recently been advanced that U.S. workers whose wages or working conditions are adversely affected by increased competition from aliens permitted to work in the United States could show "competitor standing" and, thus, challenge the Obama Administration's actions.[122] This argument is, in part, based on a June 2014 decision wherein the U.S. Court of Appeals for the District of Columbia Circuit found that U.S. persons working as herders had standing to challenge the DOL's decision to issue certain guidance as to the wages and hours of foreign herders without notice-and-comment rulemaking because DOL's action caused "increased

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[116] 521 U.S. 811 (1997).

[117] *See, e.g.*, Texas v. United States, 106 F.3d 661, 664 (5th Cir. 1997) ("The [plaintiffs'] amended complaint alleges that hundreds of thousands of undocumented immigrants live in Texas as a direct consequence of federal immigration policy. The State alleges that federal defendants have violated the Constitution and immigration laws by failing to reimburse Texas for its educational, medical, and criminal justice expenditures on undocumented aliens. The State seeks an order enjoining federal defendants from failing to pay for these alleged financial consequences of federal immigration policy and requiring prospective payment as well as restitution for the State's relevant expenditures since 1988. These expenditures are estimated at $1.34 billion for 1993 alone."). Other states also made similar claims in the mid-1990s. *See* Arizona v. United States, 104 F.3d 1095 (9th Cir. 1997); California v. United States, 104 F.3d 1086 (9th Cir. 1997); New Jersey v. United States, 91 F.3d 463 (3d Cir. 1996); Padavan v. United States, 82 F.3d 23 (2d Cir. 1996); Chiles v. United States, 69 F.3d 1094 (11th Cir. 1995), *cert. denied*, 517 U.S. 1188 (1996).

[118] *See, e.g.*, *Texas*, 106 F.3d at 664 (noting that the district court had found the plaintiffs lacked standing); *Crane*, 920 F. Supp. 2d at 745-46 (finding that Mississippi's "asserted fiscal injury is purely speculative because there is no concrete evidence that the costs associated with the presence of illegal aliens in the state of Mississippi have increased or will increase as a result of the Directive or the Morton Memorandum").

[119] *See, e.g.*, *Texas*, 106 F.3d at 664 n.2 ("For purposes of today's disposition we assume, without deciding, that the plaintiffs have standing."); *Florida*, 69 F.3d at 1096 (appellate court noting that the district court did not address the standing issue, and that the appellate court would "suppose" the state has standing to raise its claims).

[120] *See, e.g.*, *Texas*, 106 F.3d at 665; *New Jersey*, 91 F.3d at 469; *Padavan*, 82 F.3d at 27-28; *Chiles*, 69 F.3d at 1097.

[121] *See, e.g.*, Baker v. Carr, 369 U.S. 186, 217 (1962) ("Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it, [among other things].").

[122] *See, e.g.*, Josh Gerstein, *White House Readies Immigration Legal Defense*, POLITICO, Nov. 19, 2014, *available at* http://www.politico.com/story/2014/11/barack-obama-executive-order-immigration-113051.html.

competition for jobs in their industry."[123] However, this case could potentially be distinguished from a challenge to the Obama Administration's deferred actions, in particular, because the INA expressly requires the executive branch to take certain steps to protect U.S. workers from foreign competition when issuing certain types of nonimmigrant visas, like those at issue in the June decision.[124] There do not appear to be any such requirements as to the executive's determination to issue employment authorization documents to aliens who do not hold employment-based visas.[125]

## Is there historical precedent for the Administration's actions?

Competing arguments have been made as to whether there is historical precedent for the Obama Administration's actions, particularly in granting deferred action to certain aliens brought to the United States as children and to the parents of U.S. citizen or LPR children.[126] Such arguments are shaped, in part, by which historical actions are viewed as analogous to the current ones.

The executive has historically exercised its prosecutorial or enforcement discretion, delegated discretion, and/or discretion in interpreting and applying statutes to provide certain relief from removal to individual aliens who share certain characteristics and could, thus, be said to form a group or category.[127] At different times, such relief has been made available under the rubric of parole (or refugee parole), extended voluntary departure (EVD), indefinite voluntary departure (IVD), deferred enforced departure (DED), temporary protected status (TPS), and deferred action. However, the shared name given to such actions can mask important differences in the legal basis for particular grants of discretion, among other things. For example, not all grants of parole to aliens in the 1960s should be seen as exercises of prosecutorial or enforcement discretion since Congress enacted legislation in 1960 that temporarily provided the executive with express statutory authority to parole "refugees" into the United States.[128] Likewise, in some cases,

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[123] Mendoza v. Perez, 754 F.3d 1002, 1011 (D.C. Cir. 2014), *rehearing en banc denied*, 2014 U.S. App. LEXIS 15437 (Aug. 11, 2014). *See also* Int'l Union of Bricklayers & Allied Craftsmen v. Meese, 761 F.3d 798 (D.C. Cir. 1985) (finding that plaintiffs had standing where they alleged three instances wherein aliens were admitted under B-1 visas (for temporary business visitors) to "perform work of which the union members are said to be capable").

[124] *See generally* CRS Report R43223, *The Framework for Foreign Workers' Labor Protections Under Federal Law*, by Margaret Mikyung Lee and Jon O. Shimabukuro.

[125] Thus, the current situation could potentially be said to resemble earlier litigation in which the plaintiffs alleged improper competition from foreign workers, but were found to lack standing to challenge executive actions not involving employment-based visas whose issuance involves protections for U.S. workers. *See, e.g.*, Programmers Guild v. Chertoff, 338 Fed. App'x 239 (3d Cir. 2009) (finding that the plaintiffs lacked standing to challenge the 17-month extension of OPT because nothing in the INA conditioned the entry of aliens into the United States on an F-1 visa "on noninterference with domestic labor conditions"), *cert. denied sub nom.* Guild v. Napolitano, 559 U.S. 1067 (2010); Fed. for Am. Immigr. Reform, Inc. v. Reno, 93 F.3d 897, 899 (D.C. Cir. 1996) (finding that the plaintiffs lacked standing to challenge the Executive's paroling of Cuban nationals into the United States because the INA imposes no employment-related restrictions upon the parole of aliens into the United States).

[126] *Compare* Drew Desilver, *Executive Actions on Immigration Have a Long History*, Pew Research Center, Nov. 21, 2014, *available at* http://www.pewresearch.org/fact-tank/2014/11/21/executive-actions-on-immigration-have-long-history/ *with* David Frum, *Reagan and Bush Offer No Precedent for Obama's Amnesty Order*, THE ATLANTIC, Nov. 18, 2014, *available at* http://www.theatlantic.com/politics/archive/2014/11/the-weak-argument-defending-executive-amnesty/382906/.

[127] *See* Zachary S. Price, *Enforcement Discretion and Executive Duty*, 67 VAND. L. REV. 671, 675 (2004) (prosecutorial discretion not extending to "entire categories" of aliens); *Dream On*, *supra* note 4, at 846 (similar).

[128] *See* Refugee Resettlement Act of 1960, P.L. 86-648, §1, 74 Stat. 504 (July 14, 1960) (providing that, "under the terms of section 212(d)(5) of the Immigration and Nationality Act[,] the Attorney General may parole into the United States, pursuant to such regulations as he may prescribe, an alien refugee-escapee," subject to certain conditions).

Congress has expressly adopted legislation encouraging the executive to exercise particular forms of prosecutorial or enforcement discretion in certain cases, which could potentially be said to indicate congressional "approval" of the executive's exercise of this authority.[129]

The temporary relief from removal granted to unlawfully present aliens that some have asserted most closely resembles the Obama Administration's deferred action initiatives[130]—particularly in terms of the percentage of the unauthorized alien population affected—are the so-called "Family Fairness" initiatives of 1987 and 1990. In those cases, the Reagan and George H.W. Bush Administrations, respectively, granted indefinite voluntary departure (IVD) and employment authorization to certain immediate relatives of aliens who had legalized their status pursuant to IRCA.[131] (These relatives were themselves ineligible for legalization under IRCA for various reasons.) The Obama Administration's 2014 deferred action initiatives can be likened to the Family Fairness initiatives in that they involve the granting of temporary relief from removal and work authorization to certain unlawfully present aliens based, in part, on humanitarian factors. However, certain differences could also be noted between the current and earlier initiatives, including that (1) the Reagan and Bush Administrations did not establish a centralized process whereby aliens could apply for relief from removal, instead permitting regional officials to grant relief; (2) some aliens who were denied relief through the Family Fairness initiatives were reportedly placed in removal proceedings,[132] something that has not been reported with DACA;[133] and (3) the Family Fairness initiatives were preceded (and followed) by the enactment of legislation legalizing certain unlawfully present aliens, whereas Congress has enacted no such legislation here.[134] How much weight is given to these similarities or dissimilarities may ultimately depend upon one's views as to the permissibility and/or desirability of the current initiatives.

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[129] *See, e.g.*, Department of State Authorization Act, FY1984-1985, P.L. 98-164, §1012, 97 Stat. 1062 (Nov. 22, 1983) (expressing the "sense of the Congress" that the Executive ought to consider persons from El Salvador for EVD).

[130] *But see* Glenn Kessler, *Obama's Claim that George H.W. Bush Gave Relief to "40 percent" of Undocumented Immigrants*, Wash. Post, Nov. 24, 2014, *available at* http://www.washingtonpost.com/blogs/fact-checker/wp/2014/11/24/did-george-h-w-bush-really-shield-1-5-million-illegal-immigrants-nope/.

[131] *See* 1990 Family Fairness memorandum, *supra* note 48; INS, Office of the Commissioner, Family Fairness: Guidelines for Voluntary Departures under 8 C.F.R. 242.5 for the Ineligible Spouses and Children of Legalized Aliens, Nov. 1987 (copy on file with the author).

[132] *See, e.g.*, IMMIGRATION REFORM AND CONTROL ACT OF 1986 OVERSIGHT: HEARINGS BEFORE THE SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, 101ST CONG., 1ST SESS., May 10 & 17, 1989, at 48 (noting that some spouses and children of legalized aliens who applied for relief were "issues Orders to Show Cause ..., which initiate deportation proceedings").

[133] DHS has left open the possibility that aliens who apply, but are ineligible for, relief through DACA could be subject to immigration enforcement actions. *See Frequently Asked Questions*, *supra* note 13 ("Information provided in this request is protected from disclosure ... for the purpose of immigration enforcement proceedings unless the requestor meets the criteria for the issuance of a Notice To Appear or a referral to ICE under the criteria set forth in USCIS' Notice to Appear guidance.") However, it is unclear whether any such actions have been taken.

[134] Both of the Family Fairness initiatives were adopted after the Immigration Reform and Control Act (IRCA) of 1986, P.L. 99-603, 100 Stat. 3359 (Nov. 6, 1986), was enacted, and both preceded the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990).

## Author Contact Information

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## Acknowledgments

CRS Legislative Attorney Michael John Garcia authored the section of this report addressing whether granting deferred action to certain "categories" of aliens violates the Take Care Clause, or constitutes an abdication of the executive's duties under the INA. He also co-authored prior CRS products on executive discretion as to immigration whose texts have, in some cases, been adapted for purposes of this report.

(b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c)
**Sent:** Thursday, August 07, 2014 1:59 PM
**To:** Aguilar, Jason; Almeida, Corina E; (b)(6), (b)(7)(c) Beattie, Patricia A; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) Sanchez, Raphael; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) Ungerman, Leslie; Vroom, Patricia M; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) Davis, Mike P; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) Ramlogan, Riah; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) Stolley, Jim; (b)(6), (b)(7)(c)
**Cc:** (b)(6), (b)(7)(c)
**Subject:** 9c Lopez amended: I-296 Verification of Departure is non-testimonial so no Confrontation Clause or hearsay problems
**Attachments:** 9c Lopez I-296 Rem Verif is non-testimonial pub CDCal Apr14.pdf; 9c Lopez amended I-296 nontestimonial so no Confr Cl prob 1326 pub CDCal Aug14.pdf

All:

The 9c today amended their decision in this 1326 case from April (summarized below), denied the defendant's petition for rehearing, and said the mandate will issue forthwith. I haven't tried to do a comparison of what has changed throughout, but there's a change in the court's opening summary. The earlier version said: "We affirm (b)(6), (b)(7)(c) conviction despite the erroneous admission of lay opinion testimony by a key government witness because the remaining evidence of physical removal, including (b)(6), (b)(7)(c) Verification of Removal (Form I-296), is legally sufficient to support the jury's verdict."

The new version says, instead: "We affirm (b)(6), (b)(7)(c) conviction despite the erroneous admission of lay opinion testimony by a key government witness because (b)(6), (b)(7)(c) fails to show a reasonable probability that the exclusion of that testimony would have affected the outcome of his trial; nor does he demonstrate that the remaining evidence was legally insufficient to support the jury's verdict."

(b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c)
**Sent:** Wednesday, April 02, 2014 10:54 AM
**Subject:** 9c Lopez: I-296 Verification of Departure is non-testimonial so no Confrontation Clause or hearsay problems

(b)(6), (b)(7)(c)

(b)(5)

(b)(6), (b)(7)(c) raises several issues: whether 8 U.S.C. § 1326 requires proof of an order of removal or deportation as an element of the offense when the defendant has been deported or removed; whether the Verification of Removal and Agent (b)(6), (b)(7)(c) opinion testimony that (b)(6), (b)(7)(c) was in fact deported were properly admitted; and, if not, whether those errors require us to reverse (b)(6), (b)(7)(c) conviction and vacate his sentence.

(b)(5)

(b)(6), (b)(7)(c) argues that the last clause, "while an order of exclusion, deportation, or removal is outstanding," applies to the entire subsection. As the district court concluded, however, the statutory language requires as an element of the offense an outstanding order of exclusion, deportation, or removal only when an alien has "departed" the United States. If the alien "has been denied admission, excluded, deported, or removed," then no order is required. The phrase is worded in the passive voice because the alien is the subject of the enforcement action. The second clause presupposes that the alien departed on his own initiative, in which case, the fact of his return alone cannot support a conviction under Section 1326 because returning alone is not the criminal act punished by Section 1326(a)(1).

. . . .

The case (b)(6), (b)(7)(c) cites for the proposition that an order of removal or deportation is an element of the crime that must be proven to the jury under all circumstances are inapposite. . . . These cases stand for the uncontroversial proposition that the validity of a removal or deportation order is always a predicate to the crime because the deportation must be valid, legal, and comport with due process requirements to sustain a conviction under Section 1326. This does not necessarily mean that where the government proves that the alien was actually physically removed, the government must also prove the existence of a deportation or removal order. [ ] Indeed, if actual physical removal or deportation is proven, a valid order of removal or deportation may be presumed in the absence of a collateral pre-trial challenge in the form of a motion to dismiss the indictment, or, as here, the information.

(b)(5) (b)(6), (b)(7)(c)

The district court did not err by admitting (b)(6), (b)(7)(c) Verification of Removal. A verification of removal comports with the requirements of the Confrontation Clause and is admissible under the public records exception to the rule against hearsay. . . . [R]easoning by analogy to *Bahena-Cardenas* and *Orozco-Acosta*, we conclude that like a warrant of removal, a verification of removal is nontestimonial. Both documents record the alien's physical removal across the border and are made for the purpose of recording the movement of aliens. *Compare Orozco-Acosta*, 607 F.3d at 1162–63 (describing a warrant of removal), *with* Form I-296. The only functional difference between the two is that a verification of removal is used to record the removal of aliens pursuant to expedited removal procedures, while the warrant of removal records the removal of aliens following a hearing before an immigration judge.

(b)(6), (b)(7)(c)

(b)(5)

Apparently realizing the possible gap in proof and the doubts that may have been generated by the agents' lack of personal knowledge as to (b)(6), (b)(7)(c) removal, on redirect, the prosecutor asked Agent (b)(6), (b)(7)(c) "[B]ased upon your training and experience by looking at (b)(6), (b)(7)(c) Verification of Removal,] do you believe he was actually deported from the United States?" Agent (b)(6), (b)(7)(c) responded, "Yes. I believe he was." [ ] (b)(6), (b)(7)(c) argues that this testimony

was inadmissible under Federal Rule of Evidence 602 because Agent (b)(6), (b)(7)(c) lacked personal knowledge. He also argues it was inadmissible under Federal Rule of Evidence 701 because it could not have been "rationally based on Agent (b)(6), (b)(7)(c) perception," nor was it established that Agent (b)(6), (b)(7)(c) had any training or experience removing persons at the border or with the form itself.

The district court clearly erred by admitting Agent (b)(6), (b)(7)(c) lay opinion on the ultimate question before the jury. Agent (b)(6), (b)(7)(c) testimony does not satisfy the personal knowledge requirement of Federal Rule of Evidence 602. Under Rule 602, a "witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter."

. . . .

Agent (b)(6), (b)(7)(c) lay opinion testimony is also inadmissible under Federal Rule of Evidence 701. A lay person may offer testimony in the form of an opinion if it is "(a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." . . . . In presenting lay opinions, the personal knowledge requirement may be met if the witness can demonstrate firsthand knowledge or observation. As described above, Agent (b)(6), (b)(7)(c) neither witnessed (b)(6), (b)(7)(c) deportation nor could he identify the people who signed the form. Although the prosecution could have elicited Agent (b)(6), (b)(7)(c) lay opinion testimony had it laid a proper foundation for (b)(6), (b)(7)(c) familiarity and experience, if any, with verifications of removal or the removal of aliens at the border, the prosecution failed to do so.

At pages 22-25, the court finds this error does not constitute plain error warranting reversal of the conviction. Here are a couple of key paragraphs:

We must next determine whether the error affected (b)(6), (b)(7)(c) substantial rights, "which in the ordinary case means he must demonstrate that it affected the outcome of the district court proceedings." [citations omitted] (b)(6), (b)(7)(c) has not met this burden because the jury could have concluded that (b)(6), (b)(7)(c) was actually physically removed based on the Verification of Removal and Officer (b)(6), (b)(7)(c) testimony which authenticated it.

. . . .

Similarly, a properly authenticated verification of removal is legally sufficient to support a finding of physical removal beyond a reasonable doubt. As with warrants of removal, the Verification of Removal "bore [defendant's] name, immigration identification number, photograph, signature, and fingerprint." *Salazar-Lopez*, 506 F.3d at 755. At no time during trial did (b)(6), (b)(7)(c) argue that the photograph, signature, and fingerprint on the Verification of Removal did not belong to him. During trial, the government called a fingerprint expert who testified that the fingerprint on (b)(6), (b)(7)(c) Verification of Removal belonged to (b)(6), (b)(7)(c) and (b)(6), (b)(7)(c) never contested that fact. Nor did (b)(6), (b)(7)(c) contend that the photograph on the Verification of Removal was not of him; and the jury could simply compare the photograph to the defendant to determine whether it was his. Similarly, (b)(6), (b)(7)(c) did not challenge the authenticity of his signature on the form.

(b)(6), (b)(7)(c) (b)(5)

(b)(6), (b)(7)(c) Associate Legal Advisor
Appellate and Protection Law Section
Immigration Law and Practice Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Office: 503-373 (b)(6), (b)(7)(c)
E-mail: (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c)
**Sent:** Tuesday, July 15, 2014 8:22 AM
**To:** Aguilar, Jason; Almeida, Corina E; (b)(6), (b)(7)(c) Ardinger, Jo Ellen; Beattie, Patricia A; Brukiewa, Melody A; Cheng, Wen-Ting; Choi, Raphael; Frederick, Kent J; Gastelo, Elias S Jr; (b)(6), (b)(7)(c) Hengerer, Carla J; Hunker, Paul B; Longmeyer-Wood, Jennifer L; Lundgren, Karen E; Marbury, Howard W; McLane, Jo Ann; Miller, Alice M; (b)(6), (b)(7)(c) Owens, Alfie; Padilla, Kenneth; Pincheck, Catherine; (b)(6), (b)(7)(c) Sanchez, Raphael; Stolley, Jim; Ungerman, Leslie; Vroom, Patricia M;

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) Padilla, Kenneth; (b)(6), (b)(7)(c) Pincheck, Catherine;

(b)(6), (b)(7)(c)

d

**Cc:**
**Subject:** New PLAnet Event Guidance: Credible Fear Review

Hello all,

(b)(5)

(b)(6), (b)(7)(c)
Special Counsel to Director of Field Legal Operations
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement Potomac Center North
500 12th Street, SW STOP 5900
Washington, DC 20536-5900
Desk: (202) 7(b)(6), (b)(7)(c)
BB: (202) 30(b)(6), (b)(7)(c)

NOTE NEW EMAIL ADDRESS: (b)(6), (b)(7)(c)

U.S. Department of Homeland Security
Washington, DC 20229

U.S. Customs and
Border Protection

March 19, 2009

MEMORANDUM FOR: Executive Directors

Acting Director, Preclearance
Operations

Directors, Field Operations
Office of Field Operations

Director, Field Operations Academy
Office of Field Ope

FROM: for Assistant Commissi
Office of Field Ope

(b)(6), (b)(7)(c)

SUBJECT: Implementation of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)

On December 23, 2008, President Bush signed into law the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) to combat human trafficking and provide for the care and custody of unaccompanied alien children (UAC). U.S. Customs and Border Protection (CBP) is expected to implement the provisions of the TVPRA beginning March 23, 2009. The attached CBP Interim UAC Guidance outlines policy and procedures to be followed when processing UAC.

The TVPRA mandates, with limited exceptions, that all UAC CBP seeks to remove from the United States must be referred for removal proceedings under section 240 of the Immigration and Nationality Act (INA). A UAC who is a national or habitual resident of Canada or Mexico may be allowed to withdraw his or her application for admission only if CBP screening indicates that the UAC meets all of the criteria specified in the attached guidance. In addition, CBP officers are expected to follow the policy guidance specific to Field Operations outlined in this memorandum.

An alien child traveling alone is not necessarily a UAC. When an alien child traveling alone is encountered, Field Operations must first ascertain if the alien child has, or is eligible for, lawful immigration status. If the alien child has lawful immigration status, then the child does not meet the definition of a UAC. If Field Operations exercises discretion (e.g. waivers of inadmissibility) to confer lawful immigration status on an alien child, then the child is not a UAC. Port paroles

do not meet the threshold of lawful immigration status for the purpose of determining a child's status as a UAC.

Typically, Field Operations should accept permission slips and other equivalent proof as appropriate documentation indicating temporary guardianship. For instance, an alien child traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization under the supervision of an adult affiliated with the organization should generally be considered to be traveling with a guardian.

If a parent or legal guardian is available to provide care and custody for an alien child, then the child does not meet the definition of a UAC. However, Field Operations must assess the immigration status of the parent or legal guardian to determine an appropriate disposition for the entire family unit.

While Field Operations conducts UAC screening with CBP Form 93, validity of claims of asylum and/or trafficking are decided by other components within the Department of Homeland Security. Field Operations should be aware that fraudulent or frivolous claims of asylum and/or trafficking may increase after implementation. Directors, Field Operations (DFOs) should contact the appropriate counterpart at Immigration and Customs Enforcement (ICE) Office of Investigations to establish procedures specific to that field office for a more immediate assessment of trafficking risks.

Field Operations should strive to transfer the custody of all UAC within 24 hours, as outlined in CBP Directive 3340-030B, date August 8, 2008. For situations that require detention of UAC at a port of entry (POE) beyond 24 hours, the DFO must be notified. DFOs must continue to work with ICE, Detention and Removal Operations (DRO) to resolve issues related to detention, including UAC. Although the Office of Refugee Resettlement (ORR) is responsible for the care and custody of all UAC in Federal custody, DRO is the mechanism that Field Operations utilizes to obtain placement in an ORR-designated facility.

Although not specifically mentioned in the TVPRA, Field Operations must also take appropriate steps to ensure the safety and welfare of U.S. citizen children traveling without a parent or legal guardian. Referrals to local child service organizations or law enforcement agencies may be appropriate based on the totality of circumstances.

Please ensure the attached interim guidance is disseminated to all ports of entry in your area of responsibility. If you have any questions regarding this memorandum or guidance, please have a member of your staff contact (b)(6), (b)(7)(c) Acting Executive Director, Admissibility and Passenger Programs, at (202) 344-(b)(6), (b)(7)(c)

Attachments

**U.S. Customs and Border Protection**
**Interim Guidance on Processing Unaccompanied Alien Children**

The William Wilberforce Trafficking Victims Protection Reauthorization Act, 2008 (TVPRA) was signed into law on December 23, 2008. The TVPRA will significantly impact CBP operations regarding unaccompanied alien children (UAC) apprehended by CBP at and between the ports of entry. Below are specific guidelines that all CBP officers and agents should use to determine the appropriate immigration proceedings and applicable procedures for the treatment of UAC. CBP is obligated to initiate the changes from the TVPRA beginning March 23, 2009. The TVPRA mandates, with limited exceptions, that all UAC CBP seeks to remove from the United States must be placed in removal proceedings under section 240 of the Immigration and Nationality Act (INA).

The term "UAC" is defined by section 462(g) of the Homeland Security Act of 2002 (6 USC § 279(g)) as a child who:

(A) has no lawful immigration status in the United States[1];
(B) has not attained 18 years of age; and
(C) with respect to whom–
  (i) there is no parent or legal guardian in the United States; or
  (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

CBP has developed a "UAC Determination Sheet" for additional guidance (attached). If there is a reasonable claim or suspicion that an alien in CBP custody is under 18 years of age and the other criteria listed in the definition above are met, then the alien shall be treated as a UAC. The TVPRA requires Health and Human Services (HHS), in consultation with DHS, to identify procedures to make a prompt determination of age of an alien in CBP custody. CBP will continue to follow established procedures regarding age determination.

Typically, CBP should accept verifiable permission slips and other equivalent evidence as appropriate documentation indicating temporary guardianship. For instance, an alien child traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization under the supervision of an adult affiliated with the organization should be considered to be traveling with a guardian.

The TVPRA clarifies family reunification procedures for CBP. As of March 23, 2009 CBP may only reunify alien children with parents or legal guardians who are in possession of supporting documentation and are within the United States. HHS is responsible for the determination that any other proposed guardian, including a family member who lacks documentation of guardianship (e.g. grandparent, aunt/uncle, and brother/sister), is capable of providing care and physical custody.

CBP will process UAC expeditiously and complete the documentation necessary for case processing. If the UAC is under 14 years of age, or unable to understand his or her rights, the apprehending officer or agent must be sure to read and explain all documents in a language that the UAC can understand.

[1] Children under the age of five who are found within the United States, commonly referred to as "foundlings" are assumed to be United States citizens and, as such, have lawful immigration status in the United States.

**Special Rules for Children from Contiguous Countries (UAC Screening):**

The TVPRA states that any UAC determined to be a national or habitual resident of a country that is contiguous with the United States shall undergo a screening process before the UAC may be returned.

UAC Screening: CBP may allow a UAC who is a national or habitual resident of a country that is contiguous with the United States (i.e. Canada and Mexico) to withdraw the application for admission and/or be voluntarily returned if CBP determines that all three of the below-listed criteria exist:

1. The UAC is able to make an independent decision to withdraw the application for admission to the United States and/or be voluntarily returned to his/her country of nationality or last habitual residence.
    a. CBP must determine whether the UAC is able to make an independent decision on a case by case basis. However, there are a few factors that CBP may take into consideration;
        i. UAC 14 years of age and older should be considered presumptively able to make an independent decision unless circumstances indicate otherwise.
        ii. UAC under the age of 14 should be considered presumptively unable to make an independent decision unless circumstances indicate otherwise.
    b. The guidelines above do not alleviate the need for the officer or agent to determine the ability of the UAC to make an independent decision on a case-by-case basis These presumptions may be overcome based on a number of factors including, but not limited to, the child's intelligence, education level, familiarity with the immigration process, and physical and mental state at the time of processing. If it is believed that UAC does not fully understand his/her rights, then removal proceedings will be initiated under section 240 of the INA and the UAC will be transferred to ORR custody. The basis for all determinations regarding independent decisions will be annotated in the narrative of the Form I-213.
2. The UAC does not have a fear of returning to his or her country of nationality or last habitual residence owing to a credible fear of persecution.
    a. CBP will use the UAC Screening Addendum, CBP Form 93, to provide the UAC with an opportunity to express such a fear of returning. If the UAC indicates a fear or CBP identifies factors indicating a fear is likely to exist, then removal proceedings will be initiated under section 240 of the INA and the UAC will be transferred to ORR custody.
3. The UAC has not been a victim of a severe form of trafficking in persons and there is no credible evidence that the UAC is at risk of being trafficked upon return to his or her country of nationality or last habitual residence.
    a. CBP developed a UAC Screening Addendum, CBP Form 93, to assess the likelihood that a UAC has been a victim of trafficking or is at risk of being trafficked. If the UAC claims to have been a victim, or appears to be at risk, removal proceedings will be initiated under section 240 of the INA and the

UAC will be transferred to ORR custody. CBP will refer these cases to U.S. Immigration and Customs Enforcement (ICE), Office of Investigations (OI), for further investigation.

If CBP determines that the UAC meets **all** of the above criteria, then the UAC may be processed as a withdrawal or voluntary return. Current policies regarding repatriation, as outlined by local Repatriation Agreements, remain in effect. UAC must be returned to appropriate trained officials of contiguous countries during reasonable business hours.

If a UAC does **not** meet all of the above criteria or if CBP **cannot** make a determination within 48 hours of apprehension of the UAC, then the UAC shall be placed in removal proceedings under section 240 of the INA and immediately transferred to ORR.

**Visa Waiver Program (VWP)**

UAC who apply for admission under section 217 of the INA who are determined to be ineligible for admission under that section or to be inadmissible to the United States under section 212 of the INA (other than for lack of a visa), or who are in possession of and present a fraudulent or counterfeit travel documents should be refused admission into the United States. CBP may continue to process these UAC as VWP Refusals with the UAC Screening Addendum used as a guide for assessing the risk of trafficking and/or credible fear. Generally, a UAC applying for admission under the VWP who expresses a fear of returning to his or her country of nationality or last habitual residence owing to a credible fear of persecution or who has been a victim of trafficking or who is at risk of being trafficked should be referred for a limited review hearing by an Immigration Judge using Form I-863. UAC who are or who may be victims of trafficking will also be referred to ICE-OI and custody will be transferred to ORR. UAC apprehended by CBP and amenable to removal under section 217 of the INA will be placed in removal proceedings under section 240 of the INA and custody will be transferred to ORR.

**All Other Children:**

UAC who do not meet the exceptions above and whom CBP seeks to remove from the United States must be placed in removal proceedings under section 240 of the INA. Immediate notifications to the Juvenile Coordinator within ICE Detention and Removal Operations (DRO) and ORR, Division of Unaccompanied Children's Services (DUCS) must occur. Notification must occur within 48 hours from the apprehension or discovery of a UAC or any claim or suspicion that an alien in custody is unaccompanied and under the age of 18. This will expedite the transfer of custody and placement of UAC into ORR facilities.

CBP will process UAC expeditiously and complete the documentation necessary for inclusion in the alien file (A-file). A Form I-770 must be completed and a copy provided to all UAC. If the UAC is under 14 years of age, or unable to understand Form I-770, the apprehending officer or agent must be sure to read and explain all documents in a language that the UAC can understand. The attached A-file Preparation Guide has been designed to assist officers and agents in ensuring that all appropriate documents have been completed.

When CBP issues an NTA to a UAC under 14 years of age, it may be necessary to delay service of the NTA until custody can be transferred to ORR. ORR should sign the NTA and other legal documentation and receive all copies of legal documentation on behalf of the UAC.

Custody of the UAC will be transferred to ORR (generally through DRO) as soon as possible. Consistent with the language of the TVPRA, custody must be transferred to ORR no later than 72 hours after determining that a child is a UAC. This does not preclude an earlier transfer as existing CBP policy seeks to accomplish custody transfer of all UAC within 24 hours.

While awaiting transfer to an ORR-designated facility, UAC must be held in a suitable area in compliance with the Flores Settlement Agreement. CBP will separate UAC from unrelated adults whenever possible. Where such separation is not immediately possible, a UAC should not be detained with an unrelated adult for more than 24 hours. All post-arrest facilities, including temporary holding areas, will provide access to:

- toilets and sinks;
- drinking water and food, as appropriate;
- emergency medical assistance;
- adequate temperature control and ventilation; and,
- adequate supervision to protect UAC from others.

When a UAC is apprehended and is amenable to criminal prosecution, notification to ORR within 48 hours and transfer to ORR within 72 hours is necessary.

**UAC A-File Preparation Guide**

Not all forms will be used in every case. Follow existing local procedures to determine which forms are required based on the circumstances of the case. ***For children under 14 years of age, ORR will sign all legal documentation as well as receive all copies of legal documentation on behalf of the UAC.*** Additional documentation may be required by local policy.

- Record of Deportable/Inadmissible Alien (I-213 and continuation).
  The original is placed in the A-file; no copy is provided to the UAC. The apprehending officer or agent should obtain as much detailed biographical information as possible. The following information must be included in the narrative of the Form I-213, if known:
  - Location of parent(s)/legal guardian(s)
  - Location and contact information of any relatives in the United States
  - Where and with whom did the UAC reside immediately before coming to the United States
  - Destination in United States
  - Present funds and anticipated method of support
  - Whether the UAC was smuggled and if so, the arrangements made
  - The health of the UAC: all claimed or apparent health issues must be documented
  - Any language that the UAC is able to speak, read, write and/or understand
  - Length of time in transit, from place of residence to the United States
  - Route of travel (e.g., countries, length of time spent in each, status in each, date of arrival at border, etc.)
  - Person the UAC is supposed to contact in the United States and phone number
  - Document any claims of fear expressed by the UAC
  - Additional elements may be required depending on the totality of the circumstances (e.g., fraudulent documents, trafficking, etc.)

- Notice to Appear (I-862).
  This form should be signed by the authorized issuing official. The certification of service on the UAC is signed by the serving officer/agent and by the UAC. If the UAC is apprehended at a port of entry (POE), the UAC will be typically charged under both section 212(a)(7)(A)(i)(I) of the INA (as an alien not in possession of proper entry documents) and section 212(a)(4) of the INA(as an alien likely to become a public charge). If the UAC is apprehended between the POEs, the UAC will typically be charged under section 212(a)(6)(A)(i) of INA (as an alien present in the United States without benefit of admission or parole). Other charges may be lodged as appropriate.

- Notice of Rights and Request for Disposition (I-770).
  The original is placed in the file and a copy is provided to the UAC. Ensure that appropriate boxes are completed on both sides. The apprehending officer or agent and UAC both sign.

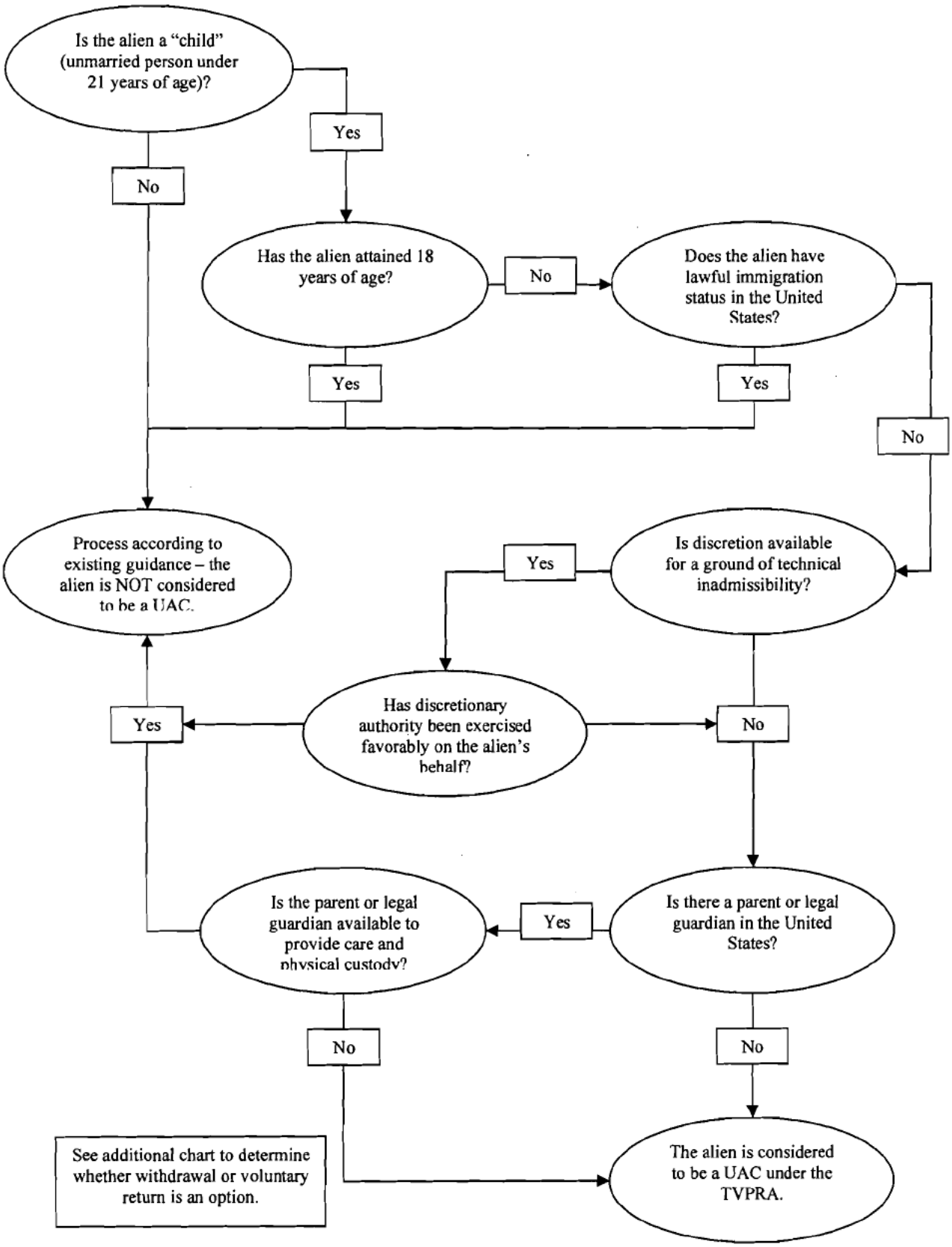
- UAC Screening Addendum (CBP Form 93).
  The original is placed in the file, no copy is provided to the UAC.

- Warrant of Arrest (I-200) (not applicable for arriving aliens).

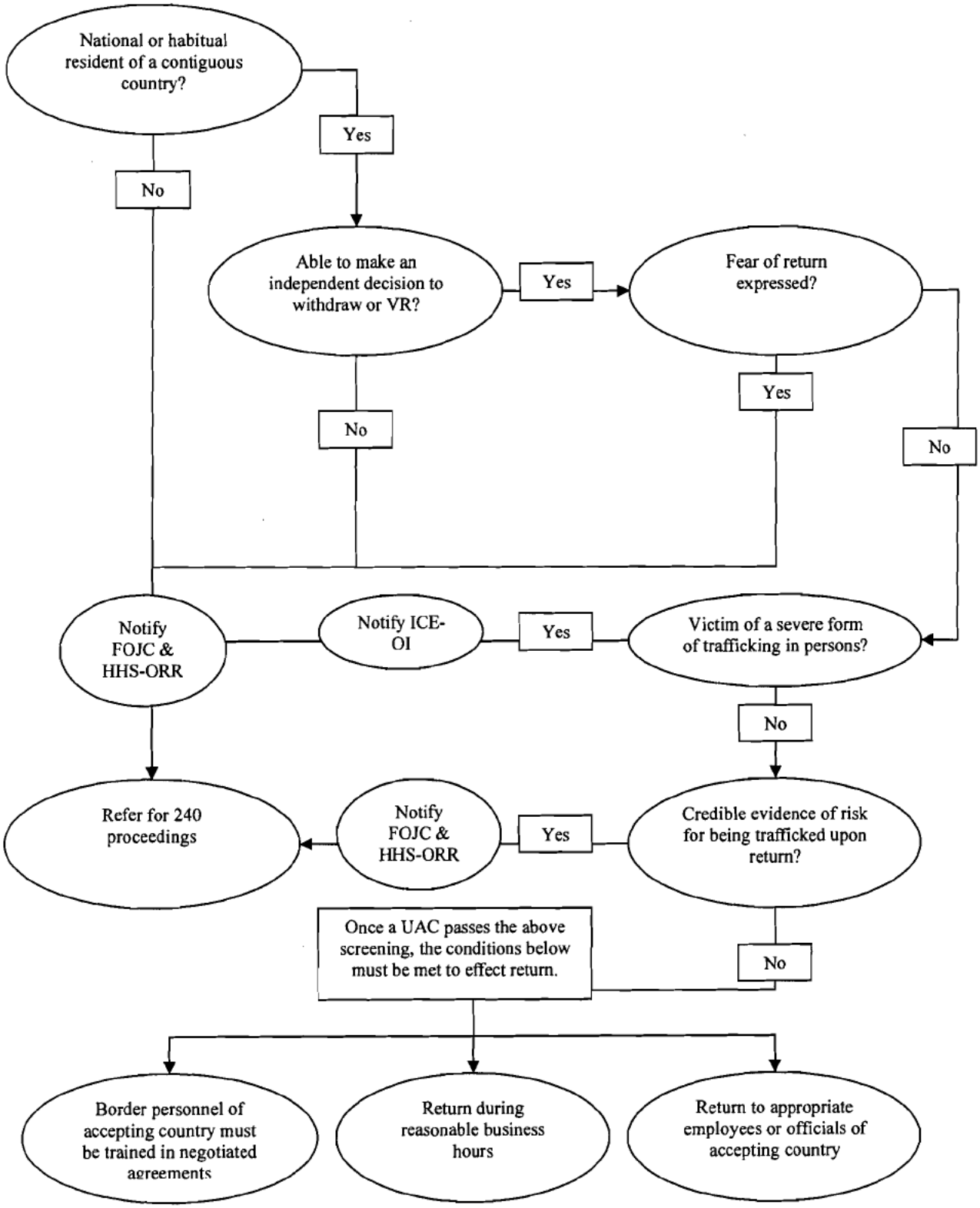
Typically, the original and one copy are placed in the file; another copy is provided to the UAC. This form should be signed by the authorized issuing official. The certification of service on the UAC is signed by the apprehending officer and by the UAC.

- Notice of Custody Determination (I-286) (not applicable for arriving aliens).
  Typically, the original and one copy are placed in the file; a copy is provided to the UAC. This form should be signed by the authorized issuing official. The certificate of service on the UAC is signed by the apprehending officer and by the UAC.
- Biographic Data for Travel Documents (I-217) or Single Journey Letter
  The original is placed in the file.
- Fingerprints (R-84 and/or FD-249)
  This applies to UAC 14 year of age and older.
- Photograph.
  A photograph will be placed in the file. All UAC must be photographed.
- Modified Orantes Rights (For El Salvadorans only) (I-848 and I-848a).
  The original is placed in the file and a copy is provided to the UAC. Explain the rights to UAC of all ages. This is signed by the apprehending officer or agent and the UAC.
- Notice to Detain, Remove, or Present Alien (I-259) (for arriving aliens only).
  The original is placed in the file; a copy is provided to the carrier who brought the alien into the United States.
- Sworn Statement.
  The original is placed in the file and a copy is provided to the UAC. Ensure that all pages are signed by the officer/agent and that the UAC initials all pages.
- Withdrawal of Application for Admission/Consular Notification (I-275).
  The original is placed in the file and a copy is given to the UAC, if allowed to withdraw his or her application for admission. A copy should also be forwarded to the appropriate U.S. consular officials.
- Notice of Refusal of Admission/Parole into the U.S. (I-160A) (arriving aliens only).
  The original is placed in the file and a copy is provided to the UAC.
- List of Free Legal Services.
  A copy must be provided to the UAC. Follow local guidelines to document appropriately.
- Consular Notification as defined by 8 CFR 236.1.
  The original is placed in the file.
- Discretionary Checklist and Third Party Notification (OFO only).
  The originals are placed in the file.

# UAC Determination Sheet



# UAC Withdrawal / Voluntary Return Determination Sheet



# Immigration and Customs Enforcement
# Office of Detention and Removal Operations (ICE/DRO)
# Field Guidance for the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) was signed into law on December 23, 2008. The TVPRA significantly impacts Department of Homeland Security (DHS) operations at ports of entry, the northern and southern borders of the United States, and in the interior of the United States.

The following field guidance must be used by all ICE/DRO officers and agents when apprehending and/or processing Unaccompanied Alien Children (UAC). DHS is obligated to initiate the changes resulting from the TVPRA on Monday, March 23, 2009.

## Definition of an Unaccompanied Alien Child (UAC)

The term "UAC" is defined by section 462(g) of the Homeland Security Act of 2002 (6 USC § 279(g)) as a child who:

(A) has no lawful immigration status in the United States;
(B) has not attained 18 years of age; and
(C) with respect to whom–
    (i) there is no parent or legal guardian in the United States; or
    (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

## Age Determination Procedures

TVPRA requires Health and Human Services (HHS), in consultation with DHS, to develop procedures to make prompt age determinations. Once developed, ICE/DRO will implement these new procedures when making age determinations of aliens in ICE/DRO custody. Until these procedures are developed however, ICE/DRO officers and agents will continue to follow the current ICE policy for age determinations dated August 20, 2004 (attached).

## Reunification

As of March 23, 2009, ICE/DRO may release a UAC only to a parent or legal guardian who is in possession of documentation supporting that relationship. Other than this and in very limited circumstances where ICE obtained custody of a UAC from a contiguous country apprehended at a land border of POE, ICE/DRO must transfer the custody of all UAC to HHS within the time frames indicated in TVPRA.

**ICE Voluntary Departure.**

ICE/DRO can no longer offer, as a matter of law, voluntary return or offer voluntary departure to any UAC who is apprehended in the U.S. ICE DRO may however, under limited circumstances, allow a UAC from a contiguous country who is apprehended at a land border or POE to withdraw his or her application for admission if the UAC is properly screened and if return occurs within 48 hours of apprehension.

**Consultation Required Prior to Execution of Removal Order.**

Prior to executing a removal order, ICE/DRO must ensure that DHS has consulted the Department of State's Country Reports on Human Rights Practices and the Trafficking in Persons' Report in assessing whether to repatriate a UAC to a particular country. Copies of the referenced reports will be placed in the UAC A-file.

**Expedited Removal/Reinstatement**.

UAC are not subject to expedited removal or reinstatement, and if sought to be removed from the U.S., except for UAC from contiguous countries apprehended at a land border or POE and who are permitted to withdraw their application for admission as described in the TVPRA, must be placed in removal proceedings following the issuance of a Notice to Appear.

**Screening of UAC within 48 Hours after Apprehension**.

TVPRA requires all UAC who are apprehended at the border or POE and are determined to be a national or habitual resident of a country contiguous with the United States, to undergo a screening process prior to repatriation. Following the screening and subsequent agency determinations, certain UAC may be permitted to withdraw their application for admission. If, within 48 hours, the UAC is not permitted to withdraw his or her application for admission, or if an agency determination is not made, the UAC must be placed in removal proceedings and transferred to HHS immediately. **Therefore**, **ICE should not accept the physical custody transfer of UAC who have not first been screened to determine if the UAC may be allowed to withdraw the application.**

*UAC Screening: A UAC who is a national or habitual resident of a country that is contiguous with the United States (i.e. Canada and Mexico) may be permitted to withdraw the application for admission and/or be voluntarily returned if the apprehending agency determines that:*

1. *The UAC is able to make an independent decision to withdraw the application for admission to the United States and/or be voluntarily returned to his/her country of nationality or last habitual residence.*
    a. *The apprehending agency must determine whether the UAC is able to make an independent decision on a case by case basis. However, there are a few factors that the apprehending agency may take into consideration;*
        i. *UAC 14 years of age and older are presumptively able to make an independent decision.*

ii. *UAC under the age of 14 are presumptively unable to make an independent decision.*

b. *The guidelines above do not alleviate the need to determine the ability of the UAC to make an independent decision on a case-by-case basis These presumptions may be overcome based on a number of factors including, but not limited to, the child's intelligence, education level, familiarity with the immigration process, and physical and mental state at the time of processing.*

2. *The UAC does not have a fear of returning to his or her country of nationality or last habitual residence owing to a credible fear of persecution.*
   a. *CBP will use Form I-770 to provide the UAC with an opportunity to express such a fear of returning. If the UAC indicates a fear or identifying factors indicate a fear of return is likely to exist, then removal proceedings will be initiated under section 240 of the INA and the UAC will be transferred to HHS custody. CBP will refer these cases to U.S. Citizenship and Immigration Services (USCIS), Asylum Office, for a credible fear determination. The TVPRA stipulates that the USCIS Asylum Office has initial jurisdiction over* ***all*** *UAC who indicate a fear of return.*

3. *The UAC has not been a victim of a severe form of trafficking in persons and there is no credible evidence that the UAC is at risk of being trafficked upon return to his or her country of nationality or last habitual residence.*
   a. *CBP developed a UAC Screening Addendum to assess the likelihood that a UAC has been a victim of trafficking or is at risk of being trafficked. If the UAC claims to have been a victim, or appears to be at risk, removal proceedings will be initiated under section 240 of the INA and the UAC will be transferred to HHS custody. CBP will refer these cases to (ICE Office of Investigations for further investigation.*

*When it is determined that the UAC does not meet any of the above criteria, only then can the UAC be processed as a withdrawal or voluntary return. Current policies regarding repatriation, as outlined by local Repatriation Agreements as well as the April 2007 DRO Repatriation of UAC Policy, remain in effect. UAC must be returned to appropriate government officials of contiguous countries during reasonable business hours.*

*If a UAC does* ***not*** *meet the criteria or if the apprehending agency* ***cannot*** *make a determination within 48 hours of apprehension, then the UAC shall be placed in removal proceedings under section 240 of the INA and immediately transferred to HHS.*

**New statutorily mandated time frame under which HHS must accept UAC for placement; transfer requirements.**

**Should a request be made by CBP to transport UAC apprehended by CBP and therefore in the custody of CBP, ICE/DRO will accept custody of the UAC from CBP only after HHS placement and bed space is confirmed. Further, ICE/DRO officers are instructed to only accept custody of a UAC for purposes of transportation to HHS for placement, 1) after the UAC has been screened as required by the TVPRA or 48 hours have passed since the UAC was apprehended, 2) alienage has been determined and the minor has been processed for removal; and 3) HHS has confirmed placement. ICE/DRO should also review the NTA prior to accepting a UAC to confirm that the certificate of service of the NTAs indicates service upon HHS and the UAC in all cases.**

**Timeline for Transfer of Custody to HHS**

Under the terms of the TVPRA, UAC can be broken into two distinct groups: 1) UAC from contiguous countries who are apprehended at a land border or POE and who may be permitted to withdraw their application for admission; and 2) all other UAC encountered by the federal government. Section 235 of the TVPRA establishes two new statutorily-mandated timeframes in which UAC must be transferred to HHS. UAC from contiguous countries must be transferred to HHS immediately upon a determination that the UAC will not be permitted to withdraw their application for admission or 48 hours after arrest, whichever occurs sooner. All other UAC must be transferred to HHS, except for cases of exceptional circumstances, within 72 hours of determining that the child is a UAC. Congress did not provide the same exceptional circumstance for a delay of transferring the first group of UAC.

The volume of UAC likely to require housing by and transportation to HHS is likely to increase significantly. As of March 13, 2009, while HHS has indicated that it does not have the funding to increase available bed space, currently at 1650, HHS intends to request additional funding to increase bed space. HHS must accept all UAC within the new statutorily mandated time frames. In those instances when ICE requests placement from HHS for a UAC apprehended by ICE and in the physical custody of ICE, and while the UAC is awaiting transfer to an appropriate facility, UAC must be held in accordance with the current ICE Hold Room Policy, dated February 29, 2009 (attachment 2). ICE will separate UAC from unrelated adults whenever possible.

**Notification of HHS required**

TVPRA § 235(b)(2) stipulates that each apprehending department or agency shall notify HHS within 48 hours upon either the apprehension or discovery of a UAC or any claim or suspicion that an alien in custody is under the age of 18.

**Section 240 of the Immigration and Nationality Act (INA)**

The TVPRA requires, with limited exceptions, that all UAC whom DHS seeks to remove from the United States be placed in removal proceedings under Section 240 of the Immigration and Nationality Act (INA). The removal order of a UAC may not be reinstated, nor as a matter of law may UAC be placed in expedited removal.

**Voluntary Departure while Under 240 Proceedings**

TVPRA § eliminates the requirement of the UAC to pay for the cost of voluntary departure. Therefore, DRO shall make all necessary travel arrangements for the UAC and shall incur the associated costs.

**Special Immigrant Status (SIJ)**

SIJ specific consent authority is transferred from DHS to HHS.

Pages 312 through 328 redacted for the following reasons:
- - - - - - - - - - - - - - - - - - - - - - - - - - -
(b)(5)

**From:**
**To:** (b)(6), (b)(7)(c)
**Cc:**
**Subject:** Acting
**Date:** Thursday, July 24, 2014 5:18:00 PM
**Attachments:** Draft response - Neugebauer.docx
Goodlatte Response - June 24 letter - Q&A.docx

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(b)(6), (b)(7)(c)

For tomorrow, there is an 8:30 meeting I've been going to concerning the building of a family residential facility at Port Isabel. There is no need for you to attend but it's possible that (b)(6), (b)(7)(c) or (b)(6), (b)(7)(c) may email you tomorrow with some random request or update. (b)(6), (b)(7)(c) sometimes calls in for FLO-type issues and (b)(6), (b)(7)(c) has started attending for CALD. (b)(6), (b)(7)(c) has also gone down on occasion and can fill you in if need be.

We have received several letters a day from Congress concerning UAC issues. The standard response is about 3 pages long with a unique paragraph or two addressing the particular concern of the Senator or Representative. I've attached a sample from today. We've given up the war on trying to limit the response to relevant issues so there's no need to beat that dead horse.

We had a request to draft a response (from scratch to a letter from (b)(6), (b)(7)(c) which we submitted for Mike Davis's review this afternoon. Not sure what he'll do with it but there could be some follow up on that. Draft response attached – we only addressed the questions asked and did not draft a responsive letter.

(b)(6), (b)(7)(c) is working on a memo concerning the need for licensure of ICE residential facilities so if anything comes in on that front, assign to him.

I'm around if you need any assistance.
H: 703-255-(b)(6), (b)(7)(c)
C: 703-300-

Thank you for acting.

(b)(6), (b)(7)(c)
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-732-(b)(6), (b)(7)(c)
BB: 202-256-(b)(6), (b)(7)(c)

of Information Act, 5 USC §§ 552(b)(5), (b)(7).

Pages 331 through 334 redacted for the following reasons:
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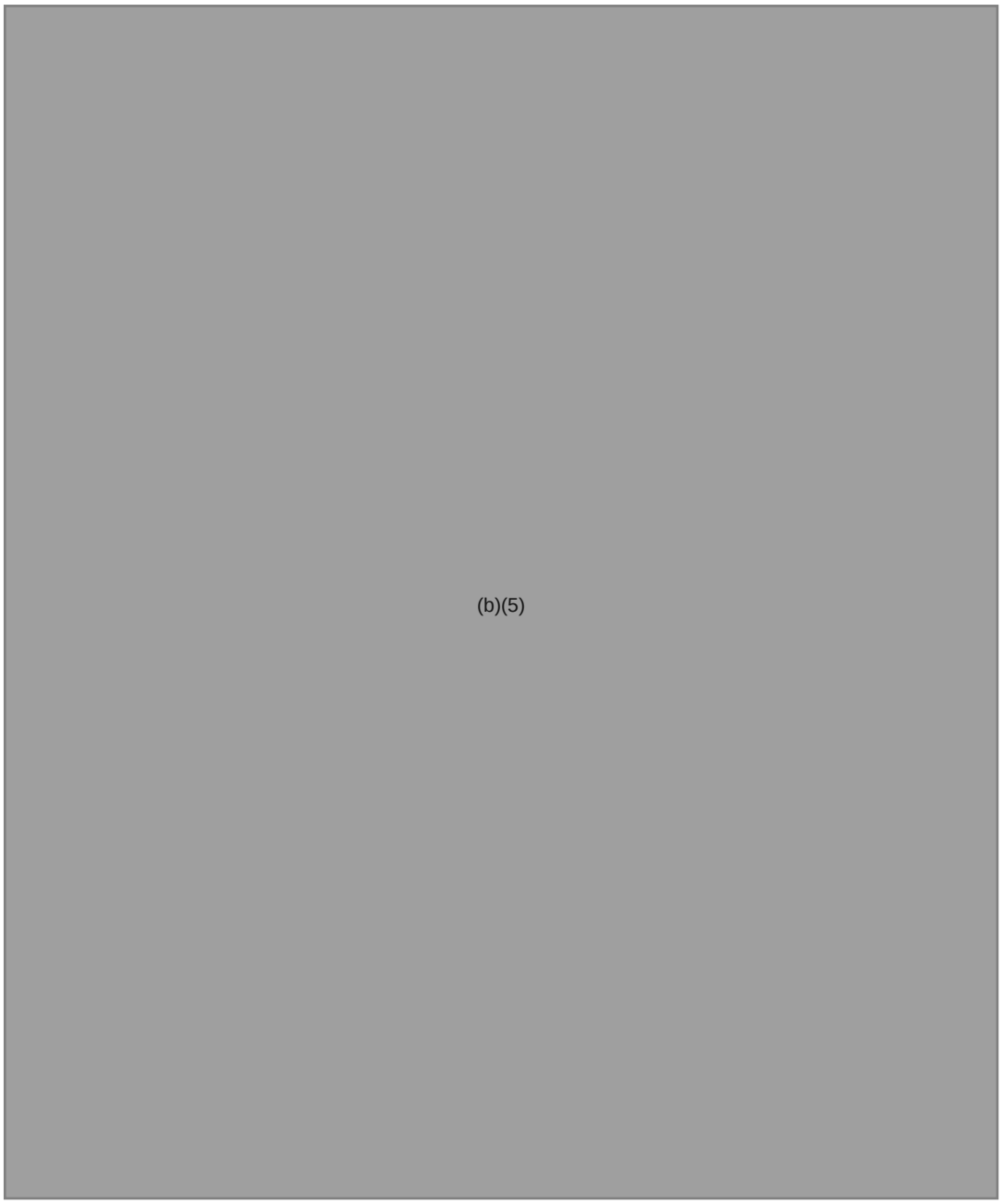
(b)(5)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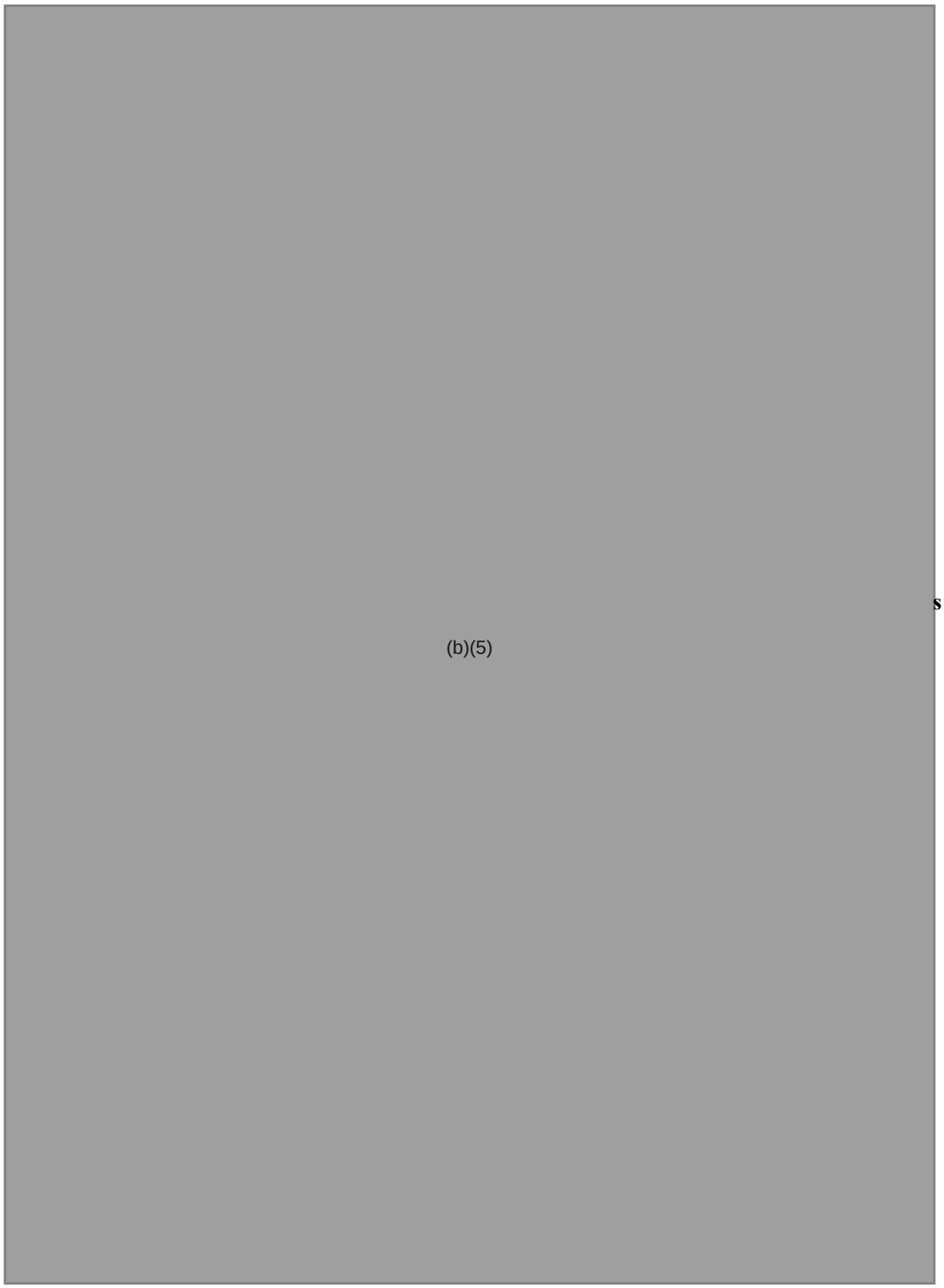
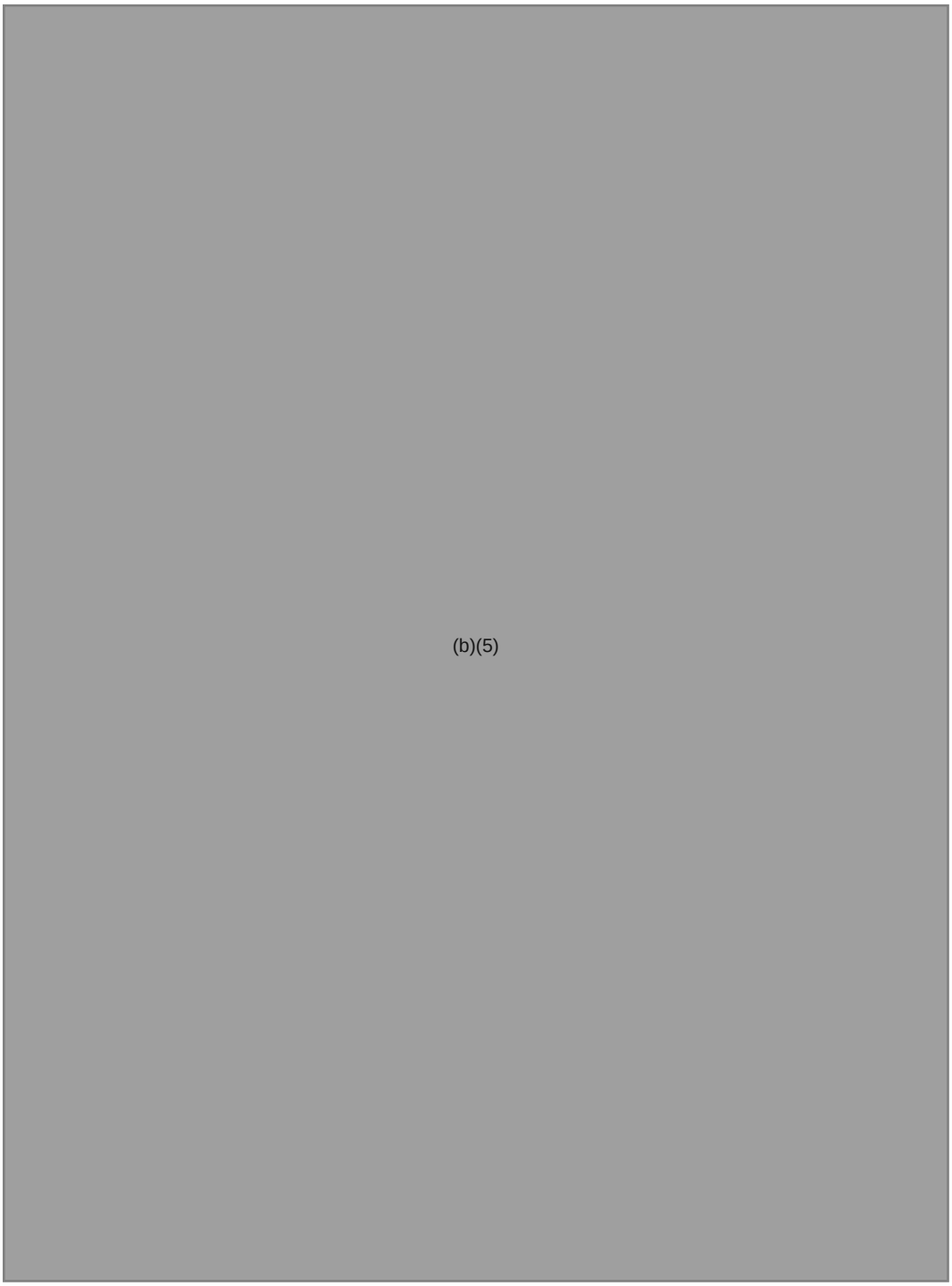

(b)(5)


(b)(5)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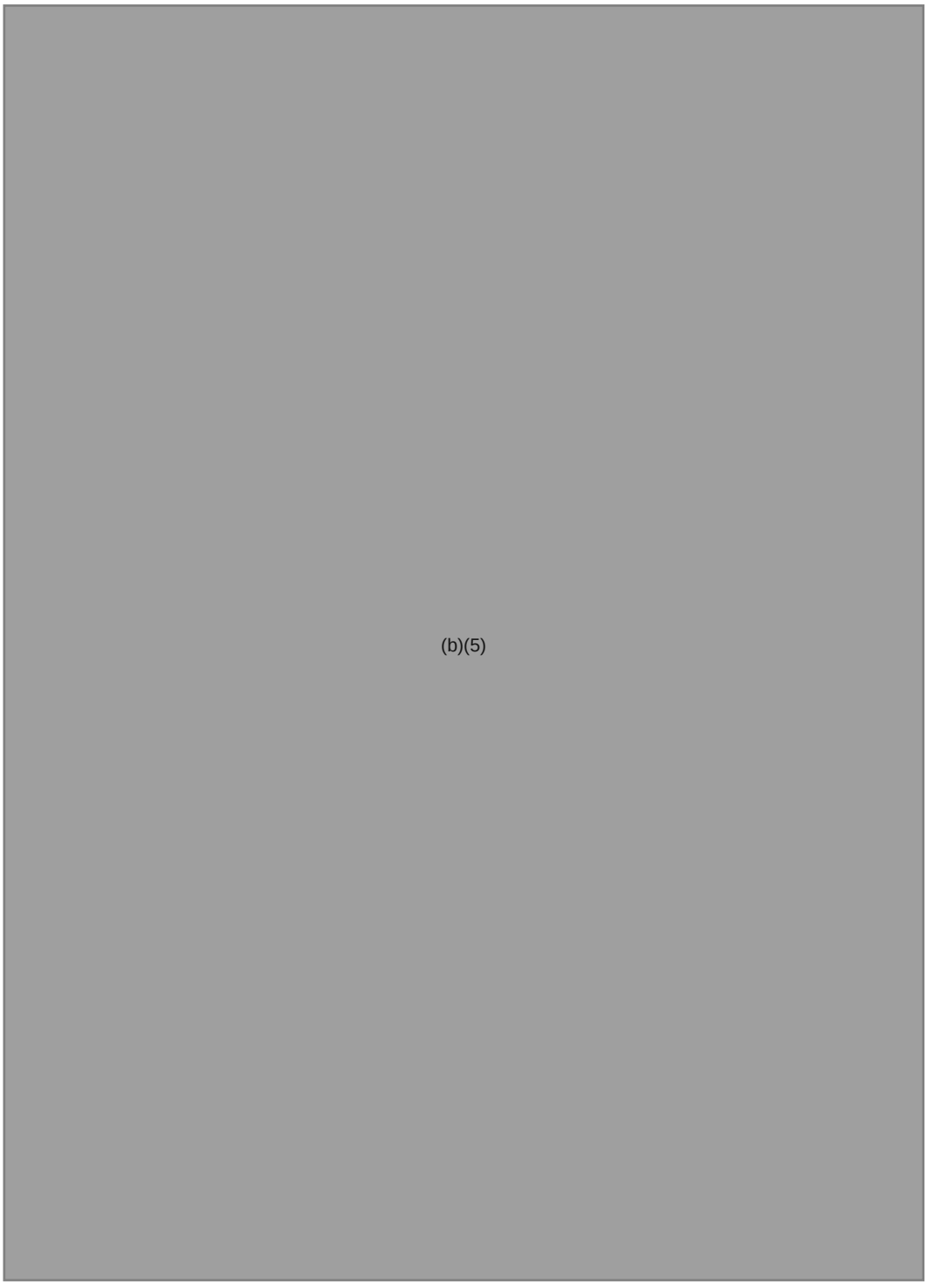
(b)(5)

(b)(5)

**From:** (b)(6), (b)(7)(c)
**To:** Davis, Mike P; (b)(6), (b)(7)(c)
**Subject:** Aging out of a family facility
**Date:** Friday, August 15, 2014 5:57:00 PM

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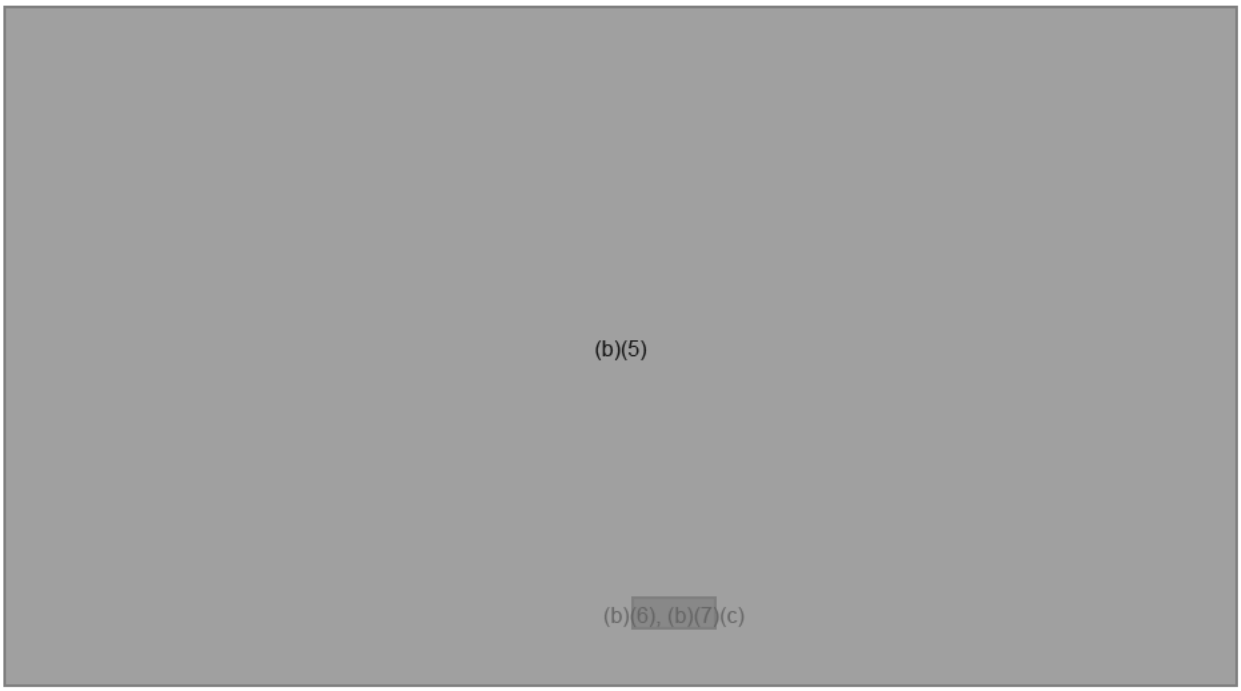
Mike and (b)(6), (b)(7)(c)




(b)(6), (b)(7)(c)
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-732(b)(6), (b)(7)(c)
BB: 202-246(b)(6), (b)(7)(c)



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**From:** (b)(6), (b)(7)(c)
**Sent:** Friday, August 15, 2014 5:44 PM
**To:** (b)(6), (b)(7)(c)
**Cc:** (b)(6), (b)(7)(c) Johnson, Tae D; (b)(6), (b)(7)(c)
**Subject:** RE: Aging out of a family facility

Deane:

(b)(5)

(b)(6), (b)(7)(c)
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-732(b)(6), (b)(7)(c)
BB: 202-246(b)(6), (b)(7)(c)



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**From:** (b)(6), (b)(7)(c)
**Sent:** Friday, August 15, 2014 5:37 PM
**To:**
**Cc:** (b)(6), (b)(7)(c) Johnson, Tae D; (b)(6), (b)(7)(c)
**Subject:** Aging out of a family facility

(b)(6), (b)(7)(c)

(b)(5)

(b)(5)

(b)(5)




(b)(6), (b)(7)(c)

**From:**
**To:** (b)(6), (b)(7)(c)
**Subject:** Artesia medical staffing issues
**Date:** Wednesday, October 29, 2014 2:41:00 PM
**Attachments:** Flores_Settlement_Implementation_Questions_Oct_2014.pdf

(b)(6), (b)(7)(c)

In preparation for a meeting with *Flores* counsel tomorrow Mike Davis asked for some facts on the medical staff at Artesia and for information responsive to 4 specific questions raised by plaintiff's counsel concerning monitoring weight loss, mental health, respiratory illness, and fever (see attachment at pp. 14-15 ). In response to Mike, I'm hoping to provide a brief overview of medical staff at Artesia and a short summary of how issues such as weight loss would be identified and monitored.

5(n) Do defendants have written standards regarding monitoring and treatment of weight loss and/or failure to thrive in minors held in family detention facilities?

5(o) Do defendants have written standards regarding the monitoring and treatment of the mental health of mothers and minors in family detention facilities?

5(p) Do defendants have written standards regarding monitoring and treatment of respiratory illnesses in minors held in family detention?

5(q) Do defendants have written standards regarding monitoring and treatment of fever in children held in family detention?

Our draft response to these questions is (b)(5) (b)(5) (b)(5) but Mike asked for any additional specifics he may be able to provide should it come up during the meeting tomorrow.

Sorry for the short turnaround. Let me know if you have any questions.

(b)(6), (b)(7)(c)
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-732 (b)(6), (b)(7)(c)
BB: 202-24 (b)(6), (b)(7)(c)

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# CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW

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October 2, 2014

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Trial Attorney
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P.O. Box 868, Ben Franklin Station
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*Via e-mail and first class mail*

Re: *Flores*, et al., *v. Holder*, et al., No. CV 85-4544 (C.D. Cal.).

Dea (b)(6), (b)(7)(c)

Plaintiffs ask defendants Attorney General, Department of Homeland Security (DHS), and their subordinate entities ("defendants") the following questions pursuant to ¶ 29 of the settlement[1] approved in the above referenced action on January 25, 1997 (Settlement):

1. Questions relating to implementation of ¶¶ 9, 10 and 41.

Paragraph 10 of the Settlement provides that the agreement shall apply to "[a]ll minors who are detained in the legal custody of the INS."

Paragraph 9 of the Settlement provides in pertinent part, "This Agreement sets out nationwide policy for the detention, release, and treatment of minors in the custody of the INS ..."

Definition 4 defines a "minor" as any person under the age of eighteen (18) years who is detained in the legal custody of the INS.

Paragraph 41 provides that "Defendants … principals, agents, and successors of such principals and agents shall be fully and unequivocally bound hereunder to the full extent authorized by law."

a) Do defendants agree that the Settlement governs the detention, release, and treatment of minors in DHS's legal custody?

[1] Paragraph 29 provides in pertinent part as follows: "… Plaintiffs' counsel shall have the opportunity to submit questions, on a semi-annual basis, to the Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation with regard to the implementation of this Agreement and the information provided to Plaintiffs' counsel during the preceding six-month period pursuant to Paragraph 28."

If not, please identify the facts, documents, and tangible things on which you base your response.

b) Do defendants agree that the Settlement is binding on the Executive Office of Immigration Review?

If not, please identify the facts, documents, and tangible things on which you base your response.

c) Do defendants consider themselves bound to comply with the Settlement with respect to minors taken into DHS custody pursuant to the Immigration and Nationality Act (INA) who are accompanied by an adult parent?

If not, please identify the facts, documents, and tangible things on which you base your response.

d) Do defendants treat minors they take into DHS custody pursuant to the INA differently if they are apprehended in the company of an adult mother as opposed to an adult father? If so —

How does such treatment differ?

What law and facts justify disparate treatment of minors depending on the gender of their accompanying parent?

e) Do defendants treat minors they take into DHS custody pursuant to the INA differently if they are arrested in the company of a parent as opposed to in the company of an adult family member other than a parent? If so —

How does such treatment differ?

What law and facts justify disparate treatment of minors depending on the type of accompanying adult relative?

2. Questions relating to implementation of ¶¶ 14 and 18.

Paragraph 14 of the Settlement provides: "Where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS shall release a minor from its custody without unnecessary delay …"

Paragraph 18 of the Settlement provides: "Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, shall make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor pursuant to Paragraph 14 above. Such efforts at family reunification shall continue so long as the minor is in INS custody."

a) Is it defendants' policy and practice to detain minors who unlawfully enter with their mothers in lieu of releasing them on bond, recognizance, or parole, pending a determination of their right to remain in the United States? If so —

Do defendants follow such policy and practice uniformly: that is, without regard to individual minors' age, reasons for coming to the United States, prior immigration violations, family ties in the United States, or potential eligibility for lawful status?

What evidence, if any, do defendants have that such policy and practice ensure the safety of others?

What instructions or directions, if any, have defendants issued to their employees, agents or officers regarding the detention or release of minors detained with their mothers?

What, if any, objections to defendants have to providing class counsel with copies of any such instructions or directions?

b) Do defendants contend that minors taken into DHS custody pursuant to the INA with an adult mother present a risk to national security? If so —

What evidence supports such contention?

How long do defendants believe such minors will continue to present a risk to national security?

What evidence, if any, do defendants have that minors who enter without authorization with an adult mother present a risk to national security greater than that presented by minors who so enter unaccompanied?

What evidence, if any, do defendants have that minors who enter without authorization with an adult mother present a risk to national security different from or greater than that presented by adults who so enter without children?

What evidence, if any, do defendants have that minors who enter without authorization with an adult mother present a risk to national security different from or greater than that presented by minors who so enter with an adult father?

Do defendants contend that accompanied minors entering without authorization present impair national security such that defendants are excused from complying with all or part of the Settlement?

If so, as to which parts of the Settlement do defendants believe their compliance excused and what is the legal and factual basis for defendants' position?

c) Is it defendants' policy and practice to refuse minors taken into custody with their mothers the favorable exercise of prosecutorial discretion pursuant to the memoranda

issued June 17, 2011, by Immigration and Customs Enforcement Director John Morton? If so —

> Do defendants follow such policy and practice uniformly: that is, without regard to individual minors' age, reasons for coming to the United States, prior immigration violations, family ties in the United States, or potential eligibility for lawful status?
>
> What facts, documents, and tangible things justify such policy and practice?

d) Is it defendants' policy and practice to advise minors taken into custody with their mothers that they might qualify for the favorable exercise of prosecutorial discretion pursuant to the memoranda issued June 17, 2011, by Immigration and Customs Enforcement Director John Morton?

> If so, do defendants follow such policy and practice uniformly: that is, without regard to individual minors' age, reasons for coming to the United States, prior immigration violations, family ties in the United States, or potential eligibility for lawful status?

e) Do defendants make and record prompt and continuous efforts toward the release of minors detained at the facility in Artesia, New Mexico? If so —

> Where are such records kept?
>
> What objections, if any, do defendants have to providing class counsel with copies of such records?
>
> If not, please identify the facts, documents, and tangible things that justify defendants' failure to make and record prompt and continuous efforts toward the release of minors detained at the facility in Artesia, New Mexico.

f) Do defendants make and record prompt and continuous efforts toward the release of minors detained at the facility in Karnes City, Texas? If so —

> Where are such records kept?
>
> What objections, if any, do defendants have to providing class counsel with copies of such records?
>
> If not, please identify the facts, documents, and tangible things that justify defendants' failure to make and record prompt and continuous efforts toward the release of minors detained at the facility in Karnes City, Texas.

g) Do defendants make and record prompt and continuous efforts toward the release of minors detained at the facility in Leesport, Pennsylvania? If so —

> Where are such records kept?

What objections, if any, do defendants have to providing class counsel with copies of such records?

If not, please identify the facts, documents, and tangible things that justify defendants' failure to make and record prompt and continuous efforts toward the release of minors detained at the facility in Leesport, Pennsylvania.

h) When setting bond for minors detained with a parent, do defendants consider parent and child separately, or do defendants determine bond for them as a family unit?

i) What factors do defendants consider when setting bond for —

A detained minor individually?

A detained family that includes a minor, if bond is determined for the family as a whole?

A parent of a detained minor, if bond is determined for the parent and child separately?

j) Do defendants consider potential eligibility for Special Immigrant Juvenile (SIJ) status in setting bond for minors apprehended with an adult parent? If so —

Have defendants issued written instructions or directions requiring that defendants' employees, agents or officers consider a minor's eligibility for Special Immigrant Juvenile (SIJ) status when making a bond determination?

What objections, if any, do defendants have to providing class counsel with copies of any such instructions or directions?

k) Do defendants consider potential eligibility for Special Immigrant Juvenile (SIJ) status in setting bond for minors apprehended unaccompanied by an adult parent? If so —

Have defendants issued written instructions or directions requiring that defendants' employees, agents or officers consider a minor's eligibility for Special Immigrant Juvenile (SIJ) status when making a bond determination?

What objections, if any, do defendants have to providing class counsel with copies of any such instructions or directions?

l) Do defendants consider national security in setting bond for minors apprehended with an adult mother? If so —

What factors do defendants consider in assessing the impact releasing minors apprehended with an adult mother will have on national security?

Have defendants issued written instructions or directions requiring that defendants' employees, agents or officers consider national security in setting bond for minors apprehended with an adult mother?

What objections, if any, do defendants have to providing class counsel with copies of any such instructions or directions?

m) Do defendants consider national security in setting bond for minors apprehended with an adult father? If so —

What factors do defendants consider in assessing the impact releasing minors apprehended with an adult father will have on national security?

Have defendants issued written instructions or directions requiring that defendants' employees, agents or officers consider national security in setting bond for minors apprehended with an adult father?

What objections, if any, do defendants have to providing class counsel with copies of any such instructions or directions?

n) Do defendants consider the national security in setting bond for unaccompanied minors detained pursuant to the INA? If so —

What factors do defendants consider in assessing the impact releasing unaccompanied minors will have on national security?

Have defendants issued written instructions or directions requiring that defendants' employees, agents or officers consider the national security in setting bond for unaccompanied minors detained pursuant to the INA?

What objections, if any, do defendants have to providing class counsel with copies of any such instructions or directions?

o) Do defendants contend that minors apprehended with an adult mother should be detained in order to deter others from entering the United States without authorization? If so —

What evidence, if any, is there that detaining minors apprehended with an adult mother deters others from entering the United States without authorization?

Have defendants issued written instructions or directions requiring that defendants' employees, agents or officers minors detain minors apprehended with an adult mother in order to deter others from entering the United States without authorization?

What objections, if any, do defendants have to providing class counsel with copies of any such instructions or directions?

p) Do defendants contend that minors apprehended with an adult father should be detained in order to deter others from entering the United States without authorization? If so —

What evidence, if any, is there that detaining minors apprehended with an adult father deters others from entering the United States without authorization?

Have defendants issued written instructions or directions requiring that defendants' employees, agents or officers minors detain minors apprehended with an adult father in order to deter others from entering the United States without authorization?

What objections, if any, do defendants have to providing class counsel with copies of any such instructions or directions?

q) Do defendants contend that minors apprehended unaccompanied by an adult parent should be detained in order to deter others from entering the United States without authorization? If so —

What evidence, if any, is there that detaining unaccompanied minors deters others from entering the United States without authorization?

Have defendants issued written instructions or directions requiring that defendants' employees, agents or officers detain minors apprehended without an adult parent in order to deter others from entering the United States without authorization?

What objections, if any, do defendants have to providing class counsel with copies of any such instructions or directions?

r) In deciding whether to detain a parents arrested with a minor child, or release such parent on bond, recognizance or parole, is it defendants policy and practice to consider the best interests of the detained child? If so —

What do such policy and practice provide?

Where are such policy and practice published?

What are defendants' procedures for monitoring compliance with such policy and practice, and where are reports of such monitoring, if any, kept and published?

Have defendants issued written instructions or directions requiring that defendants' employees, agents or officers consider minors' best interests in determining whether to release their parents on bond, recognizance, or parole?

What objections, if any, do defendants have to providing class counsel with copies of any such instructions or directions?

s) For the period from June 1, 2014, to September 30, 2014 —

What percentage and raw number of bond-eligible families comprising one or more minors did defendants determine should be detained without bond?

What percentage and raw number of children apprehended with an adult parent did defendants order detained without bond?

What percentage and raw number of bond-ineligible families comprising one or more minors which passed credible fear interviews did defendants release on parole?

What percentage and raw number of children who were part of bond-ineligible families which passed credible fear interviews did defendants release on parole?

t) For the period from June 1, 2013, to September 30, 2013 —

What percentage and raw number of detained, bond-eligible families comprising one or more minors did defendants order held without bond?

What percentage and raw number of children who were part of bond-eligible families did defendants order detained without bond?

What percentage and raw number of bond-ineligible families comprising one or more minors which passed credible fear interviews did defendants release on parole?

What percentage and raw number of children who were part of bond-ineligible families which passed credible fear interviews did defendants release on parole?

u) Of bonds set by DHS between June 1, 2014, and September 30, 2014, what was the average bond set for the release of —

An individual minor?

An individual minor and parent, when bond was set for the family as a whole?

A parent of a detained minor, if bond was set for parent and child individually?

v) Of bonds set by DHS between June 1, 2013, and September 30, 2013, what was the average bond set for the release of —

An individual minor?

An individual minor and parent, when bond was set for the family as a whole?

A parent of a detained minor, if bond was set for parent and child individually?

w) Of bonds set by DHS between June 1, 2014, and September 30, 2014, what percentage and raw number of families with one or more minors posted bond and were released?

x) Of bonds set by DHS between June 1, 2013, and September 30, 2013, what percentage and raw number of families with one or more minors posted bond and were released?

y) With respect to bond redetermined by immigration judges between June 1, 2014, and September 30, 2014, what percentage and raw number of families with one or more minors —

Were unable to post bond and remained detained?

Were released on recognizance?

Had the immigration judge's bond decision stayed by DHS appeal to the BIA?

z) With respect to release on bond or recognizance ordered by immigration judges between June 1, 2013, and September 30, 2013, what percentage and raw number of families with one or more minors —

Were unable to post bond and remained detained?

Were released on recognizance?

Had the immigration judge's bond decision stayed by DHS appeal to the BIA?

3. Questions relating to implementation of ¶ 24A.

Paragraph 24A of the Settlement provides: "A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing."

a) Are minors detained at the facility in Artesia, New Mexico, given a bond redetermination hearing before an immigration judge in every case unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing? If so —

Where are signed Notice of Custody Determination forms kept?

What objection, if any, do defendants have to providing class counsel with copies of such forms?

If not, please identify the facts, documents, and tangible things that justify defendants' failure give minors detained at the facility in Artesia, New Mexico, a bond redetermination hearing before an immigration judge in every case unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing.

b) Are minors detained at the facility in Karnes City, Texas, given a bond redetermination hearing before an immigration judge in every case unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing? If so —

Where are signed Notice of Custody Determination forms kept?

What objection, if any, do defendants have to providing class counsel with copies of such forms?

If not, please identify the facts, documents, and tangible things that justify defendants' failure give minors detained at the facility in Karnes City, Texas, a bond redetermination hearing before an immigration judge in every case unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing.

c) Are minors detained at the facility in Leesport, Pennsylvania, given a bond redetermination hearing before an immigration judge in every case unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing? If so —

Where are signed Notice of Custody Determination forms kept?

What objection, if any, do defendants have to providing class counsel with copies of such forms?

If not, please identify the facts, documents, and tangible things that justify defendants' failure give minors detained at the facility in Leesport, Pennsylvania, a bond redetermination hearing before an immigration judge in every case unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing.

4. Questions relating to implementation of ¶ 11.

Paragraph 11 of the Settlement provides in pertinent part: "The INS shall place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with its interests to ensure the minor's timely appearance before the INS and the immigration courts and to protect the minor's well-being and that of others."

a) Do defendants identify, for each detained minor, the least restrictive setting appropriate to the minor's age and special needs?

If so, please describe what information is collected, what tools and assessments are used to collect that information, what factors are considered, and who is responsible for the determination and where this information is recorded.

If not, please identify the facts, documents, and tangible things that justify defendants' failure to identify, for each detained minor, the least restrictive setting appropriate to the minor's age and special needs.

5. Questions relating to implementation of Definition 6 and ¶¶ 19 and 24C.

Definition 6 of the Settlement provides in pertinent part, "The term 'licensed program' shall refer to any program, agency or organization that is licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors… All homes and facilities operated by licensed programs, including facilities for special needs minors, shall be non-secure as required under state law; …"

Paragraph 19 provides, "Except as provided in Paragraphs 12 or 21, such minor shall be placed temporarily in a licensed program until such time as release can be effected in accordance with Paragraph 14 above or until the minor's immigration proceedings are concluded, whichever occurs earlier."

Paragraph 24C provides: "In order to permit judicial review of Defendants' placement decisions as provided in this Agreement, Defendants shall provide minors not placed in licensed programs with a notice of the reasons for housing the minor in a detention or medium security facility."

a) Is the detention facility in Artesia, New Mexico, state-licensed to provide residential, group, or foster care services for dependent children? If so —

What state agency issued such license?

What is the license's numerical or other official designation?

On what date was the license issued?

What was the date of the most recent visit or inspection by the licensing agency?

What objections, if any, do defendants have to providing class counsel with a copy of such license?

If not, please identify the facts, documents, and tangible things that excuse the absence of such licensing for the facility.

b) If the detention facility in Artesia, New Mexico, is not state-licensed to provide residential, group, or foster care services for dependent children —

Has the facility been licensed, approved or certified by any other entity? If so, what entity licensed, approved, or certified the facility, what standards did the facility meet, and on what date was the facility licensed, approved, or certified?

What objections, if any, do defendants have to providing class counsel with a copy of any such standards and license, approval or certification?

c) Are minors detained in the facility in Artesia, New Mexico, provided a notice of the reasons for housing them in a detention or medium security facility? If so —

Where are records, if any, of such notices kept?

What objections, if any, do defendants have to providing copies of such records to class counsel?

If not, please identify the facts, documents, and tangible things that excuse defendants' failure to provide such notice.

d) Is the detention facility in Karnes City, Texas, state-licensed to provide residential, group, or foster care services for dependent children? If so —

What State agency issued such license?

What is the license's numerical or other official designation?

On what date was the license issued?

What was the date of the most recent visit or inspection by the licensing agency?

What objections, if any, do defendants have to providing class counsel with a copy of such license?

If not, please identify the facts, documents, and tangible things that excuse the absence of such licensing for the facility.

e) If the detention facility in Karnes City, Texas, is not state-licensed to provide residential, group, or foster care services for dependent children —

Has the facility been licensed, approved or certified by any other entity? If so, what entity licensed, approved, or certified the facility, what standards did the facility meet, and on what date was the facility licensed, approved, or certified?

What objections, if any, do defendants have to providing class counsel with a copy of any such standards and license, approval or certification?

f) Are minors detained in the facility in Karnes City, Texas, provided a notice of the reasons for housing them in a detention or medium security facility? If so —

Where are records, if any, of such notices kept?

What objections, if any, do defendants have to providing copies of such records to class counsel?

If not, please identify the facts, documents, and tangible things that excuse defendants' failure to provide such notice.

g) Is the detention facility in Leesport, Pennsylvania, state-licensed to licensed to provide residential, group, or foster care services for dependent children? If so —

What State agency issued such license?

What is the license's numerical or other official designation?

On what date was the license issued?

What was the date of the most recent visit or inspection by the licensing agency?

What objections, if any, do defendants have to providing class counsel with a copy of such license?

If not, please identify the facts, documents, and tangible things that justify the absence of such licensing for the facility.

h) If the detention facility in Leesport, Pennsylvania, is not state-licensed to provide residential, group, or foster care services for dependent children —

Has the facility been licensed, approved or certified by any other entity? If so, what entity licensed, approved, or certified the facility, what standards did the facility meet, and on what date was the facility licensed, approved, or certified?

What objections, if any, do defendants have to providing class counsel with a copy of any such standards and license, approval or certification?

Are minors placed in such facility provided a notice of the reasons for housing them in a detention or medium security facility, and if so, where are records of such notice kept and do defendants object to providing copies of such records to class counsel?

i) Are minors detained in the facility in Leesport, Pennsylvania, provided a notice of the reasons for housing them in a detention or medium security facility? If so —

Where are records, if any, of such notices kept?

What objections, if any, do defendants have to providing copies of such records to class counsel?

If not, please identify the facts, documents, and tangible things that excuse defendants' failure to provide such notice.

j) Is the detention facility in Artesia, New Mexico, non-secure as required under state law?

If so, under what state law do defendants deem the facility non-secure?

If not, please identify the facts, documents, and tangible things that justify housing class members at the facility in Artesia, New Mexico.

k) Is the detention facility in Karnes City, Texas, non-secure as required under state law?

If so, under what state law do defendants deem the facility non-secure?

If not, please identify the facts, documents, and tangible things that justify housing class members at the facility in Karnes City, Texas.

l) Is the detention facility in Leesport, Pennsylvania, non-secure as required under state law?

If so, under what state law do defendants deem the facility non-secure?

If not, please identify the facts, documents, and tangible things that justify housing class members at the facility in Leesport, Pennsylvania.

m) In what facilities do defendants currently hold minors? For each such facility —

What is the name and location of the facility?

What type of facility is it: *e.g.*, shelter, transitional foster care, long term foster care, group home, residential treatment, staff secure, or secure?

For each facility identified, is the facility licensed, and if so, what type of license does the facility have and what agency issued the license?

n) Do defendants have written standards regarding monitoring and treatment of weight loss and/or failure to thrive in minors held in family detention facilities? If so —

What do such standards provide?

Where are such standards published?

What are defendants' procedures for monitoring individual facilities' compliance with such standards, and where are reports of such monitoring, if any, kept and published?

What objections, if any, do defendants have to providing class counsel with copies of any such standards?

If defendants have no such standards, why are there no such standards?

o) Do defendants have written standards regarding the monitoring and treatment of the mental health of mothers and minors in family detention facilities? If so —

What do such standards provide?

Where are such standards published?

What are defendants' procedures for monitoring individual facilities' compliance with such standards, and where are reports of such monitoring, if any, kept and published?

What objections, if any, do defendants have to providing class counsel with copies of any such standards?

If defendants have no such standards, why are there no such standards?

p) Do defendants have written standards regarding monitoring and treatment of respiratory illnesses in minors held in family detention? If so —

What do such standards provide?

Where are such standards published?

What are defendants' procedures for monitoring individual facilities' compliance with such standards, and where are reports of such monitoring, if any, kept and published?

What objections, if any, do defendants have to providing class counsel with copies of any such standards?

If defendants have no such standards, why are there no such standards?

q) Do defendants have written standards regarding monitoring and treatment of fever in children held in family detention? If so —

What do such standards provide?

Where are such standards published?

What are defendants' procedures for monitoring individual facilities' compliance with such standards, and where are reports of such monitoring, if any, kept and published?

What objections, if any, do defendants have to providing class counsel with copies of any such standards?

If defendants have no such standards, why are there no such standards?

6. Questions relating to implementation of ¶ 12.

Paragraph 12 of the Settlement provides in pertinent part: "Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS's concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor."

a) Do defendants have written standards specifying the minimum protections required to ensure that facilities are "safe and sanitary"? If so —

What do such standards provide?

Where are such standards published?

What are defendants' procedures for monitoring individual facilities' compliance with such standards, and where are reports of such monitoring, if any, kept and published?

What objections, if any, do defendants have to providing class counsel with copies of any such standards, procedures and reports?

If defendants have no such standards or procedures, why not?

b) Do defendants have written standards specifying the minimum and maximum temperatures for rooms at Border Patrol facilities in which minors are held following arrest? If so —

What do such standards provide?

Where are such standards published?

What are defendants' procedures for monitoring individual facilities' compliance with such standards, and where are reports of such monitoring, if any, kept and published?

What objections, if any, do defendants have to providing class counsel with copies of any such standards, procedures and reports?

If defendants have no such standards or procedures, why not?

c) Do defendants have written standards on providing minors mattresses and blankets at Border Patrol facilities in which such minors are held following arrest? If so —

What do such standards provide?

Where are such standards published?

What are defendants' procedures for monitoring individual facilities' compliance with such standards, and where are reports of such monitoring, if any, kept and published?

What objections, if any, do defendants have to providing class counsel with copies of any such standards, procedures and reports?

If defendants have no such standards or procedures, why not?

d) Do defendants have written standards regarding the retention, removal, or destruction of minors' jackets, sweaters, identity documents and other personal property at Border Patrol facilities in which such minors are held following arrest? If so —

What do such standards provide?

Where are such standards published?

What are defendants' procedures for monitoring individual facilities' compliance with such standards, and where are reports of such monitoring, if any, kept and published?

What objections, if any, do defendants have to providing class counsel with copies of any such standards, procedures and reports?

If defendants have no such standards or procedures, why not?

e) Do defendants have written standards prescribing the maximum capacity of rooms at Border Patrol facilities in which such minors are held following arrest? If so —

What do such standards provide?

Where are such standards published?

What are defendants' procedures for monitoring individual facilities' compliance with such standards, and where are reports of such monitoring, if any, kept and published?

What objections, if any, do defendants have to providing class counsel with copies of any such standards, procedures and reports?

If defendants have no such standards or procedures, why not?

f) Do defendants have written standards prescribing minors' access to toilets and sinks at Border Patrol facilities in which such minors are held following arrest? If so —

What do such standards provide?

Where are such standards published?

What are defendants' procedures for monitoring individual facilities' compliance with such standards, and where are reports of such monitoring, if any, kept and published?

What objections, if any, do defendants have to providing class counsel with copies of any such standards, procedures and reports?

If defendants have no such standards or procedures, why not?

g) Do defendants have written standards regulating the quality and quantity of food and drink minors are to be provided in Border Patrol facilities following arrest? If so —

What do such standards provide?

Where are such standards published?

What are defendants' procedures for monitoring individual facilities' compliance with such standards, and where are reports of such monitoring, if any, kept and published?

What objections, if any, do defendants have to providing class counsel with copies of any such standards, procedures and reports?

If defendants have no such standards or procedures, why not?

h) Do defendants have written standards regulating what information minors are to be provided when transferred from Border Patrol facilities to another detention facility? If so —

What do such standards provide?

Where are such standards published?

What are defendants' procedures for monitoring individual facilities' compliance with such standards, and where are reports of such monitoring, if any, kept and published?

What objections, if any, do defendants have to providing class counsel with copies of any such standards, procedures and reports?

If defendants have no such standards or procedures, why not?

i) Do defendants have written standards prohibiting their agents, officers and employees from falsely informing minors that they will be deported or are being deported? If so —

What do such standards provide?

Where are such standards published?

What are defendants' procedures for monitoring individual facilities' compliance with such standards, and where are reports of such monitoring, if any, kept and published?

What objections, if any, do defendants have to providing class counsel with copies of any such standards, procedures and reports?

If defendants have no such standards or procedures, why not?

j) Do defendants have written standards prohibiting their agents, officers and employees from recording false information on documentation, including by obtaining signatures without having provided translation services or by falsely affixing a signature? If so —

What do such standards provide?

Where are such standards published?

What are defendants' procedures for monitoring individual facilities' compliance with such standards, and where are reports of such monitoring, if any, kept and published?

What objections, if any, do defendants have to providing class counsel with copies of any such standards, procedures and reports?

If defendants have no such standards or procedures, why not?

7. Questions relating to implementation of ¶ 12C.

Paragraph 12C provides: "In preparation for an 'emergency' or 'influx,' as described in Subparagraph B, the INS shall have a written plan that describes the reasonable efforts that it will take to place all minors as expeditiously as possible…The INS shall update this listing of additional beds on a quarterly basis and provide Plaintiffs' counsel with a copy of this listing.."

a) Do defendants have a written plan that describes the reasonable efforts that it will take to place all minors as expeditiously as possible in licensed facilities? If so —

Why have defendants not provided plaintiffs' counsel with quarterly updates of the listing of additional beds?

What objections, if any, do defendants have to providing class counsel with copies such written plans issued in 2013 and 2014?

If not, please identify the facts, documents, and tangible things that justify defendants' failure to have a written plan that describes the reasonable efforts they will take to place all minors as expeditiously as possible in licensed facilities.

b) Have defendants identified facilities that will or may become available in 2014 to provide additional beds for the expeditious placement of minors, whether accompanied or unaccompanied? If so —

What is the name, location and projected number of beds for each such facility?

Will defendants require each facility to be state-licensed before it admits minors?

8. Questions relating to implementation of ¶¶ 28A and 29.

Paragraph 28A in pertinent part provides as follows: "An INS Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation shall monitor compliance with the terms of this Agreement and shall maintain an up-to-date record of all minors who are placed in proceedings and remain in INS custody for longer than 72 hours. Statistical information on such minors shall be collected weekly from all INS district offices and Border Patrol stations."

Paragraph 29 provides in pertinent part: "… the INS shall provide to Plaintiffs' counsel the information collected pursuant to Paragraph 28, as permitted by law, and each INS policy or instruction issued to INS employees regarding the implementation of this Agreement."

a) Do defendants collect the statistical information described in ¶ 28A on a weekly basis? If so —

Why does the statistical report defendants have provided class counsel most recently report information through June 2013 only?

What objections, if any, do defendants have to providing class counsel with copies of the weekly reports for the period from July 2013, to the present, in hard copy and native format?

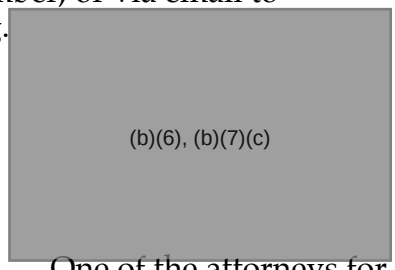
If not, please identify the facts, documents, and tangible things that justify defendants' failure to maintain an up-to-date record of all minors who are placed in proceedings and remain in INS custody for longer than 72 hours, to collect such information weekly, and/or failure to provide up-to-date information in reports.

b) Have defendants provided to class counsel each policy or instruction issued to their employees regarding the implementation of the Settlement? If not —

What facts, documents, and tangible things that justify defendants' failure to provide class counsel each policy or instruction issued to their employees regarding the implementation of the Settlement?

What objections, if any, do defendants have to providing class counsel with copies of such policies and instructions now?

Should defendants wish any clarification regarding the foregoing, I may be reached at the above address and telephone number, or via email to crholguin@centerforhumanrights.org.




One of the attorneys for plaintiffs

ccs: 

enter for Human Rights & Constitutional Law
outh Law Center
annah Benton, National Center for Youth Law
Munger, Tolles & Olsen LLP
American Civil Liberties Union

**From:** (b)(6), (b)(7)(c)
**To:**
**Subject:** Draft of Flores Answers
**Date:** Wednesday, October 22, 2014 12:13:00 PM
**Attachments:** Flores Counsel Letter Oct 2- Concerning Implementation - Hicks.docx

(b)(6), (b)(7)(c)

Last night and this morning, I reviewed and revised our draft answers to Flores counsel, which I'm going to provide to (b)(6), (b)(7)(c) I took this out of PLAnet because I wanted to delete some portions of the proposed answers without permanently changing what was in PLAnet. So, please take a look at this for outstanding issues and provide any supplementary information that JFRMU has provided you. You did very good work here in gather information and tagging answers to cleared language from other tasks – thank you.

(b)(6), (b)(7)(c)
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-732(b)(6), (b)(7)(c)
BB: 202-24(b)(6), (b)(7)(c)

Pages 367 through 400 redacted for the following reasons:
- - - - - - - - - - - - - - - - - - - - - - - - - - -
(b)(5)

The Enforcement and Removal Operations Law Division (EROLD) advises agency personnel on issues arising at any point between the arrest of an individual and his/her removal with significant resources dedicated to detention standards for both adults and children, alternatives to detention, detainer issues, location of fugitives, Fourth Amendment training, expedited removal, medical treatment of aliens in detention, and repatriation initiatives. EROLD also provides specialized support to the Homeland Security Investigations (HSI) Student and Exchange Visitor Program (SEVP), which oversees the enforcement and administration of laws involving nonimmigrant students in the F and M visa classifications and their dependents. In addition, EROLD plays a significant role in drafting all ICE's regulatory initiatives and works very closely with ICE Policy in that capacity. Specific issues that EROLD attorneys have and will continue to be intricately involved in this year include:

- The use and expansion of family detention (and its related litigation) as an enforcement tool to curtail the unprecedented influx of family units entering the United States along the southwest border, including assisting with completion of Phase II of the South Texas Family Residential Center, which is expected to hold 2,400 individuals when completed in late June.
- Implementing the Priority Enforcement Program that is outlined in the Secretary's November 20, 2014 Secure Communities executive action memorandum, which changed the manner in which ICE will request assistance from local law enforcement agencies in holding suspected aliens for ICE, following their criminal arrest or incarceration.
- Preparing a new regulation and revising the current program that permits foreign students with degrees in science, technology, engineering, and mathematics (STEM) to extend their authorized period of Optional Practical Training (OPT), in a manner consistent with the Secretary's November 20, 2014 Policies Supporting U.S. High-Skilled Businesses and Workers executive action memorandum. While simultaneously working with DOJ's Office of Immigration Litigation (OIL) to defend against a lawsuit that seeks to invalidate the current STEM-OPT program. *Washington Alliance Technology Workers v. DHS*, No. 1:14-cv-529 (D.D.C. filed Mar. 28, 2014).

**From:** (b)(6), (b)(7)(c)
**To:**
**Subject:** Family detention documents
**Date:** Tuesday, June 17, 2014 10:09:00 AM
**Attachments:** Hutto-family detention summary (061314 final).docx
Family Unit Options - 06-14-14 (MPD).docx

---

(b)(6), (b)(7)(c)

Here's the Hutto and family unit option papers. Let me know if you need anything else.

(b)(6), (b)(7)(c)
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-732(b)(6), (b)(7)(c)
BB: 202-246(b)(6), (b)(7)(c)

Pages 403 through 410 redacted for the following reasons:
- - - - - - - - - - - - - - - - - - - - - - - - - - -
(b)(5)

June 13, 2014

# WHITE PAPER ON CONDITIONS OF DETENTION OF FAMILY UNITS

## Question

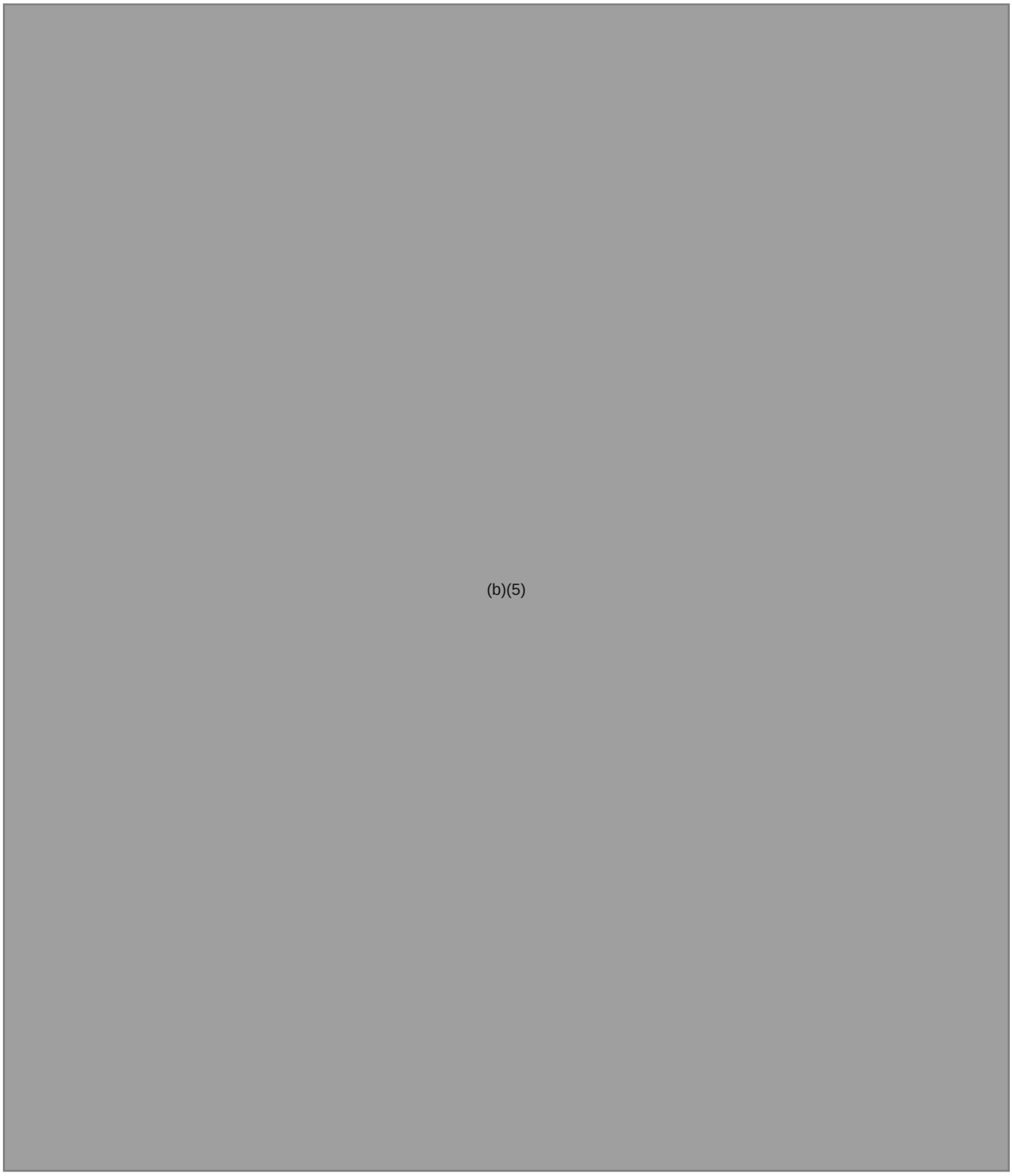
During an emergency situation, may the Department deviate from the general standards reflected in the *Flores* and *Hutto* settlements in establishing an interim family facility? In addition, in establishing an interim facility, what standards should be in place to satisfy the minimum expectations of *Flores* and *Hutto* settlements?

## Short answer

This answer is a preliminary assessment and does not address the issue of standards mandated by the constitution or federal statute. The detention of family units in interim facilities is nearly certain to generate emergent injunctive litigation against the Department. The *Flores* settlement establishes an express preference for the release of alien minors from custody and, for those minors who remain in detention, the agreement apparently obliges the Department[1] to "place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with its interests to ensure the minor's timely appearance before the [Department] and the immigration courts and to protect the minor's well-being and that of others." Flores Settlement Agreement, ¶ 11. With the exception of minors who have engaged in certain misconduct, the agreement requires prompt placement in a non-secure "licensed program" meeting certain medical, psychological, educational, recreational, and nutritional guidelines. The agreement does allow for deviation from the timeline for prompt placement in such programs "in the event of an emergency or influx of minors into the United States, in which case the [Department] shall place all minors … as expeditiously as possible."

As a model for the Department's obligations under *Flores* in a family detention setting, *Hutto* would ostensibly permit the Department to deviate from specific conditions standards if there are changed circumstances, contemplating that in emergency situations, there need be no prior court approval. At the same time, any attempt to deviate from the *Hutto* settlement on an interim basis poses an unquantifiable litigation risk. In setting up an interim family facility, the Department should aim to reduce the threat of successful litigation by striving to meet certain minimum requirements reflected in the *Flores* settlement agreement, seen through the light of *Hutto*.

[1] While the *Flores* settlement agreement was signed before the Department's creation, it expressly applies to "successors in office" of the former Immigration and Naturalization Service, and has been held by at least one court to bind DHS and ICE. *See Bunikyte v. Chertoff*, No. A-07-CA-164, 2007 WL 1074070, at *2 (W.D. Tex. Apr. 9, 2007) (so interpreting paragraph 1 of the agreement). However, with the enactment of the Homeland Security Act of 2002, and Trafficking Victims Protection Reauthoritzation Act of 2008, much of INS's authority over the placement of alien children was transferred to the Department of Health and Human Services. It therefore remains an open question whether and what portions of the *Flores* settlement agreement are still applicable to the Department as regards unaccompanied alien children.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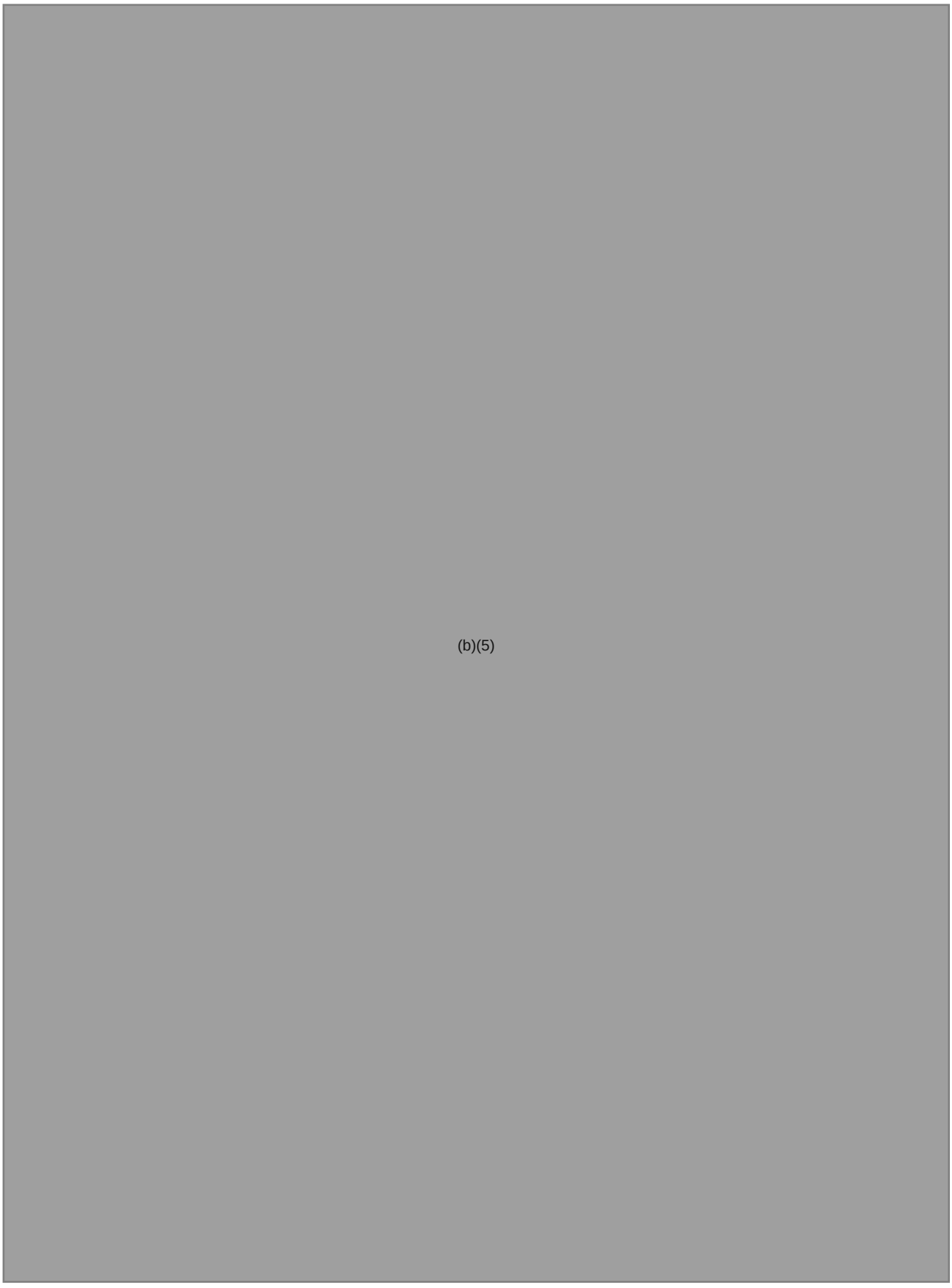
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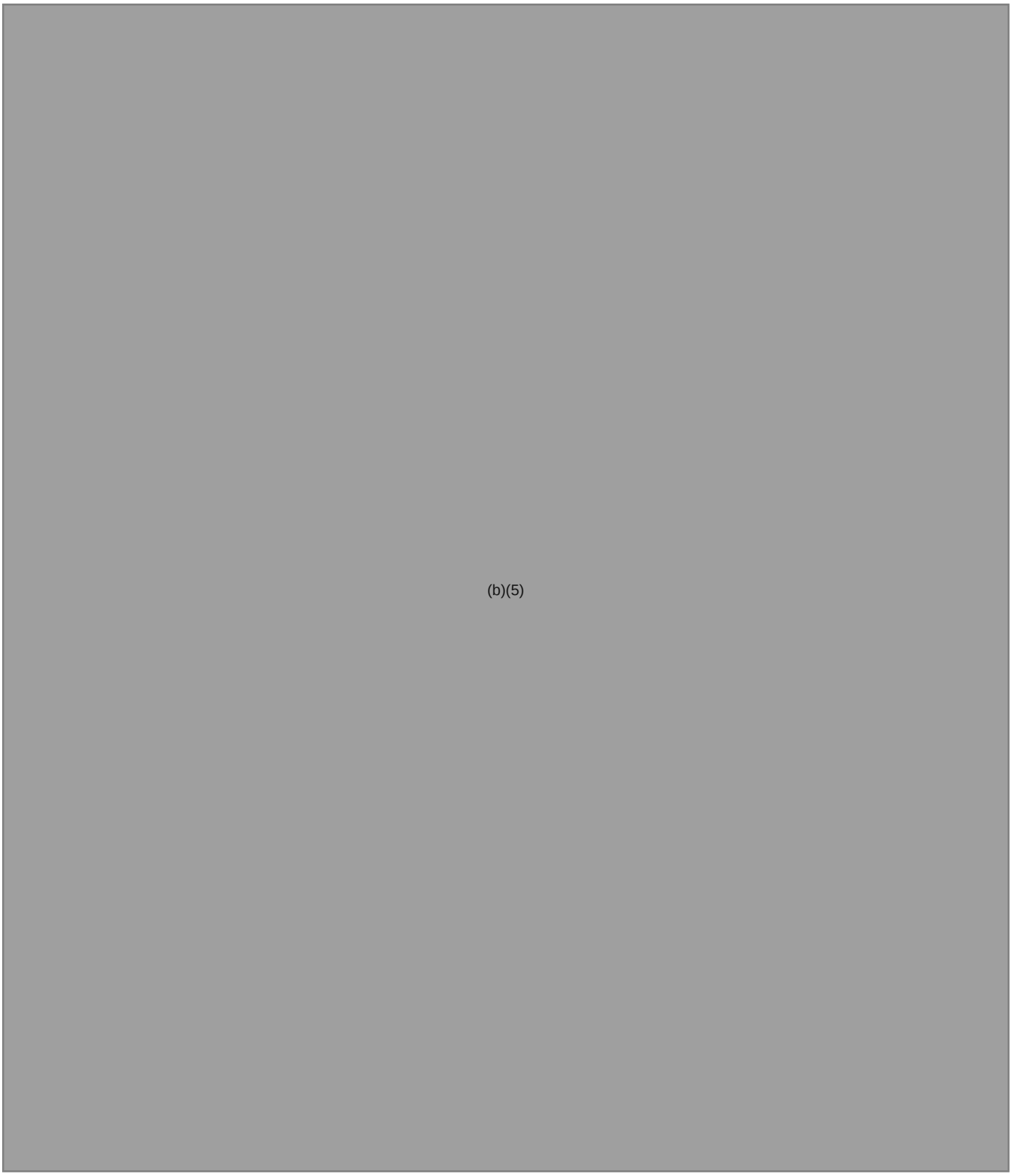
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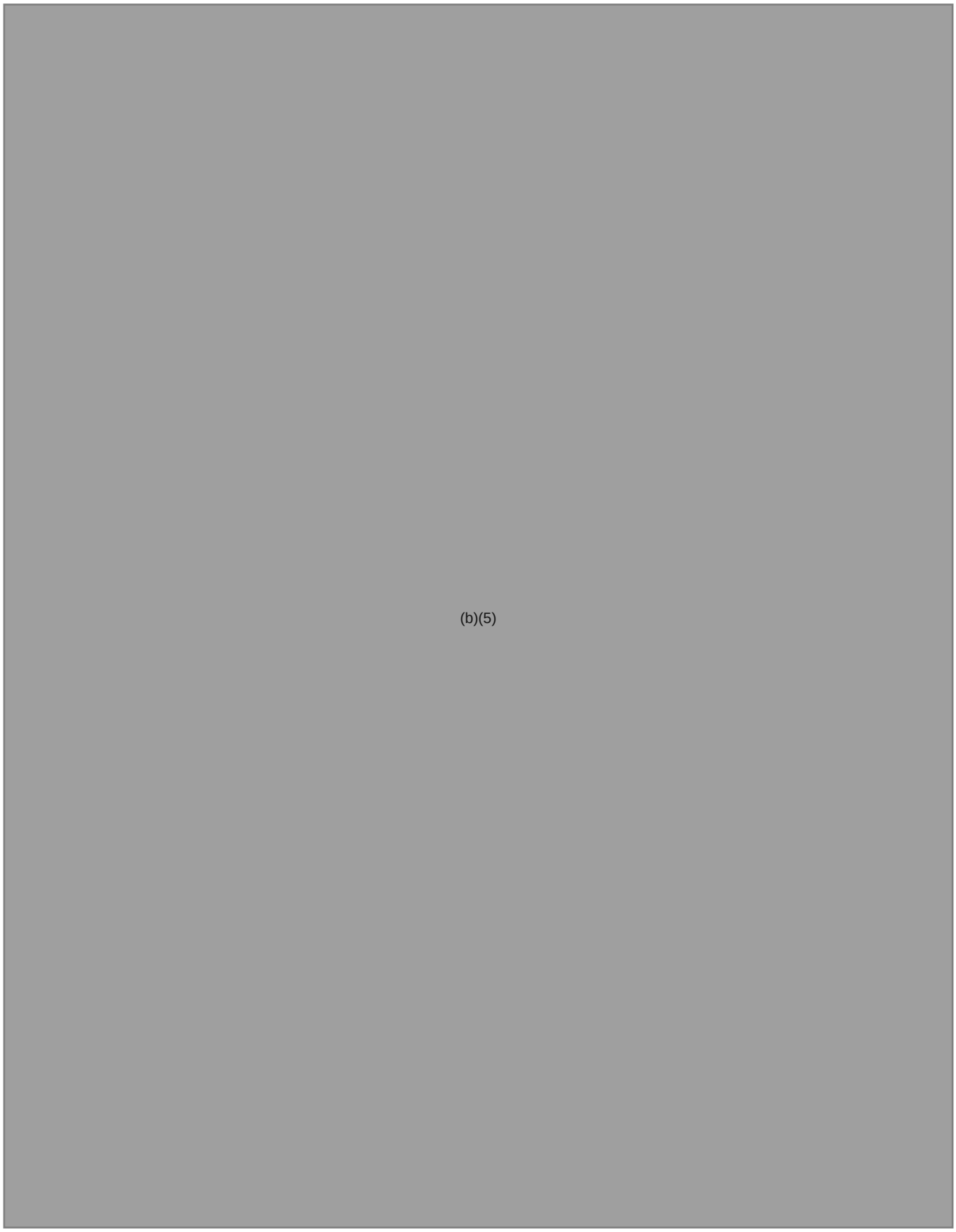
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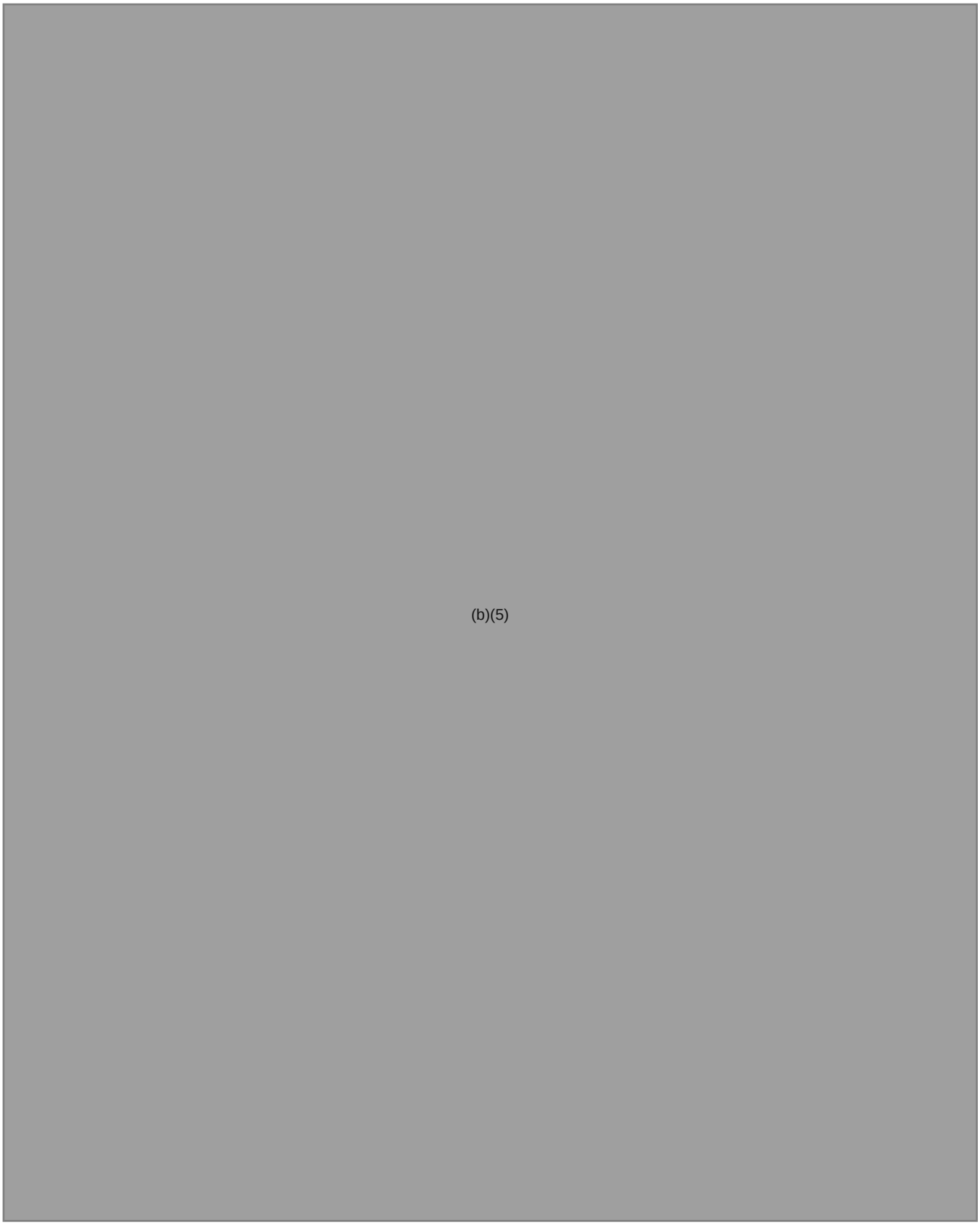
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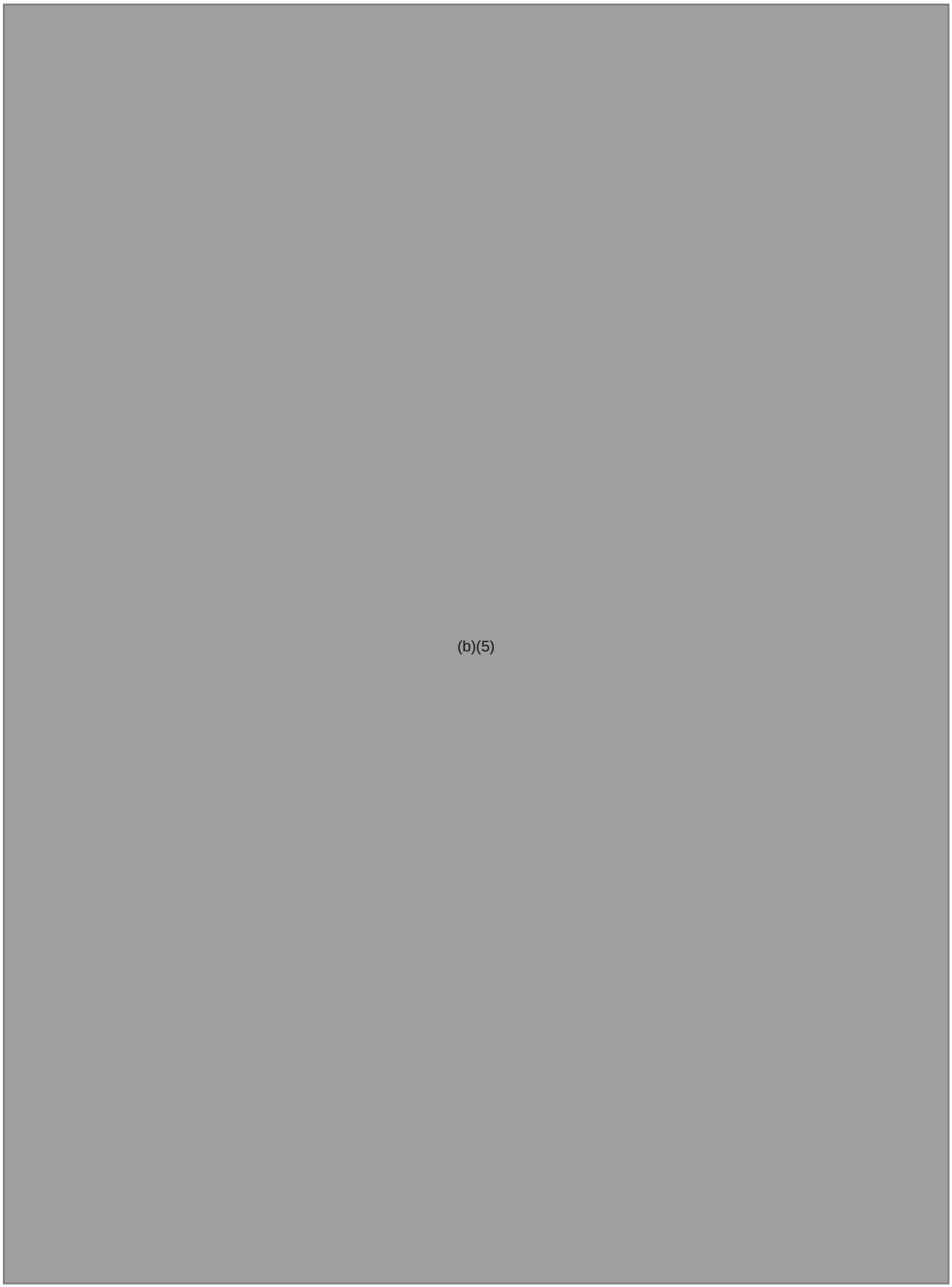
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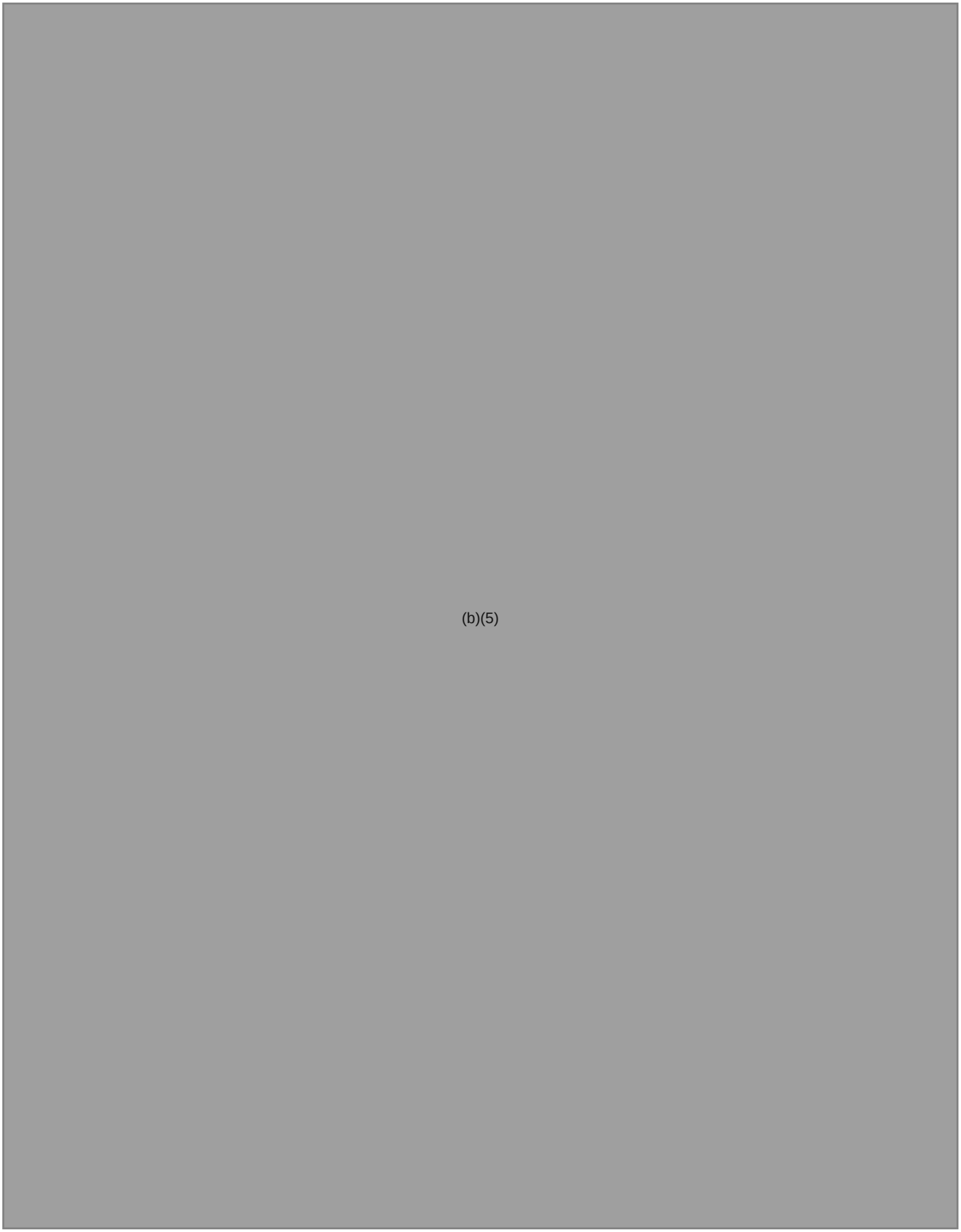
(b)(5)

**From:**
**To:** (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)
**Cc:**
**Subject:** Flores discovery request...can we pull numbers like this from somewhere?
**Date:** Thursday, October 23, 2014 9:53:00 AM

I'm happy to follow up with anyone as necessary but I'm just trying to assess what is possible.

(b)(5)

(b)(6), (b)(7)(c)
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-7(b)(6), (b)(7)(c)
BB: 202-2(b)(6), (b)(7)(c)

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(b)(5)

**From:** (b)(6), (b)(7)(c)
**To:**
**Subject:** Flores Questionnaire for Family Residential Facilities
**Date:** Friday, August 29, 2014 2:24:00 PM
**Attachments:** Flores Requirements and Questions for Family Residential Centers.docx

(b)(6), (b)(7)(c)

Yesterday you asked for a questionnaire that could be sent to a family residential facility to evaluate compliance with *Flores*. Attached is a 15-page questionnaire detailing the provisions of the Flores agreement and proposing related questions for the facility managers. Because many of the standards in Flores are difficult to interpret in a single question (for example what is meant by the requirement that ICE provide "food" or "suitable living accommodations") I have included some questions that attempt to flesh out those concepts and used some standards from Hutto and the FRS for that purpose. The document is longer than I would like but I'd rather delete items that are beyond the scope, than have to think up additional questions if questions arise.

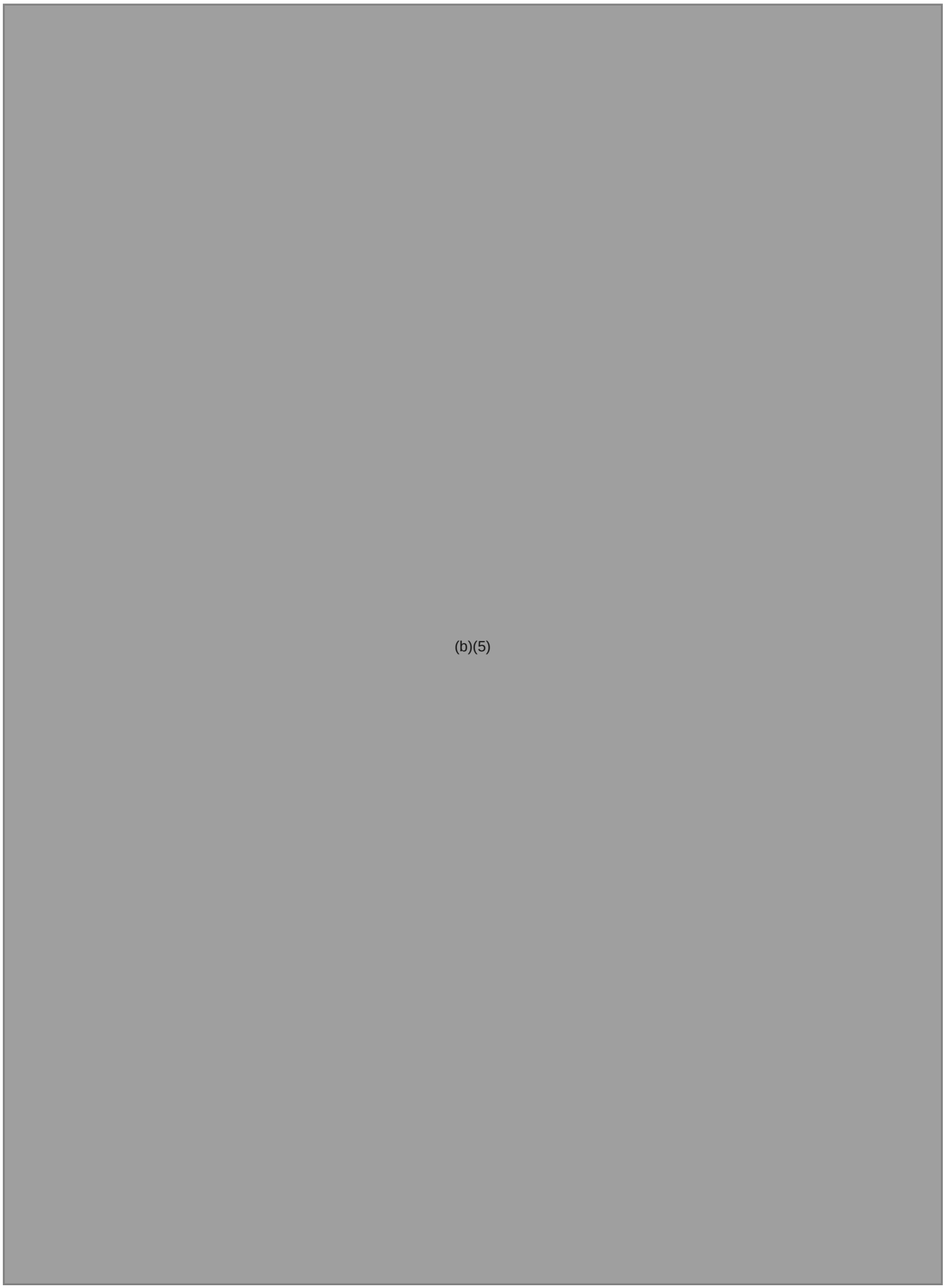
(b)(6), (b)(7)(c)
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-732-(b)(6), (b)(7)(c)
BB: 202-246-(b)(6), (b)(7)(c)

# FLORES RELATED QUESTIONS FOR FAMILY RESIDENTIAL CENTERS

(b)(5)

(b)(5)

(b)(5)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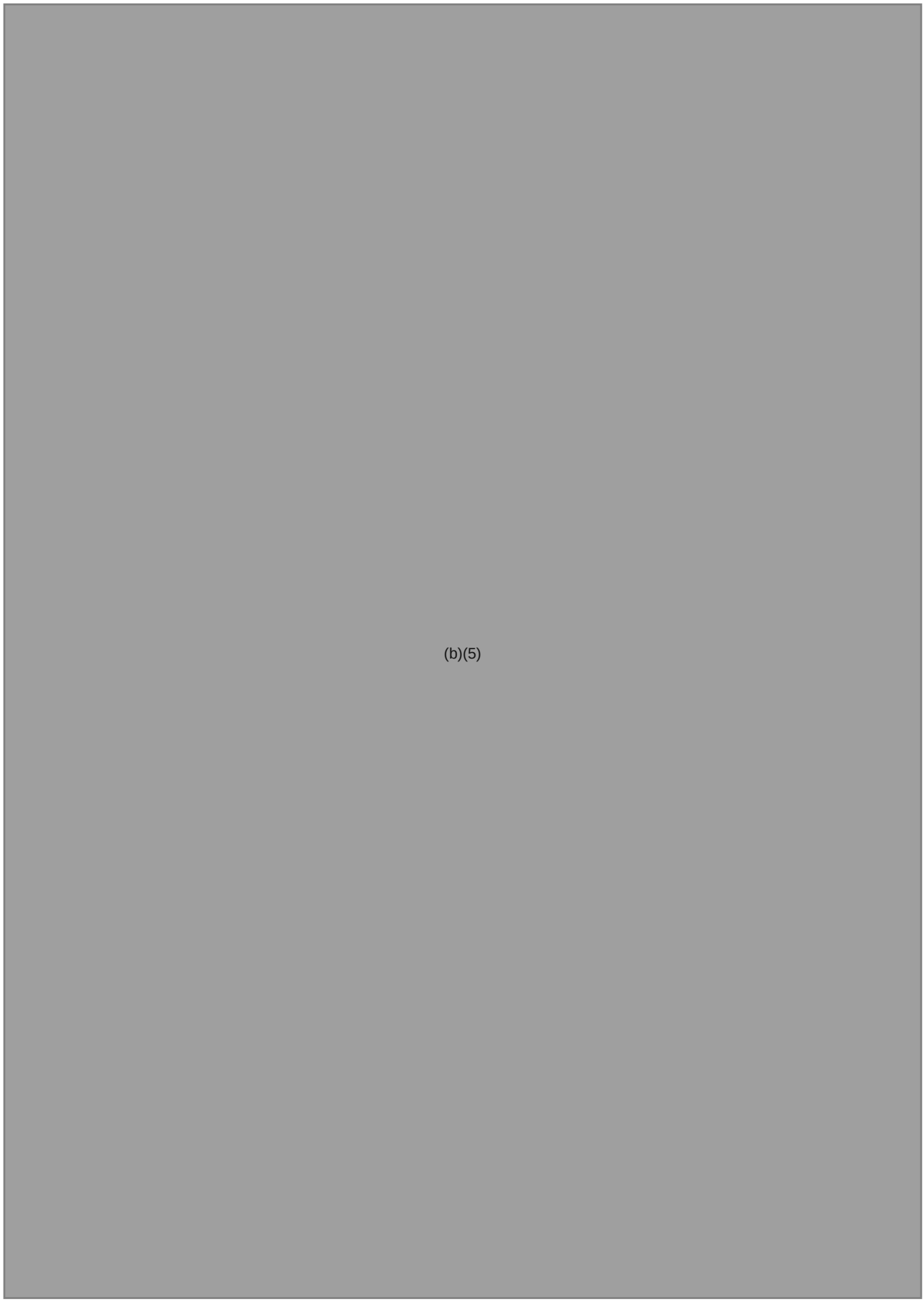
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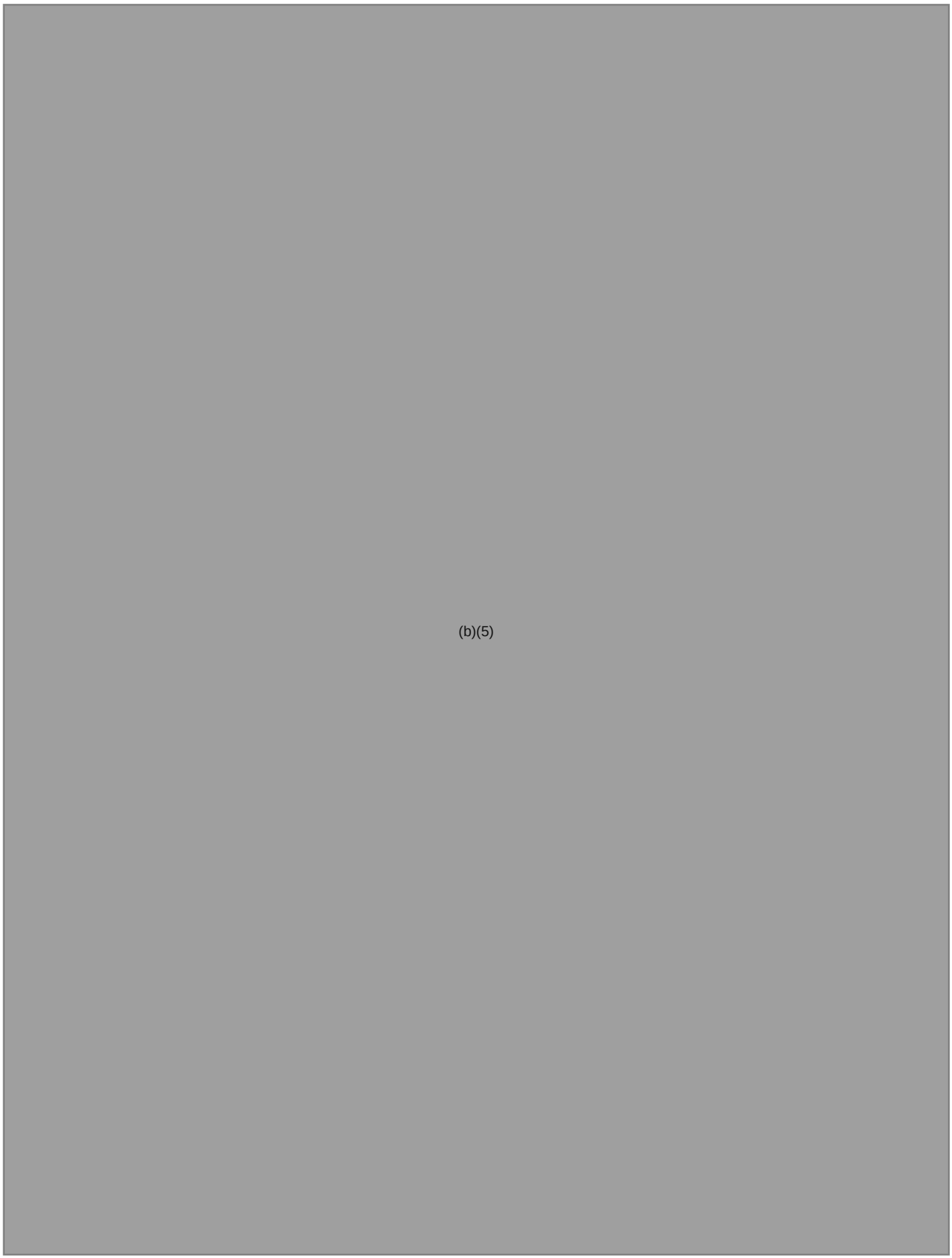
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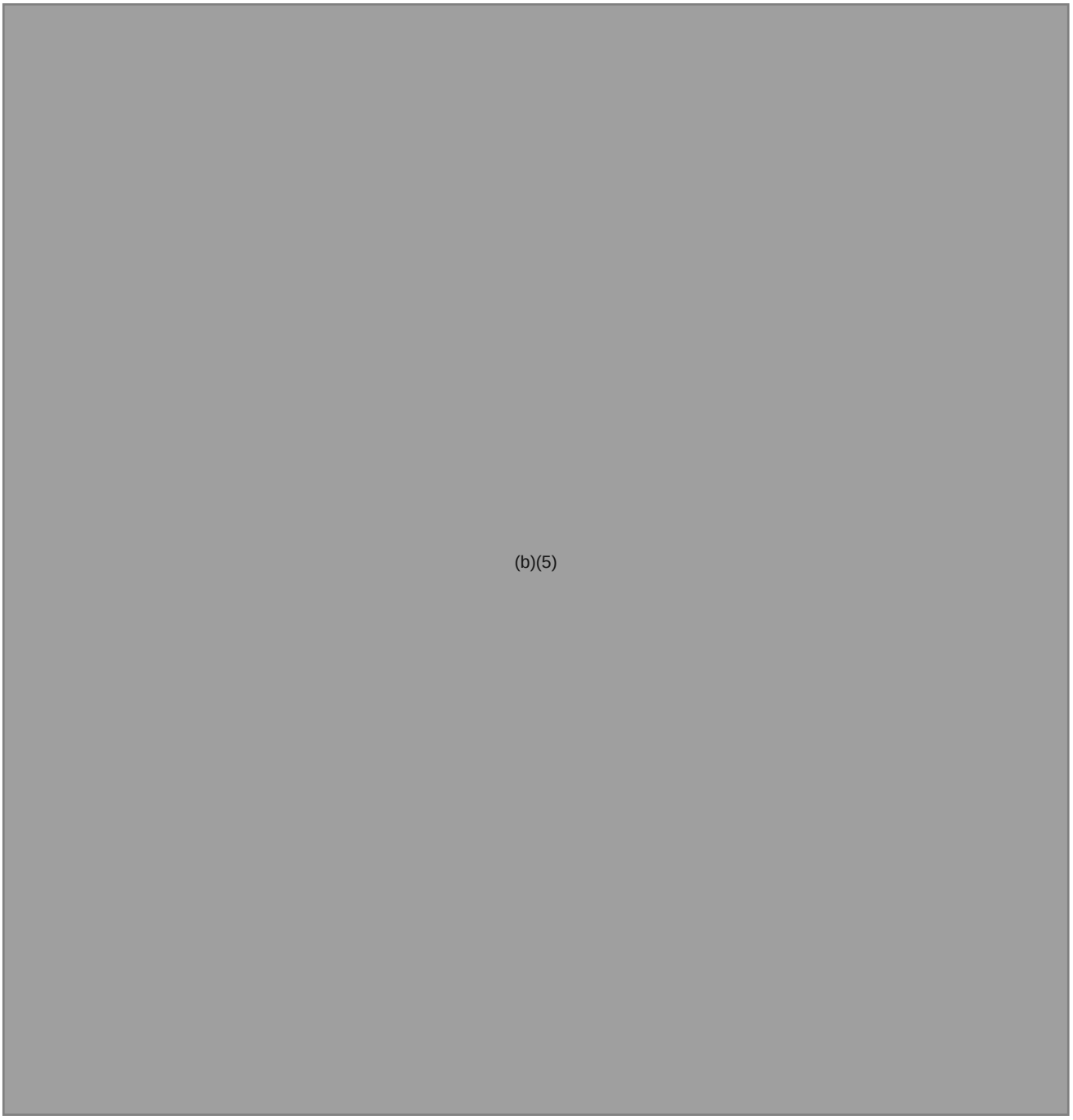

(b)(5)

**From:** (b)(6), (b)(7)(c)
**To:**
**Cc:**
**Subject:** FW: ***Updated Data For Clearance: Implementation Questions
**Date:** Thursday, October 23, 2014 2:25:00 PM
**Attachments:** 10_23_14 Revised Final Summary.xlsx

We just received a better batch of numbers from JFRMU so I may not need any additional assistance. However, I'd still like to know what is possible so that we can best answer the specific discovery requests.

(b)(5)

(b)(6), (b)(7)(c)
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-7(b)(6), (b)(7)(c)
BB: 202-24(b)(6), (b)(7)(c)

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Thursday, October 23, 2014 12:32 PM
**To** (b)(6), (b)(7)(c)
**Cc:** HQ JFRMU TASKINGS
**Subject:** FW: ***Updated Data For Clearance: Implementation Questions

(b)(6), (b)(7)(c) re-ran the numbers and identified a larger pool. Please let us know if you have any questions.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Chief
Juvenile and Family Residential Management Unit
Custody Management Division
Enforcement and Removal Operations
Immigration and Customs Enforcement
(202) 732 (b)(6), (b)(7)(c)
(202) 422

---

**From** (b)(6), (b)(7)(c)
**Sent:** Thursday, October 23, 2014 12:07 PM
**To:** (b)(6), (b)(7)(c)
**Cc:** (b)(6), (b)(7)(c)
**Subject:** ***Updated Data For Clearance: Implementation Questions

Hi (b)(6), (b)(7)(c)

I spoke with (b)(6), (b)(7)(c) this morning and she had questions about the data we provided for the Flores data request. She thought that our count of Juvenile book-ins into the Family Residential Centers during the FY14 requested time-frame seemed low. After reviewing our submission, we realized there was an error in our query that was deflating the count of Juveniles booked-in to the FRCs.

This error has been amended and the correct counts are included in the attached summary. I apologize for any confusion.

Please let us know if you have any questions.

Regards,

(b)(6), (b)(7)(c)

Contract Support to Alternatives To Detention Division
DHS/ICE/ERO
Office: 202.732(b)(6), (b)(7)(c)
Mobile: 813.751(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Tuesday, October 21, 2014 6:11 PM
**To:** (b)(6), (b)(7)(c)
**Cc** (b)(6), (b)(7)(c)
**Subject:** ***For Clearance: Implementation Questions

Hi (b)(6), (b)(7)(c)

I've attached the information we determined we would provide for this request after meeting with (b)(6), (b)(7)(c) this afternoon.

Please note, release counts are limited to Bond, Parole, and OREC and do not reflect all releases of juveniles for the requested time periods.

Please let us know if you have any questions.

Regards,

(b)(6), (b)(7)(c)
Contract Support to Alternatives To Detention Division
DHS/ICE/ERO
Office: 202.732(b)(6), (b)(7)(c)
Mobile: 813.751(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Thursday, October 16, 2014 4:11 PM
**To:** (b)(6), (b)(7)(c)
**Cc:** (b)(6), (b)(7)(c)
**Subject:** FW: Implementation Questions

Here is the document. Most stats questions relate to Bonds.

(b)(6), (b)(7)(c)
Chief
Juvenile and Family Residential Management Unit
Custody Management Division
Enforcement and Removal Operations
Immigration and Customs Enforcement

(202) 732 (b)(6), (b)(7)(c)
(202) 422

**From:** (b)(6), (b)(7)(c)
**Sent:** Friday, October 10, 2014 4:42 PM
**To:**
**Cc:** (b)(6), (b)(7)(c)
**Subject:** Implementation Questions

Dear JFRMU,

I hope you are all doing awesome. Jim and I have drafted responses to some of the questions relating to the attached document. Feel free to use this version to add on information as you see fit. We hope to finalize the first draft by Wednesday. Let us know if you have any questions and if we can be of any help.

Have a wonderful weekend.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) ssociate Legal Advisor
Enforcement and Removal Operations Law Division (EROLD)
Office of the Principal Legal Advisor (OPLA)
U.S. Immigration and Customs Enforcement (ICE)
500 12th Street, SW STOP 5900
Washington, DC 20536-5900
Office: 202-732 (b)(6), (b)(7)(c) (direct)
Cell: 202-2(b)(6), (b)(7)(c)



**From:** (b)(6), (b)(7)(c)
**Sent:** Friday, October 03, 2014 5:17 PM
**To:** (b)(6), (b)(7)(c)
**Subject:** RE: Questions re: implementation of Flores settlement.

10-4, I'm out Monday. Let's chat Tuesday.

Team—take a look at the attached—it falls in both of our lanes.

(b)(6), (b)(7)(c)
Chief
Juvenile and Family Residential Management Unit
Custody Management Division
Enforcement and Removal Operations
Immigration and Customs Enforcement
(202) 732(b)(6), (b)(7)(c)
(202) 422

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Friday, October 03, 2014 11:26 AM
**To** (b)(6), (b)(7)(c)
**Subject:** FW: Questions re: implementation of Flores settlement.

(b)(6), (b)(7)(c)

(b)(5)

Thanks,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Associate Legal Advisor
Enforcement and Removal Operations Law Division
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-732 (b)(6), (b)(7)(c) (direct)
Cell: 202-210 (b)(6), (b)(7)(c)

Whether you think you can or you think you can't, you're right. –Henry Ford



---

**From:** (b)(6), (b)(7)(c)
**Sent:** Friday, October 03, 2014 9:37 AM
**To** (b)(6), (b)(7)(c)
**Subject:** FW: Questions re: implementation of Flores settlement.

(b)(6), (b)(7)(c)

Take at look at this letter and begin thinking about responses or other issues. We have 30 days to respond and we'll be developing a plan on how best to respond over the next week or two.

(b)(6), (b)(7)(c)
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-73 (b)(6), (b)(7)(c)
BB: 202-24 (b)(6), (b)(7)(c)

retransmission, dissemination, or use by anyone other than the intended recipient. Please notify the sender if this email has been misdirected and immediately destroy all originals and copies. Furthermore do not print, copy, re-transmit, disseminate, or otherwise use this information. Any disclosure of this communication or its attachments must be approved by the Office of the Principal Legal Advisor, U.S. Immigration and Customs Enforcement. This document is for INTERNAL GOVERNMENT USE ONLY and may be exempt from disclosure under the Freedom of Information Act, 5 USC §§ 552(b)(5), (b)(7).

---

**From** (b)(6), (b)(7)(c)
**Sent:** Friday, October 03, 2014 8:57 AM
**To:** (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
**Subject:** FW: Questions re: implementation of Flores settlement.

All:

(b)(5)

Thank you.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Trial Attorney
Office of Immigration Litigation – District Court Section
(202) 532(b)(6), (b)(7)(c)

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Thursday, October 02, 2014 7:25 PM
**To:**
**Cc:** (b)(6), (b)(7)(c)
**Subject:** Questions re: implementation of Flores settlement.

Dear Ms(b)(6), (b)(7)(c)

Please see attached correspondence setting out questions regarding implementation of the *Flores* settlement.

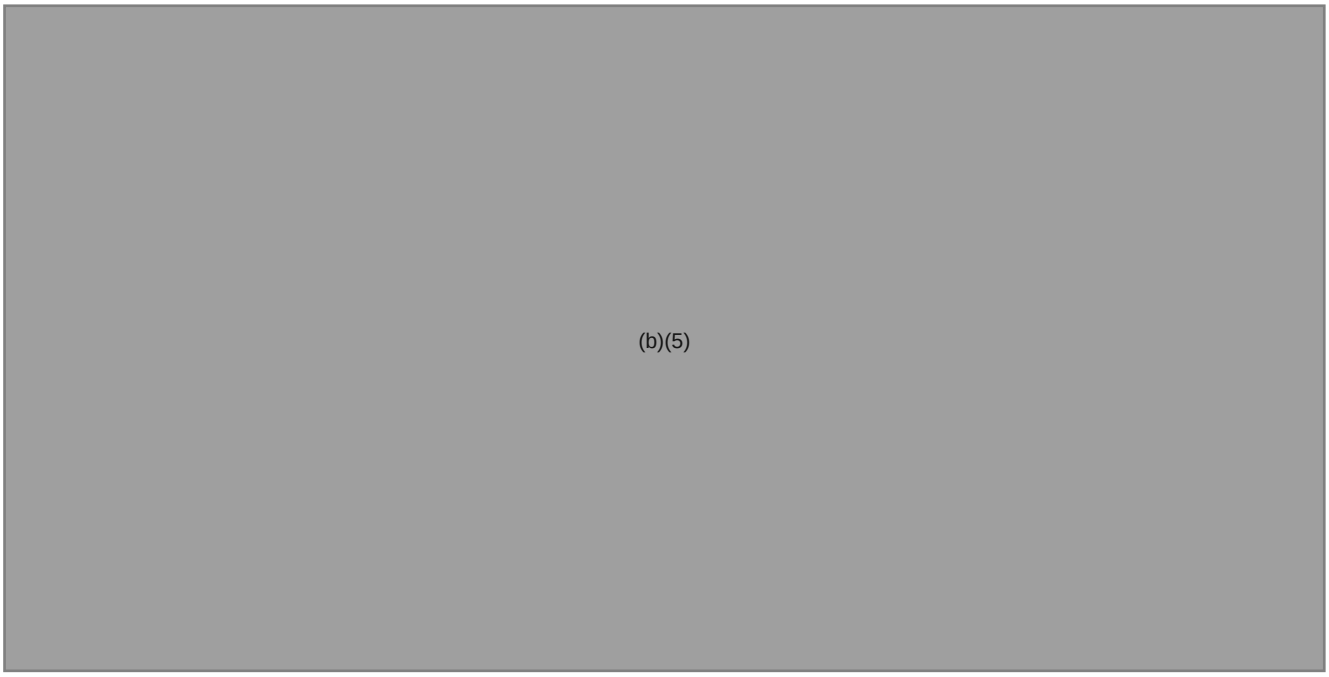
Thank you,

(b)(6), (b)(7)(c)
General Counsel
Center for Human Rights & Constitutional Law
(b)(6), (b)(7)(c)
Los Angeles, California 90057
213.388 (b)(6), (b)(7)(c) (v)
213.386.9484 (fax)
http://www.centerforhumanrights.org

## ARTESIA ADULT AND CHILDREN RESIDENTIAL CARE FACILITY

**The purpose of this section is to identify the scope of services specific to residential care guard services only.**

(b)(5)


(b)(5)

**From:** (b)(6), (b)(7)(c)
**To:**
**Cc:**
**Subject:** FW: Artesia guards
**Date:** Friday, September 19, 2014 5:08:00 PM
**Attachments:** ARTESIA ADULT AND CHILDREN RESIDENTIAL CARE FACILITY SOW.docx
image001.jpg
Karnes Family Program SOW Attachment 1 .pdf

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Song:

Last one for today....probably. Did CALD review the Karnes SOW (attached pdf) before it was signed?

(b)(6), (b)(7)(c)
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-73(b)(6), (b)(7)(c)
BB: 202-24(b)(6), (b)(7)(c)



---

**From:** (b)(6), (b)(7)(c)
**Sent:** Friday, September 19, 2014 5:05 PM
**To:** (b)(6), (b)(7)(c)
**Subject:** FW: Artesia guards

(b)(6), (b)(7)(c)
(A) Chief – Enforcement and Removal Operations Law Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-732(b)(6), (b)(7)(c)
Blackberry: 202-50(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)



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**From:** (b)(6), (b)(7)(c)
**Sent:** Friday, September 19, 2014 11:27 AM
**To** (b)(6), (b)(7)(c)
**Subject:** FW: Artesia guards

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**From:** (b)(6), (b)(7)(c)
**Sent:** Friday, September 19, 2014 11:24 AM
**To** (b)(6), (b)(7)(c) Aitken, Timothy S
**Cc:** Weinberg, Bill; (b)(6), (b)(7)(c)
**Subject:** RE: Artesia guards

Good Morning,

Please find attached the draft SOW for the Artesia Guards and the SOW that will be used for the Karnes County expansion. The Karnes expansion will be using the SOW that was incorporated with the conversion of the facility to a female and children facility. If you need any further information please feel free to contact me. Thank you.

(b)(6), (b)(7)(c)
**Detention, Compliance & Removals (DCR) | Contracting Officer**
DHS | ICE | Office of Acquisition Management (OAQ)
Phone: 202-732-(b)(6), (b)(7)(c)
**Email:** (b)(6), (b)(7)(c)

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**From** (b)(6), (b)(7)(c)
**Sent:** Friday, September 19, 2014 10:59 AM
**To:** (b)(6), (b)(7)(c)
**Cc:** Weinberg, Bill; (b)(6), (b)(7)(c)
**Subject:** RE: Artesia guards

(b)(6), (b)(7)(c)

Please send the information for Artesia and Karnes to Kevin and cc: Bill.

Thanks,

(b)(6), (b)(7)(c)
**Assistant Director | Detention, Compliance & Removals**

DHS | ICE | Office of Acquisition Management (OAQ)
Phone: 202-732-(b)(6), (b)(7)(c)
Email: (b)(6), (b)(7)(c)

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**From:** Weinberg, Bill
**Sent:** Friday, September 19, 2014 10:57 AM
**To:** (b)(6), (b)(7)(c)
**Subject:** RE: Artesia guards

Can you send the SOW for Artesia guards and the requirement for Karnes expansion to Kevin, per ERO request, please? Thanks!

Bill Weinberg
Director, Office of Acquisition Management
U.S. Immigration and Customs Enforcement
(Sent from an iPhone)

-----Original Message-----
**From:** (b)(6), (b)(7)(c)
**Sent:** Friday, September 19, 2014 10:53 AM Eastern Standard Time
**To:** Weinberg, Bill; (b)(6), (b)(7)(c)
**Subject:** RE: Artesia guards

Bill-

Yes. We have agreement from the program office and we received the requisition (b)(6), (b)(7)(c) creating the modification and will send it to GEO today for their review. (b)(6), (b)(7)(c) mentioned that since they were having a different GEO subsidiary perform this effort, there would be some language GEO would need to insert into the modification. We haven't seen the language, but it doesn't sound like it will be an issue for us. I don't expect the modification to actually get awarded until Monday, since I'm not sure what time GEO will return the mod today.

Thanks,

(b)(6), (b)(7)(c)
Assistant Director | Detention, Compliance & Removals
DHS | ICE | Office of Acquisition Management (OAQ)
Phone: 202-732-(b)(6), (b)(7)(c)
Email: (b)(6), (b)(7)(c)

-----Original Message-----
From: Weinberg, Bill
Sent: Friday, September 19, 2014 10:44 AM
To: (b)(6), (b)(7)(c)
Cc (b)(6), (b)(7)(c)
Subject: Artesia guards

Do we have everything we need to award this effort?

Bill Weinberg
Director, Office of Acquisition Management U.S. Immigration and Customs Enforcement (Sent from an iPhone)

**FAMILY RESIDENTIAL FACILITY**

**STATEMENT OF WORK**

1. Background

The U. S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) provides funds through this agreement to both public and private sector entities to provide temporary residential shelter care and other related services to families in its custody.

2. Objectives

a. The purpose of this contract is to facilitate the provisions for the necessary physical structures, equipment, facilities, personnel and services, to provide a program of temporary shelter care in a staff secure environment and other related services to alien family groups who are currently held in the legal custody of ICE.
b. The specific project goal is the provision of residential care and other related services twenty-four (24) hours per day, seven (7) days per week, to alien family groups who have been approved for such services by ICE. The Service Provider shall seek licensing from the State agency responsible for residential programs that house juveniles (and family groups if applicable).These individuals, although released to the physical custody of the Service Provider, shall remain in the legal custody of ICE. Service delivery is expected to be accomplished in a manner that is sensitive to the culture, the native language and the complex needs of this population. The alien population will consist of families with juveniles up to and including 17 years of age and related adults 18 years of age and older. The Service Provider should expect aliens from any number of ethnic backgrounds and nationalities.
c. A goal of the statement of work is to establish and implement Performance Criteria, as stated in Appendix A. The statement of work contains a wide range of performance requirements and references Federal laws, ICE Family Residential Standards (FRS) and requires adherence to applicable state laws and requirements. The Performance Criteria in Appendix A cites those areas of performance that are deemed to be critically important and must be achieved to enable compliance with laws and to safeguard and support alien family groups' health, safety and well-being. The list of Performance Criteria includes the required outcomes; performance indicators and information on how each is measured. The establishment of these criteria serves to categorize this statement of work as a *Performance Work Statement (PWS)*. Notwithstanding the establishment of selected tasks and deliverables as formal Performance Criteria with corresponding outcomes, performance indicators and measurements, the Service Provider is obligated to perform and fulfill all requirements of this contract and statement of work.

3. Terms

a. Admission: A procedure, which includes searching, photographing, health and safety assessment, and collecting personal history data. Admission also includes the inventory and storage of the individuals' accompanying personal property.
b. Alien Family Group: A group of closely related adult alien parent(s) or legal guardian(s) encountered within the United States accompanied by their own alien child(ren) (son, daughter, grandchild etc.)
c. Contracting Officer (CO): An ICE employee responsible for the complete conduct and integrity of the contracting process, including administration after award. The only individual authorized to issue changes to this contract.
d. Contracting Officer's Technical Representative (COR): An ICE employee responsible for monitoring all technical aspects and assisting in administering the contract.
e. Service Provider: The entity, which provides the services described in this statement of work.
f. Local ICE Supervisor in Charge of the Facility: The ICE Enforcement and Removal Operations (ERO) Field Office with responsibility over the facility.
g. ICE Family Residential Standards (FRS): A set of standards and policies governing the minimum requirements for care and treatment of aliens held in ICE family residential centers.
h. Family Residential Center: For the purposes of this document, includes 24-hour supervised residential care for juveniles and related adults.
i. Health and Safety Assessment: A system of structured observation and/or initial health assessment to identify newly arrived residents who could pose a health or safety threat to themselves or others.
j. Juvenile and Family Residential Management Unit (JFRMU): A designated unit within the Headquarters, Enforcement and Removal Operations, with the primary responsibility for management and oversight of juvenile and family care, custody, and treatment.
k. Medical Records: A separate set of records apart from the resident's social record that are maintained by the Service Provider. Although Medical Records may be created and/or maintained by the Service Provider, its sub-Provider, or any other third party, they are the property of ICE.
l. Policy/Standard: A definite written course or method of action, which guides and determines present and future decisions and action.

4. Program Scope and Services

a. Program Scope

i. The Service Provider shall provide shelter care and other services in a residential shelter care program. The design and administration of the program shall be in accordance with the requirements of ICE Family Residential Standards (FRS). It is the Service Provider's responsibility to assume adequate and appropriate management oversight for the implementation and successful performance of this contract.
ii. The location of this facility(s) shall be within the Continental United States. ICE reserves the right to award more than one contract for one or multiple facilities. The Service Provider must be able to admit and discharge family groups or any part of that group on a 24-hour per day, seven (7) days a week basis.
iii. Services shall be provided for the period beginning when the family group or any part of

that group is placed in the Family Residential Program and ending when the ICE releases the family group or any part of the family group, transfers him/her to another facility, or removes him/her from the United States.

iv. These individuals, although placed in the physical custody of the Service Provider, remain in the legal custody of the ICE.

v. The Service Provider shall ensure that the family group(s) and its individual members follow an integrated and structured daily routine that shall include, but not be limited to the following services: education, recreation, life skills and/or chores, study period, counseling, group interaction, free time and access to religious and legal services.

vi. The daily routine will enhance programmatic supervision and accountability as well as encourage the development of individual and social responsibility on the part of each individual. Program rules and disciplinary procedures shall be written and/or translated into a language understood by the residents and appropriate for their level of development. These rules shall be provided to the residents and fully understood by all program staff.

vii. Program content and plans must accommodate individuals of all ages and abilities, in various stages of personal adjustment amid ICE administrative processing. Because of the variables and uncertainties inherent in each case, the length of care per resident will vary. Therefore, the Service Provider will design the program to provide a combination of short-term (up to 90 days) and long- term (in excess of 90 days) care.

viii. Residents served by this contract are individuals who are alleged to have entered or attempted to enter the United States in violation of law. Some residents may have committed other immigration law violations. Others may have been referred to ICE by state or local law enforcement officials. These residents may be seeking some type of relief from removal from the United States through an administrative process. No alien who has a violent or criminal history has a known affiliation with a gang or drug cartel and/or convictions shall be admitted into a family facility.

ix. The Service Provider shall implement and administer a case management system that tracks and monitors each resident's progress on a regular basis, at a minimum of weekly, to ensure that he/she receives the full range of program services in an integrated and comprehensive manner.

x. Service Provider shall structure all programs and implement strategies designed to prevent escapes, prevent the unauthorized absence of individuals from the facility or programs provided by the facility, and protect against influences that may jeopardize the well-being of the residents.

xi. ICE will work closely with the Service Provider in the administration of these programs in order to address the intricate and complex needs of these individuals in ICE custody for care and protection in a manner that meets the mandates of current United States law.

b. Program Services

The following is a description of program services the Service Provider is required to provide:

i. Care and Maintenance – Proper physical care and maintenance, including suitable living accommodations, food, appropriate clothing, personal grooming items and hair care services, and remuneration for work shall be provided (outside of normal chores or responsibilities) as defined by applicable State statutes. The Service provider will also comply with federal laws and with DHS regulations regarding special needs residents.

ii. ICE FRS Compliance- The Service Provider will maintain compliance with the most current published ICE FRS and allow DHS compliance inspections free access to monitor

compliance. The Service Provider will correct all identified deficiencies within 30 days. The Service Provider will correct deficiencies determined to be Life, Health or Safety related immediately upon notice of deficiency.

iii. Medical/Mental/Dental Care – ICE retains the right to use a medical provider proposed by the Service Provider or to use its own Medical Provider, the United States Public Health Service (USPHS), Immigration Health Services Corps (IHSC). As such, the cost component for health services should be shown as a line item.

1. Medical Stipulations: The ICE, through IHSC, will authorize the service and payment for such service(s) of all non-emergency, offsite medical care and non-routine on-site medical services (e.g. offsite lab tests, eyeglasses, cosmetic dental prosthetics, dental care for cosmetic purposes – See attached IHSC Covered Services Plan).
2. IHSC acts as the final health authority for ICE on all offsite and non-routine resident medical and health related matters. The relationship of IHSC to the resident equals that of physician to patient. The Service Provider shall release all medical information for residents to IHSC upon request. The Service Provider shall solicit IHSC approval before proceeding with non-emergency, offsite medical care (e.g. offsite lab tests, eyeglasses, and cosmetic dental services). The Service Provider shall submit supporting documentation with the request for authorization of services to IHSC. For medical care provided outside the facility, IHSC may determine that an alternative medical provider or institution is more cost- effective or more aptly meets the needs of ICE and the resident. The ICE may refuse to reimburse the Service Provider and/or outside health care provider for non- emergency medical costs incurred that were not approved in advance by IHSC.
3. USPHS IHSC On-site Visits: The Service Provider shall allow IHSC reasonable access to its facility for the purpose of liaison activities with the Service Provider's Health Authority and associated staff and departments.
4. The Service Provider shall submit a Medical Payment Authorization Request (MedPAR) to IHSC for payment for any off-site medical care (e.g. off-site lab testing, eyeglasses, prosthetics, hospitalizations, emergency visits, specialty office visits). The Service Provider shall enter payment authorization requests electronically as outlined in the MedPAR User Guide. The Service provider should expect that review and adjudication of the MedPAR will be completed by the appropriate IHSC personnel within 5 business days, as long as all the necessary information is provided to IHSC. If needed sooner than that for an urgent request, the Service Provider should contact the appropriate IHSC personnel to make an expedited request. More guidance on MedPAR and on billing for outside medical care can be found at the following website address: http://www.ice.gov/about/offices/enforcement-removal-operations/ihs/managed-care.htm
5. The Service Provider shall furnish twenty-four (24) hour emergency medical care and facility emergency evacuation procedures. In an emergency, as determined by the Service Provider, the Service Provider shall obtain the medical treatment required. The Service Provider shall have access to an off-site emergency medical provider at all times. The Health Authority of the Service Provider shall notify the local ICE Field Office as soon as possible, and in no case more than seventy-two (72) hours after detainee receipt of such care. Authorized payment for all offsite medical services for the initial emergency need and for medical care required beyond the initial emergency situation will be made by the Veterans Administration Franchise Service Center (VA FSC) on behalf of IHSC directly to the medical provider(s).

IHSC VA Financial Services Center
(b)(6), (b)(7)(c)
Austin, TX 78714-9345
Phone: (800) 479(b)(6), (b)(7)(c)
Fax: (512) 460-5538

6. The Service Provider shall direct offsite medical providers to submit all medical invoices for authorized payment for medical, dental, and mental health services along with a copy of the approved MedPAR to the following address:

VA Financial Services Center
(b)(6), (b)(7)(c)
Austin, TX 78714-9345
(800) 479(b)(6), (b)(7)(c)

iv. Communication- The Service Provider will provide residents information in a language or manner that the residents understand or will provide access to translations services. The Service Provider will generally provide Spanish translation of all written materials. Where practicable, the Service Provider will translate written material for other prevalent language groups in the population who have limited English proficiency. The Service Provider will provide oral interpretation or assistance to residents who speak a language in which written material is not translated or residents who are illiterate.

In addition to compliance with the above listed requirements, the Service Provider will also be required to comply with the following:

v. Individual Counseling – Programs shall schedule at least one (1) individual counseling session per week conducted by trained social work staff with the specific objectives of reviewing the resident's progress, establishing new short-term objectives, and addressing both the developmental and crisis-related needs of each resident. Service Provider shall anticipate many "emergency" individual counseling sessions.

vi. Family Counseling – Programs shall include family group counseling sessions as needed, with the opportunity presented at least once a week.

vii. Acculturation/Adaptation – The Service Provider shall provide a program, which includes, but is not limited to, information regarding personal health and hygiene, human sexuality and the development of social and inter- personal skills, which contribute to those abilities necessary to live independently and responsibly.

viii. Juvenile Education

1. Educational services appropriate to the level of development and communication skills are to be made available to all juveniles in accordance with existing appropriate State and federal regulations. Service Provider shall provide an education program in a structured classroom setting, Monday through Friday modeled after a year-round program. Daily lessons will include a minimum of one (1) hour of daily instruction in each of the following core subjects: Science, Social Studies, Math, Language Arts (Reading/Writing), and Physical Education. A secondary focus of the education program will be English as a Second Language (ESL). Teaching staff is required to be bi lingual in the majorly spoken language of residents when the teacher is hired.

Teachers must also be ESL certified, or enrolled in an ESL Certification program. As it is expected that Spanish will be the predominant language, the Service Provider shall provide Spanish-speaking teachers/aides to accommodate the student population as needed. Telephonic translation services shall be made available in each classroom to accommodate the diverse needs of the multi-lingual student population. The educational program shall meet or exceed respective State guidelines and requirements and shall meet all benchmarks as required by the U.S. Department of Education.

2. All teachers shall be certified or licensed by the respective state Department of Education or equivalent government-licensing agency. The student/teacher ratio shall not exceed 20:1, or shall comply with State policy and requirements.
3. All children who are handicapped and/or in need of special education and related services will be identified, located, evaluated, and referred to an appropriate agency for intervention and services, in accordance with the Individuals with Disabilities Education Improvement Act of 2004, Title 20 U.S.C. § 1400, *et seq.,* and any subsequent amendments to the statute.
4. Upon transfer or discharge from the program, each juvenile shall be provided with proof of attendance, and copies of assessments and transcripts will be made available upon request.

ix. Recreation and Leisure Time – The Service Provider shall provide a separate space for indoor and outdoor age appropriate recreation activities. The Service Provider shall develop a program allowing for off-site field trips by juveniles at least monthly.

x. Library Services –

1. The Service Provider shall make leisure library services available to all residents. Reading material should reflect diverse languages and interests and be appropriate for various levels of literacy.
2. The Service Provider will provide space and equipment for an ICE Law Library, containing legal materials explaining United States immigration law and procedures. ICE will supply all necessary legal materials on CD-ROM.

xi. Assignment of Individual Chores – The Service Provider shall develop written procedures regarding chores or vocational assignments and associated schedules. Consideration shall be given to the fact that residents are not required to participate in uncompensated work assignments unless the work involves light housekeeping of personal areas or personal hygiene needs and the need to maintain parental supervision of their children while residing at the Center.

xii. Food Services – Meal programs shall incorporate a meal service that promotes cultural diversity and family unity and needs. Consideration as to types of meals, manner of meal presentation, and access to salad bars and drink service should consider self-service opportunities. Menus should also consider palatability and variety with consideration given to both family and child friendly meals that promote healthy eating while allowing parental responsibility in selection and delivery. The Service Provider will also provide 24/7 resident access to healthy snacks and drinks.

xiii. Translators – The Service Provider is responsible for providing necessary translators or bi-lingual personnel for necessary communication with residents who do not speak or comprehend the English language. Other than in emergencies, residents shall not be used for interpretation or translation services. The Service Provider may utilize commercial

phone language interpretive services, at ICE's cost, to fulfill this requirement.

xiv. Linens and Bedding -All linens, bedding and mattresses shall be provided and cleaned by the Service Provider in accordance with state standard and approved facility policy. The material of these items shall be fire-retardant.

xv. Daily Program Activity Schedule – The Service Provider shall develop a weekly schedule of all program activities. The schedule shall show on a daily basis (Sunday-Saturday) the activity, location, supervisor, and any limitation on the number of participants. The facility Program Director shall review the activity schedule and forward to ICE for JFRMU approval.

xvi. Remote Custody and Transportation Services - The Service Provider shall provide policy and procedures on remote custody and transportation services for approval by the CO. At no time will the Service Provider be required to provide remote custody services at hotels and/or motels.

1. Remote Custody Services

   a. The Service Provider shall provide, at the direction of the COR, remote custody services as may be required. The Service Provider shall be reimbursed for these services only when the COR. directs such services. The Service Provider shall not abandon any facility assignment to perform remote custody services.
   b. Duties and responsibilities of this function shall be to remain with residents at medical appointments, medical facilities where the resident has been admitted, or at other locations as directed in writing by the COR.
   c. The Service Provider shall be authorized one facility staff person of the same gender as the resident for each such remote custody service, unless at the direction of the COR, additional facility staff persons are required.

2. Transportation Services

   a. The Service Provider shall provide transportation services as may be required to transport residents securely, in a timely manner, to locations as directed by the COR.
   b. The Service Provider shall perform routine medical transportation as needed, using two (2) staff persons per run, one (1) of which must be the same gender as the transported resident.
   c. The Service Provider shall furnish sufficient vehicles in good repair and suitable, as approved by the ICE, to safely provide the required transportation service. The Service Provider shall not allow employees to use their privately owned vehicles to transport residents.
   d. Transportation routes and scheduling shall be accomplished in the most economical manner as approved by the COR.
   e. The Service Provider personnel provided for the above transportation services shall be of the same qualifications, receive the same training, and complete the same security clearances as those Service Provider personnel provided for in the other areas of the Agreement.
   f. The Service Provider shall, upon order of the COR, or upon his/her own decision in an urgent medical situation, transport a resident to a hospital location. The Service provider employee person shall keep the resident under constant supervision 24 hours per day until the resident is ordered released from the hospital, or at the order of the COR. If the resident requires constant supervision

outside the facility, this shall be considered Remote Post Services and the Service Provider shall be reimbursed for such services. The Service Provider shall then transport the resident to the facility.

xvii. Rights of Residents

1. Each resident is to enjoy all rights as indicated in the FRS which shall include but are not limited to:
   a. Maintaining parental rights over their children;
   b. Wear their own clothes, when available and appropriate;
   c. Retain a private space in the residential facility for the storage of personal belongings;
   d. Talk privately on the phone in accordance with the FRS and State regulations;
   e. Visit privately with legal counsel in accordance with the FRS;
   f. Visit socially as permitted by the FRS;
   g. Receive and send mail in accordance with the FRS; and
   h. Access to religious services as desired.

2. The Service Provider shall establish a policy and procedure that shall provide each resident freedom from discrimination based on race, religion, national origin, sex, handicap, or political beliefs, and ensures equal access to various services and work assignments, as appropriate.
3. The Service Provider shall ensure that all residents have equal opportunities to participate in activities and receive services offered by the Service Provider.

5. Program Management

a. Organizational Structure and Coordination

i. The Service Provider shall prepare and submit all policies, plans and procedures required by this statement of work and the FRS to ICE for review and approval in accordance with Section F, Deliverables, of this contract prior to implementation. The Service Provider shall provide a system that ensures all written policies, plans and procedures are reviewed at least annually and updated as necessary. The Service Provider shall provide written certification that they conducted the reviews on schedule. No policy, plan, procedure, or any changes under this Agreement shall be implemented prior to the written approval of the COR.

ii. Service Provider shall have operative plans that identify organizational structures, lines of authority and lines of responsibility. Service Provider shall also maintain and administer comprehensive plans that facilitate and enhance intra-program and intra-organizational (if appropriate) communication. At a minimum, the Service Provider must ensure weekly staff meetings to discuss individual service plans, progress and daily schedules. Service Provider shall maintain working relationships and liaison with appropriate community organizations and ICE. The Service Provider shall have established policy and procedure in place to provide for shift briefings. The purpose of these structured briefings is to afford staff a pre-scheduled and structured opportunity to pass critical information from one shift to the next.

iii. The Service Provider shall provide an overall Quality Assurance Plan (QAP), for approval, that addresses critical and measurable operational performance standards for the services required under this contract. The Service Provider shall incorporate in the QAP a periodic system that reviews and updates the changes to all policies, plans and procedures. The QAP shall include a monthly audit, or as directed by ICE which shall include the performance review of the facility operations for compliance with the QAP and compliance with the

requirements of this contract. The Service Provider shall notify the Government 24 hours in advance of the audit to ensure the COR is available to participate. The Service Provider's QAP shall be capable of identifying deficiencies, appropriate corrective action(s) and timely implementation plan(s) to the CO.

iv. Service Provider shall identify measures they will take or have taken to assure and maintain community receptivity and support and/or reduce community opposition to the program.

b. Media and Organizational Inquiries –

The Service Provider shall refer all media inquiries to the ICE Public Affairs Office (PAO) through JFRMU. The Service Provider shall not provide any information to the press concerning this contract without prior approval from the ICE PAO. The Service Provider shall immediately notify the ICE PAO of any media or other organizational inquiries.

c. Personnel/Staffing

The Service Provider shall obtain prior written concurrence from the ICE CO Prior to the hire of any key personnel, the Service Provider shall submit to JFRMU, Project Manager (PM) and the CO a request for the review and approval of the job description, resume, cover letter, application, and any other applicable documents.

i. The following is a list of Key Personnel: Program Director, Assistant Program Director (if applicable), Clinicians/Lead Clinician, and Lead Case Manager.

ii. Prior to any employee performing duties under this contract, the Service Provider shall compile all documents and certifications which demonstrate the employees' compliance with the terms and conditions for employment as required by this contract and provide them to the COR. The Service Provider shall obtain written approval from the COR, for each employee, prior to assignment of duties. Staff hiring shall be in compliance with applicable FRS.

d. Service Provider shall ensure:

i. One person identifiably responsible for the entire program and its outcomes;

ii. Staff person(s) identifiably responsible for the overall coordination of services including the individual service plans and the case management activities;

iii. Clear lines of authority and responsibility;

iv. Professional staff available to provide program services according to State standards;

v. Staff available to provide structure and to coordinate and deliver all services required of the program;

vi. All staff responsible for the direct supervision of residents shall comply with the employee educational and/or experience levels that are commensurate with State standards;

vii. Staffing ratio is to be at most stringent state licensing requirement level, specifically, at a ratio at the lowest age group in the facility;

viii. All movement and activity of residents throughout the facility must be supervised by staff who are responsible for the direct supervision of residents;

ix. Staffing ratios must be maintained anywhere in the facility, e.g., when in recreation or dining (one staff person cannot take ten people down the hall). At no time shall there be all male or all female staff on duty. Staffing shall consist of appropriate male/female staff in accordance with the population to allow the accomplishment of the facility's goal;

x. Staff training shall be in accordance with State standards and shall meet minimum requirements of the applicable FRS. The Service Provider shall submit a training policy and

procedure including the standards. The Service Provider will provide ICE certification of employee training/refresher training annually. Staff is prohibited from providing any legal advice or counsel to residents in care, and is expressly prohibited from hindering or interfering with a resident's custody arrangements or in the execution of final immigration court orders.

e. Service Provider Employee Conduct. The Service Provider shall develop for his/her employees' standards of employee conduct and specific disciplinary actions that are consistent with the Federal Employee Responsibilities and Conduct, *5* CFR Part *735.* The Service Provider shall hold his/her employees accountable for their conduct based on these standards, which are not restricted to, but must include:

i. Service Provider staff shall not display favoritism or preferential treatment to one resident, or group of residents, over another.
ii. No Service Provider employee may deal with any resident except in a relationship that will support the approved goals of the facility. Specifically, staff members must never accept for themselves or any members of their family, any personal (tangible or intangible) gift, favor or service, from any resident or from any resident's family or close associate, no matter how trivial the gift or service may seem, for themselves or any members of their family. All staff members are required to report to the facility director any violation or attempted violation of these restrictions. In addition, no staff shall give any gift, favors, or service to residents, their family or close associates.
iii. No Service Provider employee shall enter into any business relationship with residents or their families (selling, buying or trading personal property).
iv. No employee shall have any outside or social contact (other than incidental contact) with any resident (past or present), his/her family, or close associates.
v. The Service Provider shall report all violations or attempted violations of the Standards of Conduct or any criminal activity to the COR. Violations may result in employee dismissal by the Service Provider or at the discretion of ICE. Failure on the part of the Service Provider to report a known violation or to take appropriate disciplinary action against offending employee or employees shall subject the Service Provider to appropriate action up to and including termination of the contract for default.
vi. The Service Provider shall provide all employees with a copy of the Service Provider's Standards of Conduct. All employees must certify in writing that they have read and understood the Service Provider's Standards of Conduct. A record of this certificate must be provided to the COR prior to the employee's beginning work under this contract.

6. Education and Background Requirements:

Education and Experience - at minimum, Service Provider employees shall possess a high school diploma or GED certificate and have at least two (2) years of experience that demonstrates the following:

a. The ability to greet and deal tactfully with the general public.
b. A clear capability of understanding and applying written and verbal orders, rules and regulations. All personnel shall be literate to the extent of being able to read and interpret printed rules and regulations, detailed written orders, training instructions and materials, and must be able to compose reports which contain the informational value required by such directives.
c. Each employee shall possess good judgment, courage, alertness, an even temperament, and

render satisfactory performance by conscientiously acquiring a good working knowledge of his/her position responsibilities.

d. The ability to maintain poise and self-control during situations that involve mental stress; this entails being able to withstand the accompanying excitement of fires, explosions, civil disturbances, and building evacuations.
e. The Service Provider is responsible for reviewing the standard for hiring and training and for meeting the criteria set under that standard for the various positions identified. The Service Provider will require current staff to self-report any arrests in a timely manner.

7. Removal from Duty:

a. The Service Provider shall immediately notify the COR in writing when learning of any adverse or disqualifying information on any employee. If the CO or COR receives disqualifying information on a Service Provider employee, he/she shall direct that the Service Provider immediately remove the employee from performing duties under this contract or any other ICE contract. The Service Provider must comply with all such directions. Disqualifying information includes but is not limited to:

i. Conviction of a felony, a crime of violence, a serious misdemeanor or any child related violation;
ii. Possessing a record of arrests for continuing offenses;
iii. Arrests for any sexual or child related violations; and
iv. Falsification of information entered on suitability forms.

b. ICE may direct that the Service Provider immediately remove from assignment to this Agreement any employee(s) who has/have been disqualified for either security reasons or for being unfit to perform their required duties as determined by the COR or CO. The Service Provider shall immediately notify the COR in writing when the employee is removed from duty. The Service Provider shall comply with this direction. A determination of being unfit for duty may be made from, but is not limited to, incidents involving the most immediately identifiable types of misconduct or delinquency as set forth below:

i. Neglect of duty, including sleeping while on duty, loafing, and unreasonable delays of failures to carry out assigned tasks, conducting personal affairs during official time, and refusing to render assistance or cooperate in upholding the integrity of the security program at the work sites.
ii. Falsification or unlawful concealment, removal, mutilation, or destruction of any official documents or records, or concealment of material facts by willful omissions from official documents or records.
iii. Theft, vandalism, immoral conduct, or any other criminal actions.
iv. Selling, consuming, or being under the influence of intoxicants, drugs, or substances which produce similar effects.
v. Unethical or improper use of official authority or credentials.
vi. Unauthorized use of communication equipment or
vii. Government property.
viii. Violations of security procedures or regulations. Recurring tardiness
ix. Possession of alcohol or illegal substances while on duty.
x. Allegations of misconduct related to resident care or custody
xi. Undue fraternization with residents as determined by the COR.
xii. Repeated failure to comply with visitor procedures as determined by the COR.

xiii. Performance, as determined by investigation by the CO, involving acquiescence, negligence, misconduct, lack of diligence, good judgment, and/or common sense resulting in, or contributing to, a resident escape.

xiv. Failure to maintain acceptable levels of proficiency or fulfill training requirements.

xv. The Service Provider shall not assign nor permit any employee to work under this contract more than a total of 12 hours of any 24-hour period. This shall include time employed not within the scope of this contract. All employees shall have a continuous eight (8) hour rest period within each twenty-four (24) hour period. Should situations arise where an employee is required for more than 12 hours, the Service Provider shall obtain prior approval from the COR. Exceptions shall only be granted on a case-by-case basis dependent upon the situation.

xvi. The Service Provider shall immediately notify the COR in writing of any employee(s) terminations, suspensions, resignations, or any other adverse personnel actions taken for any reason.

xvii. The Service Provider is responsible for his/her employees having identification credentials in their possession at all times while performing under this contract. The Service Provider credential required by ICE under this contract must contain the following for each employee:

1. A photograph of the employee that is at least one inch square. The photograph will show as a maximum, the head and shoulders of the employee and will be no more than one year old at the time the credential is issued.
2. A printed personal description consisting of the employee's name, sex, birth date, height, weight, hair color, and eye color.
3. Date of issuance.
4. Signature of the employee.
5. Identification of and validation by the issuing authority.
6. No credential shall be more than three years old. The Service Provider must void and immediately make the appropriate disposition of all identification credentials upon completion of assignments which result in his/her employees no longer performing under this contract.

8. Physical Facility Plant:

a. Program services shall be provided in the least restrictive environment appropriate to the population and administered in a culturally sensitive manner. Service Provider shall affirmatively demonstrate through appropriate documentation that all facilities meet all applicable State licensing requirements for residential childcare facilities and adult shelter care facilities, where applicable.

b. The Service Provider shall provide regular and effective monitoring and shall ensure that all residents are provided housing which meets or exceeds the minimum design standards described in this document and in the FRS. State licensing guidelines provide ample instruction on space, privacy, fire, safety, and sanitation requirements. State licensing standards shall be made part of the record submitted by the Service Provider to ICE. The Service Provider shall provide a copy of all State issued reports on the facility to the ICE CO.

c. The Service Provider shall have a daily housekeeping plan for the facility's physical plant. The Service Provider shall make arrangements and be responsible for periodic scheduled cleaning of floors, windows, furnishings, fixtures, and grounds necessary to conform to the applicable health and sanitary requirements. All facility maintenance, including janitorial service, is the

responsibility of the Service Provider. Service Provider shall supply the COR with a copy of the housekeeping plan.

d. The Service Provider shall provide space and accommodations as described in the attached Design Standard for "Family Residential Facility".
e. The Service Provider shall not change or modify any drawings, schedules, specifications, or documentation provided under the solicitation/contract, without prior written direction or approval of the CO. The Service Provider shall provide a complete set of construction drawings, schedules, and cut sheets at the 35% and 100% design stages for review and concurrence by the CO. The 100% design shall be provided to the CO at least 60 days prior to commencement of construction

9. Emergency and Safety Requirements:

a. The facility shall comply with all applicable federal, state and municipal sanitation, safety and health codes and the applicable FRS. The Service Provider shall provide copies of the certificate(s) which document the compliance with these codes to the COR prior to occupancy.
b. The Service Provider shall provide written policy and procedure to the COR which specify the facility's locally approved fire prevention plan and procedures to ensure the safety of staff, residents and visitors in compliance with the applicable FRS. ICE may perform inspections as deemed necessary to assure compliance with all health, safety and emergency procedures.
c. The Service Provider shall assure that the facility is a tobacco free environment.
d. The Service Provider shall prepare emergency plans in compliance with the FRS.
e. The Service Provider shall ensure that the facility has the fully functional equipment necessary to ensure automatic transfer of services for essential lights, power and communications in an emergency.
f. The Service Provider shall ensure that the interior finishing materials in living areas, exit areas and places of public assembly conform to recognized national safety codes.
g. Children under 10 years of age shall not be permitted in upper bunks of any bunk beds.
h. All electrical receptacle outlets shall be turned **off** in all bedrooms or protected by electrical safety devices such as surge protection switches or covers. All areas off-limits to residents must be locked when not in use.

10. Program Reporting Requirements:

a. Monthly Program Progress Reports are due the fifth workday after the end of each month. These reports shall, at a minimum, provide information regarding adjustments, and progress made toward meeting the specific goals and objectives of the contract. The Monthly Program Progress Report shall include, but is not limited to, information describing a chronological listing of all residents, which includes name, alien control number, date of admission, end of month status, and date of discharge.
b. The Service Provider, upon discovery, shall immediately notify the applicable JFRMU coordinator and local ICE supervisor in charge of the facility verbally and follow up in writing within 24 hours with a complete written report of any change in the status or condition of any resident in care including the following:

i. Any unauthorized absence of the resident;
ii. Contacts or threats by individuals believed to represent alien smuggling syndicates or organized crime;
iii. Pregnancy of the resident; (d) Childbirth by the resident;
iv. Hospitalization of, serious illness of, or serious injury to the resident;

v. Suicide or attempted suicide by the resident;
vi. Escape or attempted escape by the resident; (h) Death of the resident;
vii. Hunger strike by the resident(s);
viii. Arrest and/or incarceration of the resident; (k) Commission of a major program offense;
ix. Any abuse or neglect incident dealing with a resident; and
x. Unauthorized correspondence and/or contact with a resident (past or present).

c. Procedures for reporting escapes or other unauthorized absences are as follows:

i. Report to local law enforcement authorities; and
ii. Report to the appropriate JFRMU coordinator and local ICE supervisor in charge of the facility;
iii. Information reported will include:

1. Name and alien registration number of resident(s);
2. Physical description of individual(s)
3. Time of incident;
4. What occurred;
5. Any known calls or contacts made by resident prior to escape;
6. Name, address, phone number of family;
7. Information regarding unusual behavior;
8. Any reasons to believe that escape was involuntary;
9. Other law agencies notified and point(s) of contact.

11. Record Retention:

a. The Service Provider shall provide written plans, policies and procedures that describe the format and reporting criteria for all records and reports in compliance with applicable FRS. The Service Provider shall maintain all logs and records required to operate and document both the operational and personnel aspects of the facility and to comply with the requirements of this contract. ICE officials and FRS compliance inspection personnel shall have the right to inspect any and all records, upon demand, at any time during the term of the contract or thereafter as specified below. All reporting requirements contained within this contract shall comply with this paragraph.
b. The Service Provider shall only destroy or alter with intent to deceive any logs/records pertaining to this contract in compliance with applicable FRS. At the completion of termination of this contract, the Service Provider shall turn over all remaining logs and records as directed by the CO.

12. ICE Coordination:

a. ICE will be involved in the programmatic development and on-going activities proposed and agreed upon in this contract. ICE will monitor and evaluate the provision of services; establish mechanisms to facilitate the referral and assignment of juveniles and family groups to the Service Provider for purposes of shelter care and other related services and provide consultation regarding programmatic issues or concerns, as needed.
b. At time of placement in facility, ICE will provide the Service Provider with appropriate available alien documentation.

13. Operating Constraints:

The following constraints are the statutory, regulatory, policy and operational considerations that will or may impact the Service Provider. The Service Provider is expected to become familiar with all constraints affecting the work to be performed. These constraints may change over time; the Service Provider is expected to be aware of any changes to the constraints and perform in accordance with the most current version of the constraints. Constraints include, but are not limited to:

a. Memoranda of Understanding between ICE and individual state and local law enforcement jurisdictions may vary.
b. ICE resource constraints and funding may influence the activities and breadth of the Family Residential Management program.
c. Department of Homeland Security Management Directive (MD) 11042.1- Safeguarding Sensitive but Unclassified (For Official Use Only) Information.
d. Department of Homeland Security Management Directive (MD) 11050.2 - Personnel Security and Suitability Program
e. Other applicable Executive Orders and Management Directives f) Computer Security Act of 2002
f. The Patriot Act of 2001
g. The Illegal Immigration Reform and Immigrant Responsibility Act (IIAIRA), P. L. 104-208
h. Immigration and Nationality Act of 1952, as amended (P.L. 82-414)
i. The Privacy Act of 1974, as amended (P. L. 5 U. S. C. 552a)
j. Health Insurance Portability and Accountability Act of 1996 (P. L. 104-191)
k. Federal Acquisition Regulations (FAR) and Department of Homeland
l. Security Acquisition Regulations (HSAR)
m. Applicable facility codes, rules, regulations and policies. n) Applicable Federal, state and local labor laws and codes.
n. Pre-clearance approvals are required for access to ICE field staff, facilities and information
o. All applicable environmental requirements, including Executive Orders and
p. Management Directives
q. Existing lease agreements.
r. DHS Non-Disclosure Agreement Requirement

# Artesia Family Residential Center

## Resident Handbook

**A_ICE-0001**
**FLETC**
**1300 West Richey Avenue**
**Artesia, NM 88210**

# Table of Contents

## INTRODUCTION

The Artesia Family Residential Center (The Center) is operated by U.S. Immigration & Customs Enforcement (ICE). The Center's mission is to allow families to remain together while in ICE custody in the least restrictive setting available while enforcing rules necessary to ensure the safety and well-being of residents and staff alike. The Juvenile and Family Residential Management Unit (JFRMU) monitors activity at this Center. JFRMU is a unit within U.S. Immigration and Customs Enforcement and is responsible for all operations where ICE families are housed. JFRMU and the ICE Detention Services Monitor are responsible for monitoring the health, safety and security of residents placed here. These officers ensure the Center complies with federal standards relating to a variety of topics including food service, sanitation, medical care, visitation, and legal rights.

MAILING ADDRESS

**A_ICE-0001**
**FLETC**
**1300 West Richey Avenue**
**Artesia, NM 88210**

## THE RESIDENT INFORMATION CENTER

The Resident Information Center is located in the hallway by your dormitory's bathroom facilities and is freely accessible 24 hours a day. Forms and mailboxes are located at the Resident Information Center relating to legal assistance, ICE communication requests and grievances. Postings regarding access to medical care, mail procedures, program services, recreational activities, and a copy of the current resident handbook are also located in the Resident Information Center.

## RESIDENT HANDBOOK

The purpose of this handbook is to provide residents with specific rules, regulations, policies and procedures that must be followed while residing at the Center. The handbook will also provide a general overview of the programs and services offered at the Center. Upon admission to the Center, each family is provided with a copy of the resident handbook. It is your responsibility for you and your family to become familiar with the contents of this handbook and to ask staff questions if there is anything you do not understand. Questions may be directed to any of the staff. A copy of the current resident handbook is also posted at your dormitory's Resident Information Center. Occasionally, changes need to be made to the resident handbook. When this occurs, residents will be given the updates and the updates will also be posted at your dormitory's Resident Information Center.

## RESIDENT RIGHTS AND RESPONSIBILITIES

It is Center policy to treat residents with dignity and respect while maintaining a safe, secure, and sanitary residential center. It is expected that staff will receive your full cooperation while you reside here. Although staff may not know newly admitted residents by name, they are always expected to address you in an appropriate and respectful manner. You are expected to address other residents and staff in the same manner.

- You have the right to be informed of the rules, procedures and schedules concerning the operation of the Center. You have the responsibility to know and abide by them;
- You have the right to freedom of religious affiliation and voluntary religious worship. You have the responsibility to recognize and respect the rights of others in this regard;
- You have the right to contact your consulate or embassy and have those officials call and visit you during your stay at the Center. See the sections on telephone usage and visitation for more information;
- You have the right to receive regular health care, nutritious meals, proper bedding and clothing, an opportunity to shower regularly, hygiene products, proper indoor climate control, and regular exercise opportunities among other things. It is your responsibility to seek medical care as needed, to not to waste food, to follow the laundry schedule, to maintain proper hygiene and keep your living quarters clean;
- You have the right to protection from personal abuse, corporal punishment, unnecessary and excessive use of force, personal injury, disease, property damage and harassment;
- You have the right to freedom from discrimination based on race, religion, national origin, sex, handicap or political beliefs;
- You have the right to pursue grievances in accordance with written procedures outlined in this handbook;
- You have the right to due process, including the prompt resolution of administrative disciplinary matters as outlined in this handbook;
- You have the right to unrestricted and confidential access to the courts;
- You have the right to pursue legal assistance at no cost to the United States Government;
- You have the right to use the law library. You have the responsibility to use those resources responsibly and to respect the rights of other residents in the use of the space and materials;
- You have the right to freely correspond with persons or organizations;
- You have the right to have family members and friends visit. You have the responsibility to conduct yourself properly during visits;
- You have the right to take advantage of activities and programing, which may aid in an enjoyable stay at the Center. You have the responsibility to abide by the rules governing the use of such activities and programs;
- School aged children have the right to attend school and receive instruction equal to that of their peers. You have the responsibility to ensure children attend school and study for assigned class work and homework;
- Children have the right to participate in all age appropriate activities and programing when not in school. You have the responsibility to encourage them to participate in leisure activities, ensure they abide by all Center rules including respecting the personal space of others and refraining from bullying behavior.

## RESIDENT PROGRAM RULES

- Follow the directives that are given by the Center staff;
- Wear your Center identification wristband at all times. Report any damage or loss of the band to staff so a replacement may be made.
- Treat all residents and staff with respect and courtesy, regardless of race, religion, ethnicity, gender or age;

- Attend to the physical and emotional needs of your children while modeling appropriate behavior;
- Monitor your child's behavior and use only approved behavior modification techniques when necessary. Corporal/ physical punishment is prohibited;
- Do not file knowingly false complaints, grievances or other reports;
- Do not speak disrespectfully, or be verbally or physically aggressive towards other residents or staff. Should you encounter others displaying this behavior, report it immediately to staff;
- Do not have physical or intimate contact with other residents or staff while at the Center. See the section on sexual abuse and assault prevention for more information;
- Do not possess contraband while at the Center;
- Respect the rights of other residents and staff;
- Do not take or borrow other residents' property;
- Comply with census procedures;
- Perform assigned chores;
- Maintain proper hygiene;
- Clean your bedroom and assist in the sanitation of common areas of your housing area.;
- Conduct yourself in an orderly manner during meals, clear your immediate area after each meal and ensure your children's area is also cleaned;
- For students- follow classroom rules that are established by the teachers and the Center staff;
- Promptly report broken items or damaged property to staff;
- Alert staff immediately of any problems or concerns;
- Ask staff if you do not understand or remember Center rules;
- Abide by the room visitation policy. See the section concerning bedrooms for more information;
- Do not borrow or trade clothing, hygiene products, jewelry or make-up;
- Do not deface or otherwise damage Center property;
- Comply with the dress code found in this handbook;
- Do not use tobacco products, alcohol or gum;
- Do not waste food;
- Do not use profanity.

Failure to follow the above rules may result in the initiation of disciplinary proceedings. Serious and/or continuous infractions may lead to a review of your continued suitability for placement in this residential setting. See the section on disciplinary procedures for more information. Residents who act in an aggressive manner and/or attempt to cause harm to themselves or others, may be passively restrained under the Center restrictive procedure policy to protect themselves and others.

## RESIDENT REQUESTS

Generally, residents can have questions answered and obtain services merely by speaking to staff. For those who would rather request information formally, the official method is by completing a Resident Request form. These forms are available at your dormitory's Resident Information Center. Please complete all the information requested on the forms. You may obtain assistance from another resident or staff member in preparing your request form. Completed forms are to be placed in the

drop off box labeled "Requests" located at your dormitory's Resident Information Center. These forms are collected each business day and routed to an officer for resolution. This procedure is not to be used for submitting formal grievances. See the section on grievance procedures for more information.

## CONTACTING IMMIGRATION

Specific ICE staff is assigned to your immigration case and they conduct a minimum of weekly scheduled visits to answer your immigration concerns. You may speak with these officers during their scheduled visits and convey any questions, requests or concerns to them. The ICE visit schedule is posted at your dormitory's Resident Information Center.

## LIVING ARRANGEMENTS

Residents are expected to share common equipment such as telephones, televisions, tables, recreational games and other equipment. Quiet hours are from 10:30pm to 6:30am on weekdays (Sunday night through Thursday night) and at 12:00 midnight to 6:30am on weekends (Friday and Saturday night) and holidays. During quiet hours, residents are expected to refrain from activities that would disturb the sleep of others.

## BEDROOMS

Children 12 years and under will be assigned a bedroom with their parent. Children 12 years and over will be assigned a bedroom with other children of the same gender and like age. Each resident is provided with his or her own bed. Residents should make their beds and straighten up their immediate area each morning. When not in use, beds should remain made. Beds are not to be moved. It is AFRC policy that the **room doors remain open from 8:00 am to 8:00 pm.** Due to the communal nature of the Center, where children from different families may room together, and non-related adults room together, residents must abide by the following room visitation policies to ensure the privacy and safety of all residents: Children not sleeping in the same room as their parent may enter their parent's bedroom only in the company of their parents. As there are areas in the Center to relax with other residents for conversation, adults are not allowed to congregate in bedrooms. Residents are permitted to decorate their rooms with personal items, so long as the decorations do not present a health or safety hazard, do not peel paint off the walls or otherwise deface Center property. No items are allowed to cover the light fixture, doors or windows. Items are not to be hung from vents or beds. Due to the communal nature of the Center, residents must only disrobe in the shower rooms or in the bathroom. Approved property will be stored inside assigned bedroom closets. See the section on allowed personal property for more information. Closets shall be kept organized. No unauthorized food or drinks are allowed to be stored in bedrooms. All hygiene items must be stored in assigned bedroom closets. Toys are allowed in bedrooms during free movement hours. After free movement, all toys must be taken back to the common areas so that they can be sanitized for the following day. See the section on free movement for more information.

## CHILDREN'S BEDTIMES

Children's bedtimes were set to promote a routine for the Center children and to allow for their restful attendance in class. The general bedtime for children 4 years and younger is 8:30pm Sunday through Thursday. The general bedtime for children 5 years to 17 years is 9:00pm Sunday through Thursday. The bedroom light shall be turned off no later than 15 minutes after the set times. There

are no general bedtimes set for children on Friday and Saturdays. Parents are encouraged to continue (or develop) their children's bedtime routines while at the Center.

## OVERNIGHT CHECKS

State regulations require staff to conduct room checks at a minimum of every fifteen minutes during each night to ensure resident safety. The checks will be done with as little disruption as possible.

## FREE MOVEMENT

Barring temporary restrictions due to medical or security reasons, free movement hours are from 6:00am to 8:00pm each day. During this time, adult residents are allowed to move freely throughout all programing areas of the Center without first asking staff permission or notifying staff where they are going. Children age 10 and older may participate in free movement, when issued a pass by their parent. See the section on free movement passes for more information. Children age 10 and older who do not currently have a pass and all children under 10 years old are expected to be under the direct supervision of their parent at all times when not in school or participating in an organized activity. Outside of free movement hours, residents are expected to remain in their dormitory area. Each dormitory area has resident bedrooms, bathrooms and shower rooms; all of which may be accessed freely 24 hours a day.

## OUTDOOR CAMPUS ACCESS

Barring temporary restrictions due to medical, environmental or security reasons the outdoor campus is open from 6:00am to 8:00pm or dusk, whichever is earlier. Outdoor recreation equipment may be checked out by speaking with the Housing Officer. These items must be returned to the Housing Officer. Residents must report any loss or breakage to staff so the equipment stays in good working order and is replaced as needed. Drinking water and bathrooms are accessible while outside.

## CHILDREN'S FREE MOVEMENT PASS

Children 10 years and older may receive a free movement pass from their parent which allows them to participate in the free movement program. This pass may be given, suspended and reinstated by the parent at any time of their choosing. Residents not receiving free movement passes for their children at admission should request these passes by completing a Resident Request Form. These forms are available at your dormitory's Resident Information Center. Completed forms are to be placed in the mailbox labeled "Requests". These forms are collected each business day and routed to an officer for resolution. You may obtain assistance from another resident or staff member in preparing your request form.

## CLOTHING

Residents must be properly dressed when outside of their bedrooms. See the section on resident dress code for more information. Each resident is allowed to keep 10 sets of personal clothing in their rooms. Children newborn to age 5 years may have 12 sets. These sets may be clothing you brought to the Center, clothing provided by the Center or clothing you purchased during your stay. Underwear, bras and socks will be exchanged as needed. Residents in need of new underwear or clothes should speak with staff or submit a Resident Request form. These forms are located at the Resident Information Center. Completed forms are to be placed in the mailbox labeled "Requests". Residents will not be allowed to have more items than those listed above, except when authorized by the Center Administrator.

## CENTER CLOTHING

Indigent residents and residents not arriving at the Center with a suitable amount of seasonally appropriate clothing will be issued Center clothing to use during their stay. Should you need additional or seasonally appropriate clothing during your stay, speak with your dormitory officer or submit a Resident Request form. These forms are located at your dormitory's Resident Information Center. Completed forms are to be placed in the mailbox labeled "Requests".

## RESIDENT DRESS CODE

Residents 12 years and older:

- Shall only wear clothing that covers their shoulders, chest, stomach and all areas of the anatomy between the naval (belly button) and mid-thigh when seated;
- The top or neckline of clothing shall be no lower than the underarm in the front and in the back;
- Sheer (see-through) clothing is prohibited;
- Shoes shall be worn at all times;
- Shirts shall be worn at all times;
- "Gang colors" are prohibited.

## LINENS

The following linens are provided to each resident upon admission to the Center:

- 2 sheets,
- 1 pillowcase,
- 1 blanket,
- 1 laundry bag

These linens will be exchanged for clean linens no less than once a week, or more frequently as needed. Speak with staff should an occasion arise when you need clean linens outside the normal exchange day.

## LAUNDRY

Residents' personal clothing will be laundered at least once a week. Each dormitory is scheduled to turn in their dirty laundry on an assigned day. The laundry schedule is posted at your dormitory's Resident Information Center. In the event clothing become soiled between scheduled laundry times, ask your dormitory officer for additional clothing.

## PERSONAL HYGIENE

At the Center, you will be living in close proximity with other families, so personal hygiene is essential. You are expected to bathe regularly and keep your hair clean. Upon arrival to the Center, each resident was issued hygiene products. These items may be replaced as needed by submitting a Resident Request form. These forms are located at the Resident Information Center. Completed forms are to be placed in the mailbox labeled "Requests". Feminine hygiene items are available in the female toilet room in your dormitory and female residents are allowed to keep a supply in their bedroom. Residents have free access to showers during free movement hours, 7 days a week. Should you need to shower at other than free movement times, speak to staff. The shower rooms are labeled according to gender (male and female). Children 9 years and older will shower according to their gender. Should your child need assistance and is older than nine, see staff for accommodations.

Children 8 years and younger will shower only under the direct supervision of their parent so as to not disturb other residents using the shower room. Adults may wear their own make-up. All make-up must fit in your bedroom storage locker or it will need to be placed in storage. Razors are available daily as per the schedule posted in the Resident Information Center. All razors are issued by housing officers and shall be returned to housing officers upon completion of use.

## ALLOWABLE PERSONAL PROPERTY

While at the Center, you are permitted to retain in your bedroom:

- 10 sets of clothes per resident as described above;
- Personal hygiene items;
- Legal documents, legal papers and legal Information;
- Photos;
- Medical prostheses, (i.e. eyeglasses, dentures, etc.);
- Personal reference materials, (i.e. address/phone book and/or list of relatives, friends and/or other correspondence);
- Religious items (approval by the Center RSC required). See the RSC section for more information;
- Newspapers, magazines, books and other literature (limited to any combination of 3 at a time to ensure accumulations do not produce and/or effect fire safety standards);
- Items listed on the commissary work sheet;
- Artwork, crafts etc. that you have accumulated during your stay at the Center.

Any items not included on this list will be considered contraband. Additional personal property must be approved by the Center Administrator prior to purchase/possession.

## WRITING INSTRUMENTS AND PAPER

Writing paper is available at the dormitory officer station or by completing a Resident Request form. These forms are located at your dormitory officer's station or by completing a Resident Request From. These forms are available at your dormitory's Resident Information Center. Completed forms are to be placed in the mailbox labeled "Requests". Pens, pencils, arts supplies (colored pencils, crayons) may be available in your dormitory's day room and at your dormitory officer's station. Parents must supervise young children using art supplies so as to not deface Center property.

## GENERAL SAFETY/EVACUATION DRILLS

Center staff makes every effort to ensure the safety of all residents and staff. Residents also have a responsibility for aiding in their family's safety in the following ways:

- Clean up your and your family's spills or request staff assistance to do so;
- Pay attention to posted warnings, such as wet floor signs and use reasonable care when in these areas;
- Notify staff immediately if a fire, emergency or other possible hazard is observed.

During an emergency, loud alarms may sound and bright lights may flash. At these times, residents must refrain from conversation unless it is directed to staff and concerns the immediate issue at hand. Your and your family's safety depends on your ability to hear, understand and follow staff direction during an emergency. During an emergency, staff is required to evacuate all residents and

staff to a predetermined outdoor evacuation location. Staff will confirm everyone has left the building by counting the residents and staff when they arrive at that location. If your children were not in your presence when the emergency occurred, you will reunite with them at the outdoor evacuation location. Please familiarize yourself with the diagram posted in the dormitories and at the Resident Information Center, which shows the location of the outdoor evacuation location. There are exit diagrams posted around the Center that show the location of all emergency exits. Study these diagrams carefully and become familiar with their locations. Should an emergency occur and you are near a fire exit, do not wait for staff – exit to the outdoor evacuation location and wait for staff to arrive. Per local, state and federal laws, the Center is required to perform evacuation drills. The Center performs several drills each month, at varied times of the day and night. These drills are not designed to inconvenience residents, but rather to comply with regulations and ensure resident and staff safety in the case of an actual emergency. Parents should advise and discuss these drills with their children.

## RESIDENT CENSUS

At this Center, resident accountability is done through residents reporting for censuses 3 times during each 24-hour period. Census times are:

10:30am
4:30pm
8:00pm

Residents will report to their dormitory officer as family units during the times listed above. If residents are at an appointment near the close of the census time, the staff supervising the appointment will report the resident's location. Residents who do not check in properly during census will be counseled regarding the requirement.

## MEALS

All menus are designed to be nutritionally balanced and are approved by a certified dietician. Residents are provided 3 meals each day in the dining room, located on the bedroom floor:

Breakfast 06:30am -08:30am
Lunch11:30am -01:30pm
Dinner 5:30 pm – 7:30 pm

Seating in the dining room is not assigned. Residents may sit wherever they desire for each meal. High chairs and booster seats are available in the dining room. Small children are expected to be seated during meals to encourage sound eating habits.
Utensils and trays used in the dining room are disposable. At the end of each meal, residents are required to clear their family's immediate area. All food or drink must be consumed during the meal – no food may be taken from the dining room.

## SNACKS AND DRINKS

Fruit, snacks and drinks are available 24 hours a day in the dormitory area. Residents are not allowed to take more food or drinks than they will consume at one sitting. This food is replenished several times a day so there is no need to hoard food.

## SPECIAL DIETS

Therapeutic/medical diets shall be prepared and provided according to the orders of the Center medical department physician. Religious diets shall be prepared and provided for residents whose religious beliefs require the adherence to religious dietary laws. Residents are required to meet with the Religious Services Coordinator (RSC) for religious diet approval. See the section on the RSC for more information.

## RELIGIOUS SERVICES

All residents have access to religious resources, services, instructions and counseling while residing at the Center. These services include individual counseling, group prayer, Bible study and various church/worship services. These onsite religious services are provided through outside religious organizations and community volunteers. The Center Religious Services Coordinator (RSC) addresses all questions or concerns regarding religious opportunities or practices and will assist in obtaining materials on various faiths and may be able to facilitate visits by ministers of particular faiths. Outside religious persons may also freely visit with residents either by appointment made by the RSC, or during visitation hours. See the section on visitation for more information. A schedule of scheduled services is posted at your dormitory's Resident Information Center. These services are open to all who wish to attend and are only limited by the occupancy of the chapel space. If this occurs, additional arrangements will be made. Should you wish accommodation such as for special religious observances, speak to the RSC who will coordinate the request if possible.

### Religious Services Coordinator (RSC)

Residents may request appointments with the Chaplin by speaking with him, or by completing a Resident Request form. These forms are located at your dormitory's Resident Information Center. Completed forms are to be placed in the mailbox labeled "Requests".

## MEDICAL SERVICES

We want you and your children to be healthy during your stay with us, so appropriate and necessary health care is provided free of charge. ICE provides this care through the ICE Health Services Corps. Medical care begins upon your arrival at the medical clinic. You and your family members will receive an initial medical screening upon entry into the facility. All individuals will be scheduled for a physical exam and on-going medical services as needed.

## EMERGENCY MEDICAL SITUATIONS

If you or a family member is experiencing a medical emergency and/or need immediate medical attention while at the Center, notify any staff member and stay calm, medical will respond. If you cannot go to staff due to your medical situation, request any resident in the area to alert staff to help you. Medical responds to all areas within the facility.

## SICK CALL

If you or your children are feeling sick or have a medical, dental or mental health problem, you can access the medical department through the sick call process. Sick call is conducted seven days a week. Sick call is held at specific times each day and the times are posted at your dormitory Resident Information Center. To access sick call services report to the medical exam room in your

dormitory at the designated time posted. Staff is also available to provide you with information on how to access medical routine medical care.

## URGENT CARE

Urgent care is defined as care that cannot wait for routine sick call but may not require hospitalization. If you or a family member is having an urgent medical, mental health or dental condition, please notify the staff in your dormitory so the medical department can be contacted. Examples of urgent care situations include, but are not limited to: An accident or injury, fever, difficulty breathing, bleeding or seizures. If the condition reported is determined not to be non-urgent, you may be requested to report to sick call for an appointment. Please do not use the urgent care process for routine medical care, it slows down the medical process for everyone.

## DENTAL SERVICES

The Artesia Medical Clinic is equipped to assess dental concerns. Upon admission, you will receive a dental screening. Routine and emergency dental care is also available. Emergent dental care includes, but is not limited to: dental infections, painful teeth, facial swelling, or trauma to teeth. To receive dental treatment follow the same process as outlined above. An appointment will be made for you to address your dental concerns in a timely manner. The appointment time will depend on the seriousness of your problem.

## MENTAL HEALTH SERVICES

Routine mental health services are available upon request. Please use the sick call process if the concern is routine in nature. You should seek mental health services for yourself or your child if you notice a significant change in behavior or experiencing significant challenges in adapting to the facility. Please notify a staff member if you are feeling suicidal or one of your children is expressing suicidal thoughts, this is considered a medical emergency and the medical staff is here to help.

## MEDICATIONS

If you or a family member is prescribed medication, you will be educated to the name, frequency, and purpose of the medication. These medications will be prepared and administered at scheduled intervals in the dormitory. Each dormitory has a “pill-line” room; please report to the “pill-line” room as scheduled to assist in ensuring that you or your children receive timely and appropriate medical care.

## MEDICAL DEPARTMENT CONDUCT

The general rules of conduct at the Center will be followed while in the medical department. Parents are required to supervise their children at all times. The clinic is a busy place, parents are to keep their children in sight at all times and ensure that they are not engaging in any activity that may lead to an injury such as running around or jumping off chairs. There may be medical equipment in the area such as scales; parents are to ensure that their children are not playing with these items.

## CHAPERONS

We want you and your children to feel comfortable while being treated by our health care professionals. At any time, you may request a chaperone be present during an examination.

## COMPLAINT OR GRIEVANCE ABOUT MEDICAL CARE

You are encouraged to discuss the medical care that you or your family is receiving with the medical staff. If you need to discuss the care that you or a family member receives, report to sick call and our staff can answer your questions. If it is an urgent matter, ask the officer in your dormitory to contact the medical department. If you are not satisfied with the outcome of your discussion with medical staff or continue to have concerns about medical services provided, you may choose to complete a medical grievance that will be submitted to the Health Services Administrator for further review. See the section on grievances for more information.

## SEXUAL ABUSE AND ASSAULT PREVENTION AND INTERVENTION

ICE has a zero tolerance policy against any sexual abuse and assault. The Center has a Sexual Abuse and Assault Prevention and Intervention (SAAPI) Program in place to protect residents and staff. If you feel unsafe at any time during your stay at the Center because of threats of sexual abuse or assault, or if you are sexually abused or assaulted, you should immediately advise any member of the staff for assistance. If you are sexually abused or assaulted, the medical department will provide appropriate treatment and counseling. There is also sexual abuse and assault information at the Resident Information Center. On site IHSC social workers provide counseling and/or assistance at resident request. You can also request a victim advocate who will provide you support after an allegation of sexual abuse or assault. Please ask staff for the "Detainee Assistance Alternative" flier. Additionally, residents feeling in danger may do one or all of the following:

- Report your concern to any member of the staff;
- File an emergency grievance stating the nature of your problems and your emergent needs. See the section on grievances for more information;
- Contact ICE by completing a Resident Request Form. These forms are located at the Resident Information Center. Completed forms are to be placed in the drop off box labeled "Requests";
- File a complaint directly to the Department of Homeland Security;
- Contact your consular office (see contact lists in Residential Information Center);
- Contact the Office of the Inspector General (OIG) through the free phone call system, or by:

Writing **DHS OIG HOTLINE**
**245 Murray Drive, S.E., Building 410**
**Washington, D.C. 20538**
Emailing (b)(6), (b)(7)(c)
Telephoning: **1-800-323** (b)(6), (b)(7)(c)

- Notify a relative, friend or your attorney and request that they contact ICE or DHS/OIG on your behalf.

## RESIDENT CHORES

Residents are responsible for maintaining their bedrooms in a neat and sanitary condition. Residents are expected to make their beds each morning and pick up after themselves and their children when in the Center common areas.

## TELEPHONE ACCESS

Resident telephones are located in each dormitory and are available 24 hours a day. The Center may monitor or record conversations on telephones. There is sanitizer available to clean the phones before or after use. Accommodations shall be made for residents with communication impairments (ex: hearing/speech impaired), or residents who wish to communicate with such persons by speaking with your dormitory officer or completing a Resident Request form. These forms are located at the Resident Information Center. Completed forms are to be placed in the drop off box labeled "Requests". To ensure that all residents have the opportunity to use the telephones, residents are allowed at a minimum two twenty minute telephone calls each day. Friends and family may call the Center to leave messages for residents by calling 1-888-351-4024. The call in number is posted in your dormitory's Resident Information Center. Emergency messages will be delivered to the resident as soon as possible and non-urgent messages will be delivered within 24 hours.

## ICE FREE ACCESS TELEPHONE CALLS

Residents may contact a variety of organizations at no cost. See the information posted at your dormitory's Resident Information Center or your dormitory officer for instructions on calling consulates, immigration courts, the American Bar Association, the ICE Detention Information and Reporting Line, the Office of Inspector General and a variety of other government and non-governmental offices.

## INDIGENT RESIDENT TELEPHONE ACCESS

In addition to the ICE free telephone calls mentioned above, indigent residents may also make free calls to legal assistance organizations, family and other necessary calls, by speaking to their dormitory officer or by completing a Resident Request form. These forms are located at your dormitory's Resident Information Center. Completed forms are to be placed in the drop off box labeled "Requests".

## LEGAL ASSISTANCE TELEPHONE ACCESS

Telephone calls to your legal provider and courts are not monitored or recorded at any time. To access a more private area from which to make legal assistance calls, speak to your dormitory officer or complete a Resident Request form. These forms are located at the Resident Information Center. Completed forms are to be placed in the mailbox labeled "Requests".

## COMPLAINT AND GRIEVANCE PROCEDURES

Staff will not harass, discipline, punish or otherwise retaliate against a resident who files a grievance or complaint. Any allegations of this nature will be thoroughly investigated by the Center Administrator. Residents have access to the formal grievance system at all times, but are encouraged to try to resolve small complaints informally whenever possible.

**Informal Process** - The informal route involves discussing the issue with staff in an attempt to resolve the matter. You may choose to speak with staff, your caseworker, or supervisor. You may also submit your complaint on a Resident Request form, which a supervisor or designee will review and attempt to resolve. The informal route is less time consuming than the formal route so may offer resolution more quickly. If you are dissatisfied with the response, you may file a formal grievance as outlined below.

**Formal Process** - If you do not receive a resolution through the informal process, or wish to bypass the informal process, you may file a grievance on a grievance form. These forms are available at the Resident Information Center. If you attempted to resolve the matter first informally, please indicate on the grievance form who you spoke with informally. Grievance forms should be completed and placed in the locked mailbox at the Resident Information Center marked "Grievance". Only the grievance officer has access to this mailbox, and will keep your grievance as confidential as possible. This mailbox will be checked and emptied each business day. If a resident feels the grievance is of a sensitive nature or that their safety or wellbeing would be jeopardized if others read the grievance, they may seal the form in an envelope, mark it as "Sensitive" and deliver it directly to the Center Administrator. See your dormitory officer for an envelope if needed and information on how to deliver it directly to the Center Administrator. Grievances should be filed as soon as possible after the alleged incident. Delays in filing may make it more difficult to investigate the issue. Residents may ask other residents, family members, legal representatives or staff for assistance in completing the grievance form. Residents are not allowed to submit a grievance on behalf of another resident unless they are the parent of the resident who has a problem. Residents may write about one single complaint, or several closely related complaints concerning a single subject on each grievance form. When completing the form, residents should try to clearly identify the issue, complaint or area of concern. If the form is not clear, it will be returned for further information. The grievance officer will meet with the resident, conduct an investigation and return a written decision to the resident within 5 business days of receipt of the grievance. If the resident disagrees with the grievance officer's decision, the officer will submit the grievance and decision to the Resident Grievance Committee (RGC). The RGC will adjudicate the grievance within 5 days and serve the resident with the written decision and basis of the decision. If the resident disagrees with the RGC decision, they may appeal to Center Administrator. Prior to submission the resident must complete the section on the grievance form described as "State Reason(s) for Appeal" and return it to the RGC at the time the RGC decision was served or by placing the completed dormitory in the locked drop off box at the Resident Information Center marked "Grievance". The resident shall be provided with an opportunity to appear before the Center Administror to present his or her case, answer questions, and respond to conflicting evidence or testimony. The Center Administrator will render a written decision on the appeal within 5 business days of receipt

## EMERGENCY GRIEVANCE PROCEDURES

An emergency grievance is initiated when a resident verbally notifies staff that that they have a complaint that immediately affects their safety or welfare. The staff receiving the resident's report will bring the matter to the immediate attention of the Center Administrator.

## NON-GRIEVABLE MATTERS

The following matters are not grievable through the Center grievance procedure:

- State and Federal Court decisions;

- State and Federal laws and regulations;
- Final decisions on grievances;
- ICE policies, procedures, or decisions (i.e., institutional transfers, releases, removals etc.);
- Disciplinary hearing decisions. Disciplinary appeals may be submitted on the disciplinary form after the hearing.

Residents who demonstrate a pattern of filing nuisance complaints or otherwise abuse the grievance system may have those complaints returned unprocessed.

## STAFF MISCONDUCT

Residents may report staff misconduct directly with the Department of Homeland Security, Office of Inspector General by calling directly dialing 1-800-323-8603, by using the free call system programmed into the telephones or writing to:

**Department of Homeland Security**
**Office of the Inspector General**
**245 Murray Drive, S.E., Building 410**
**Washington, D.C. 20538**

## CONTRABAND

Contraband is any material prohibited by law or regulation or that can cause physical injury, is inherently dangerous as a weapon or tool of violence, affects the safety of the Center residents or staff, or creates dangerous or unsanitary conditions in the Center. Examples would be: knives, guns, flammable liquids, keys, intoxicants, prohibited currency, controlled substances, cigarettes, alcohol, scissors, pornography, any medications, food or drink brought to the Center, etc. Any item that is deemed contraband shall be seized by staff. If the contraband is not illegal under criminal statutes and would not otherwise pose a threat to security, the staff will inventory and receipt the property, and store with the resident's other stored personal property. Religious property will not be treated as contraband or seized without consultation with the Center RSC and the Center Administrator. However, if a religious item is deemed contraband, it will be seized and disposed of in accordance with contraband disposal procedures. Staff will discard all food (including uneaten fast food, drinks, and opened baby food or formula) at the time of admission. When the ownership of a contraband item is in question, an investigation will be conducted to determine ownership. Staff shall inventory and store the item(s) pending verification of ownership. The resident shall have 7 days to verify ownership of the listed item(s). If a resident cannot establish ownership and/or ownership cannot be reasonably established, the property may be destroyed.

## DISCIPLINARY PROCEDURES

Prohibited acts are divided into three categories: "Major," "Moderate," and "Low." The sanctions authorized for each category will be imposed only if the resident is found to have committed a prohibited act and no other method of behavioral modification has been found to be effective. Due to the family residential nature of the Center, sanctions are used as a last resort and only as a means to correct behavior that threatens the safety and welfare of residents, staff, and visitors.

Action or attempted action by any resident that violates established Center rules or poses a threat to the safety and orderly operation of the center shall be dealt with through appropriate disciplinary action. Action or attempted action by any resident which violate the laws of the United States may also be actionable in a United States criminal court of law.

Staff will attempt to correct minor violations of Center rules informally through conversation and counseling whenever possible. This informal procedure may include consequences which are mutually acceptable by the resident and staff, such as temporary floor restrictions, privilege loss, and for children, time outs. Children will only be interviewed concerning violations in the presence of their parent (unless the allegation involved in incident between a parent and child). Discipline will never be of a nature or administered in a way that is degrading or humiliating to residents. Staff will never impose the following sanctions: corporal punishment; deviations from normal food services; denial of legal assistance; deprivation of correspondence, telephone, or visitation privileges; deprivation of physical exercise or access to recreation, deprivation of school or education. No punishment shall require confinement in any locked room or space. Only in mental health situations may deprivation of clothing, bedding, or items of personal hygiene occur and if so, these decisions will be made by the medical department. In the event a staff member believes that a resident is committing an offense that cannot be handled through the informal procedure, the staff member will complete an incident report. A supervisor will begin an investigation of incident reports within 24 hours of receipt. Residents under investigation have the right to:

- Remain silent during every stage of the disciplinary process. Silence will not be used to support a finding against the resident;
- Receive the Incident Report / Notice of Charges at least 24 hours before the start of administrative proceedings;
- To have an initial hearing before a Management Review Committee (MRC) within 24 hours of receiving the Notice of Charges for low to moderate violations.

  During hearings before the MRC, residents have the right to:

- Present evidence and statements on their own behalf;
- Attend the hearing (except deliberation), unless behavior poses a safety concern;
- Have an interpreter present if the hearing is in a language not understood by the resident;
- Appeal the committee's determination through the appeal process.

  Incidents involving serious violations of Center rules, or unresolved cases will be referred to an Executive Review Panel (ERP). During hearings before the ERP, residents have the right to:

- Call witnesses and present evidence and statements on their own behalf;
- Attend the hearing (except deliberation), unless behavior poses a safety concern;
- Have an interpreter present if the hearing is in a language not understood by the resident;
- Request a staff representative to assist in the case;
- Waive the hearing and admit committing the offense in question;
- Appeal the committee's decision through the appeal process.

## DISCIPLINE HEARING APPEALS

Residents may appeal disciplinary panel decisions following their hearing by giving their written appeal to one of the panel members. The panel will submit the appeal to the Center Administrator who will provide an immediate written response.

## DISCIPLINE PROCEEDING POSTPONEMENTS

Disciplinary proceedings may be postponed for reasons such as defense preparation, physical or mental illness, security concerns, escape, disciplinary transfer, pending criminal prosecution, etc.

## CORRECTIVE SANCTIONS FOR CHILDREN

Sanctions 1 through 4 below may be imposed by the MRC. Sanctions 1 through 5 may be imposed by the ERP.

1. Referral to counseling
2. Restriction to their dormitory, not to exceed 72 hours
    a. When a child is restricted to housing, they must be afforded a minimum of one hour of outdoor activity time daily.
    b. The child may be restricted to the dayroom area but may not be forced to remain in his/her room except during a time out period.
    c. No sanction may restrict a child from attending required school classes or religious practices.
3. Children 12 years old and older may have their free movement privilege suspended for up to 14 days. Such a suspension would require that the parent supervise all activities for that time period.
4. Loss of extracurricular activity time such as movie night.
5. Loss of field trip privileges for up to 45 days.

Corrective action may not interfere with such daily functions as eating and sleeping. Disciplinary actions may not adversely impact a child's health, physical or psychological well-being or deny a child regular meals, sufficient sleep, exercise, medical care, the right to correspondence, or legal assistance.

## CORRECTIVE SANCTIONS FOR ADULTS

Sanctions 1 through 4 below may be imposed by the MRC.
Sanctions 1 through 5 may be imposed by the ERP.

1. Referral to counseling
2. Require attendance in an appropriate training / educational class
3. Additional work details such as: general housekeeping
4. Loss of commissary
5. Restriction to their dormitory, not to exceed 72 hours.
    a) Imposition of such a sanction must take into account the ages of children and the negative impact this sanction would have on minors who were not involved in the charged offense.

## DESCRIPTION OF OFFENSES

## LOW OFFENSES

(101) Being in an Unauthorized Area - Being in an area that is designated through verbal, written, or posted orders as “off limits" to residents.
(102) Disorderly Conduct- Behavior such as loud talking, yelling, or pushing which disrupts the orderly running of the facility.
(103) Failure of Parent/Legal Guardian to Appropriately Manage Children's Behavior - For parents who allow their children to be unruly, disrespectful, or insubordinate while in their presence.
(104) Failure to Follow Verbal or Posted Rules and/or Regulations- Not following specific rules and/or orders which have been designated for the clean, safe, orderly operation of the facility which residents have been told in advance through posting or have been given verbally by an employee of the facility or person who has charge of the resident at the time. This includes not following the procedures established by the facility for taking count.
(105) Fighting - Exchange of words or body contact in anger wherein no injury requiring medical attention occurs, such as horseplay.
(106) Gambling - Operate or act in any game of chance involving betting or waging of goods or other valuables.
(107) Possession of Gambling Paraphernalia- Having in one's control, items for use in operating or acting in any game of chance involving betting and wagering of goods or other valuables.
(108) Self-Mutilation -Inflicting injury on one's self; such as cutting on one's own body or tattooing.
(109) Smoking - Smoking tobacco of any form in any area of the facility.
(110) Unauthorized Receipt or Possession of any Item of Value- Receiving or having in one's possession any item of value which has been obtained through false pretenses, threats, or stealing.
(111) Unexcused Absence from Place of Assignment- Being away, without authorization from an appropriate supervisor, from the place of assignment such as housing area, recreation area, health services, etc.
(112) Use of Vulgar, Abusive, or Obscene Phrases/Language
(113) Failure to Maintain Personal Hygiene or Personal Hygiene of Child - Not having a clean body or clothes.
(114) Unsanitary and Disorderly Housing Conditions- Not keeping a clean, neat living area. The area should be kept in a manner so that all possessions are stored in an organized manner in areas designated for such. The area should be free from dirt and clutter.
(115) Possession of Non-Dangerous Contraband (Soft Contraband) - Possession of contraband items that are not allowed at the facility but are not capable of causing serious injury or harm to self or others, including tobacco products.
(116) Unauthorized Use of Telephone- Using the telephone during unauthorized times.
(201) Refusal to Submit to a Reasonable Suspicion Drug Test- Not providing a urine sample for use in reasonable suspicion drug testing.

## MODERATE OFFENSES

(202) Positive Reasonable Suspicion Drug Test-Testing positive for an illegal drug or un-prescribed controlled substance.
(203) Theft - Unauthorized taking of something that belongs to someone else.

(204) Destruction, Alteration, or Damage to Property (Under$1,000.00) - Destroying, changing or hurting property of the facility or any other person.
(205) Forgery or Unauthorized Reproductions of Documents or Articles (Excluding Money) - Counterfeiting, forging, or reproducing without approval, any document, article, identification, or security documents.
(206) Hindering an Employee in the Performance of Their Duties- Acting in such a way to interrupt an employee during their work time such as causing delays or giving false information.
(207) Refusal to Submit to a Reasonable Suspicion Search.
(208) Child Neglect- Failure to give care and proper attention to a child (Non-Injury)
(209) Verbal Sexual Harassment of a Resident. Acting in such a manner as to create a hostile residential environment for other residents regardless of age or gender.

## MAJOR OFFENSES

(301) Arson - Starting or causing to be started a fire which could or does cause damage to person(s) or property.
(302) Assault/Battery-A non-sexually related attack upon the body of another person with the intention of harming or causing serious injury.
(303) Rape-Sexual contact of any person without his or her consent, or of a person who is unable to consent or refuse; and contact between the penis and the vagina or the penis and the anus including penetration, however slight; or contact between the mouth and the penis, vagina, or anus; or penetration of the anal or genital opening of another person by a hand, finger, or other object (i.e. penetration or oral sodomy).
(303) Sexual Assault- Abusive contact of any person without his or her consent for the purpose of sexual gratification or arousal or of a person who is unable to consent or refuse; and intentional touching, either directly or indirectly or through the clothing, of the genitalia, anus, groin, breast, inner thigh or buttocks of any person. Sexual assault excludes incidents involving penetration or oral sodomy.
(304) Attempt/Conspiracy to Commit a Major Offense-An offense for residents who do not actually commit the offense but participate in one (1) or more of the following ways:
(304a) Attempts to commit the major offense;
(304b) Solicits another or others to commit the major offense;
(304c) Conspires with another or others to commit the major offense; and/or
(304d) Facilitates the action of another or others in committing the major offense.
(305) Child Abuse - Treating a child cruelly, roughly, wrongly, improperly, or in an insulting manner.
(306) Child Neglect - Failure to give care and proper attention to a child resulting in endangerment or injury to a child.
(307) Confirmed STG Affiliation/Activity-Affiliated or participating in a gang-related activity.
(308) Counterfeiting, Forgery, or Unauthorized Reproduction of Money
(309) Death of Any Person - Any act of which the end result is the death of any person including employees, visitors/volunteers, and/or other residents.
(310) Destruction, Alteration, or Damage to Property ($1,000 or more) - Destroying, changing or hurting property of the facility or any other person.
(311) Hostage Taking- Holding a person(s) against their will as a security for the fulfillment of certain terms.

(312) Escape-Leaving the grounds of the facility or from the custody of an employee outside of the facility without permission.
(313) Insurrection -Participation or encouraging another to participate in unauthorized activity such as protesting or rioting.
(314) Possession of Dangerous Contraband (Hard Contraband) - Possession of contraband items that are not allowed at the facility and are capable of causing serious injury or harm to self or others. This includes deadly weapons, items altered to be used as weapons, drugs and drug paraphernalia.
(315) Sexual Misconduct - This includes, but is not limited to, the following acts:
(315a) Exposing the genitals or buttocks to an employee, visitor/volunteer, or resident for the purpose of sexual gratification or arousal.
(315b) Masturbation where an employee, visitor/volunteer, or other resident can see the act
(316) Intimidating or Threatening Another with Harm - Telling someone, through actions or words, that harm will come to them.
(317) Possession of Drugs or Intoxicants-Possession of any drugs or intoxicants which have not been prescribed or approved by the health services department for use.
(318) Violation of any Federal, State, or Local Law-Any act, though not specifically listed in this policy, that would be considered either a felony or misdemeanor under federal laws or under the state laws in which the resident is housed.

## EDUCATION

*Only applies during scheduled school semester *
The Center operates an on-site school during the school year. The Center school provides educational services to all children who are at least 4 years old on Auguat 1 of the current school year. Attendance in the educational program is mandatory and is provided in a structured classroom setting Monday through Friday. The basic academic areas include science, social studies, math, reading, writing, and physical education. Generally, children 4 to 5 years old will participate in a half day preschool program, and children 5 to 18 years old will participate in a full day academic program. All children 5 years old and over will be tested upon their admission to the Center and placed into the appropriate classroom. When school is in session, parents are required to physically drop off their children in the proper Center classroom at the beginning of the school day. Parents must return to their children's classroom at the end of each school day to pick up their children, unless otherwise told by staff of schedule changes. School hours, holidays and breaks will be announced and posted at your dormitory's Resident Information Center.

## SPECIAL NEEDS INFORMATION

Although each child is evaluated for special needs after admission, parents who believe their children may have educational deficiencies or learning disabilities, may also initiate a special needs evaluation request. Parents may request this evaluation by speaking with their child's teacher, an IHSC social worker or by completing a Resident Request form. These forms are located at your dormitory's Resident Information Center. Completed forms are to be placed in the drop off box labeled "Requests". The educational unit will meet with the parent and test the child; if found to be eligible for special needs instruction, the child will receive an Individual Educational Plan (IEP). The child's educational program, and any necessary modifications, will be driven by their IEP.

## MARRIAGES

You or your legal representative may request permission to have a marriage ceremony while at the Center from the Chief of the Juvenile and Family Residential Management Unit in writing. The request must specifically state:

- That the resident is legally eligible to be married;
- That he or she is mentally competent, as determined by a qualified medical practitioner;
- That the intended spouse wants to marry the resident, as attested by a written affirmation of intent to marry the resident by the intended spouse.
  The affirmation must be included as part of the request. Failure to obtain approval from the Chief, JFRMU could result in a delay or cancellation of any ceremonies or approved visits for the purpose of marriage. (See staff for more information.)

## FINANCES

Residents are not allowed to have money or funds in their possession while at the Center. Upon admission, all U.S. currency was deposited into an account which you have access to during your stay here. Any non U.S. currency was placed into your stored property. You will receive a receipt for any funds processed during your stay at the Center. Residents may receive funds (cash or checks/money orders made out to the resident) from family and friends by having them mailed to the Center address located at the front of this handbook. (Cashier's checks are recommended). Residents who choose to participate in the Center's voluntary work program, those payments will also be deposited into your account. You may also receive funds during visits. These funds must be turned over to staff prior to the visit to be placed in your account. Residents coming from another center will have their funds credited to their account within 24 hours of the arrival of those funds. Upon discharge, residents will receive the balance of any funds they have in their Center account in the form of a check.

## VOLUNTARY WORK PROGRAM

Adult residents may participate in the Center's voluntary work program. Prior to starting the voluntary work program residents must obtain a medical clearance. Speak to the medical department concerning this clearance. Residents will receive any necessary training and are required to sign a voluntary work program statement prior to beginning to work. Residents participating in the voluntary work program will be paid $1.00 per day for their participation. See your dormitory officer to sign up for the voluntary work program or complete a Resident Request form. These forms are located at your dormitory's Resident Information Center. Completed forms are to be placed in the drop off box labeled "Requests". Residents may also volunteer for temporary work details that occasionally arise. Temporary work generally lasts from several hours to several days. Residents assigned to special work areas shall be provided appropriate protective clothing and instruction in accordance to the requirements of the job. Work assignments are strictly voluntary. Unsatisfactory work performance and or disciplinary cases could result in removal from the voluntary work program.

## VISITATION

Residents are allowed social, legal and consular visits as outlined in those related sections in this handbook. All visitors must present US government issued photo identification upon arrival at the

Center. At the supervisor's discretion, a minor without positive identification may be admitted if the accompanying adult visitor vouches for his/her identity. Minors will remain under the direct supervision of an adult visitor, so not to disturb other visitors. Disruptive conduct by visitors or residents may cause termination of the visit. Any property brought to a visit to be given to a resident must be turned over to staff for inventorying and receipting. No items may be given directly to a resident during a visit. Residents are not allowed to receive contraband or perishable food items. See the sections on allowable personal property and contraband for more information.

## SOCIAL VISITATION

Residents may schedule social visits with friends, family and other associates. Social visitation is conducted seven days a week from 9:00am to 8:00pm, Tuesday to Thursday, 12:30pm to 04:30pm, Friday to Monday. Residents may have an unlimited number of visits. Generally, visits will be a minimum of 60 minutes per visit. Visits are by appointment only. Appointments are made by signing up for visitation by completing a Resident Request form. These forms are located at your dormitory's Resident Information Center. Completed forms are to be placed in the drop off box labeled "Requests". The request must include the following information related to the visitor who wishes to come to the Center: Name, date of birth and county of birth. This information will be used to conduct a criminal background check. Should the check determine the visitor has no criminal arrests or convictions, you will be notified of the appointment date and time which you may forward to the visitor. The number of visitors per visit may be restricted due to the volume of visits scheduled at that time. Residents may also request a special visitation accommodations if their visitors are traveling significant distances or have other special circumstances.

## LEGAL AID VISITATION

The Center permits legal visitation 7 days a week, including holidays. On Mondays through Fridays legal visitation hours are from 7:00am through 7:00pm and on Saturday, Sundays and holidays from 7:00am through 7:00pm. Should a legal representative provider need to arrange an appointment at other than the times listed above, they may contact a supervisor for assistance. Contact information for the Center is located at the Resident Information Center. Legal visits may proceed through a scheduled meal period. In such cases, the resident shall receive a tray or sack meal after the visit, or may choose to eat during the visit. Attorneys must present a US state issued bar membership card. Persons allowed during a legal visit:

- Attorneys and other legal representatives;
- Legal assistants;
- Upon presentation of a letter of authorization from the legal representative under whose supervision he/she is working, an unaccompanied legal assistant may meet with a resident during legal visitation hours. The letter shall state that the named legal assistant is working on behalf of the supervising legal representative for purposes of meeting with the ICE resident(s);
- Interpreters to aid the legal representatives or assistants.

## CONSULAR VISITATION

The Center permits visits by consular officers at any time. Consular officers should contact the Center to schedule appointments. Should a consular officer need to arrange an appointment at other than the times listed above, they may contact a supervisor for assistance.

## VISITOR DRESS CODE

Visitors Age 12 and Older:

- Must wear clothing which covers their shoulders, chest, stomach and all areas of the anatomy between the naval (belly button) and mid-thigh when seated;
- The top or neckline of clothing shall be no lower than the underarm in the front and in the back;
- Sheer (see-through) clothing is prohibited;
- Shoes shall be worn at all times;
- Shirts shall be worn at all times;
- "Gang colors" are prohibited.

## LEGAL INFORMATION

## LAW LIBRARY / ACCESS TO LEGAL MATERIALS

The law library is located on CENTER and is open during free movement hours. No more than 4 residents will be allowed to use the library at any given time. If you cannot access the law library due to the resident limit, speak with a supervisor who will make arrangements for you to use the law library. Any residents not using the library for its intended purpose will be asked to leave. Computers are available in the law library for preparation of legal documents and for legal research. The computers contain a "Lexus Nexus" application which has a variety of publications on immigration law and other related publications. There may also be non-governmental organization legal and immigration related research in the bookshelf in the law library. Residents may request off site law related materials by completing a Resident Request form. These forms are located at your dormitory's Resident Information Center. Completed forms are to be placed in the drop off box labeled "Requests". For instruction on accessing the Lexus Nexus application, to sign up for the orientation or for questions concerning using the law library equipment, speak with the law library officer or complete a Resident Request form. Speak to the law library officer for paper, computer storage disks to store documents and to report malfunctioning of law library equipment.

## MATERIALS PROVIDED BY LEGAL REPRESENTATIVES

Documents or other written material provided to a resident during a legal aid visit shall be inspected, but not read. Residents may keep legal materials in their bedrooms. Quantities of blank forms or self-help legal material in excess of that required for personal use may be held for the resident in their property. The resident will be permitted access to these documents by speaking with staff or by completing a Resident Request form. These forms are located at your dormitory's Resident Information Center. Completed forms are to be placed in the drop off box labeled "Requests".

## FREE LEGAL ASSISTANCE

Each adult resident is provided a Pro bono (free) legal assistance list upon arrival at the Center. Pro bono legal assistance may be requested by contacting the pro bono legal assistance organizations on the provided list. The Pro bono list is also posted at your dormitory's Resident Information Center. The Executive Office for Immigration Review supplies this list.

## ROUTINE SANITATION AND SAFETY INSPECTIONS

Sanitation and fire safety inspections are conducted weekly in all program areas of the Center. During these inspections, staff inspects for proper sanitary conditions and compliance with other regulations. When inspecting bedrooms during these inspections, the residents living in the room will be requested to be present. Parents are requested to be present when staff are checking their child's bedrooms.

## NON-ROUTINE SEARCHES

A non-routine search of housing or programing area is done when there is reasonable suspicion to believe contraband or a threat to resident or staff safety is present. A non-routine search of a resident's bedroom or personal items will only be done after the resident is notified and is present unless exigent circumstances exist (such as in a self- harm situation). In these cases, the resident will be notified after the search is conducted.

## SEARCHES OF PERSONS:

- Visual Inspection: A visual search for contraband without physical contact.
- Pat Search: A physical inspection of a resident while clothed. It will only be conducted by a staff member of the same gender. The inspector uses their sense of touch when patting or running the hands over the resident's body. A pat search does not require the resident to remove clothing, although the inspection may include a search of the resident's clothing and personal effects. Pat searches will only be conducted on any resident if there is reasonable and articulable suspicion that they possess contraband. No children under 15 years of age will be the subject of a pat search without the explicit authorization of the Center Administrator and JFRMU.

## MAIL / CORRESPONDENCE

Residents may send and receive correspondence and a variety of other items through the mail including phone cards, money orders, books, clothing, and other "allowable" items. See those related sections for more information. Residents shall be permitted to receive and send at their own expense:

- An unlimited amount of general correspondence mail. The amount will only be limited when a public safety or Center security and order situation exists;
- An unlimited amount of special correspondence, including correspondence with a legal representative, potential legal representative, courts and other governmental agencies and news organizations. See the section on special correspondence for more information;
- Packages containing personal property. To send or receive packages, complete a Resident Request form. These forms are located at your dormitory's Resident Information Center. Completed forms are to be placed in the drop off box labeled "Requests". You will be instructed on the procedure for sending and receiving packages.

## ADDRESSING ENVELOPS

When sending mail, write your name, A number and Center address legibly in the return address area of the envelope or package. Also write the name and address of who the mail is being sent, legibly.

## INDIGENT RESIDENT MAIL

Residents who do not have adequate funds to purchase postage will be permitted to send at no cost:

- A reasonable amount "special correspondence" mail. Should the Center consider the related amount "unreasonable", the ICE Office of Chief Counsel will be consulted prior to suspending mail postings;
- At least 5 general correspondence letters per week;
- Any packages that are deemed necessary by ICE/ERO, such as clothing, personal items, and items needed for return to country of origin;
- Packages containing personal property when it is determined that space is limited for the proper storage of the items.

## SPECIAL CORRESPONDENCE

Special correspondence is written correspondence to or from attorneys and other legal representatives, judges, courts, embassies/consulates, the President and Vice President of the United States, members of Congress, the Department of Justice, the Department of Homeland Security, the U.S. Public Health Service, and representatives of the news media. Correspondence will only be treated as Special Correspondence if the title and office of the sender (for incoming mail) or addressee (for outgoing mail) are unambiguously identified on the envelope and the envelope is labeled "Special Correspondence." Incoming special correspondence must also be marked as "Special Correspondence" on the envelope or package. Residents must instruct anyone sending Special Correspondence to the Center of the related rules and address requirements. Special Correspondence may only be opened in the presence of the resident, and may only be checked for contraband, not read;

Special Correspondence packages may only be sent or received with advance arrangements. To send or receive such a package, speak with your dormitory officer or complete a Resident Request form. These forms are located at your dormitory's Resident Information Center. Completed forms are to be placed in the drop off box labeled "Requests".

## POSTAGE AND ENVELOPES

Postage and envelopes will be provided to residents at no cost by speaking with your dormitory officer or by completing a Resident Request form. These forms are located at your dormitory's Resident Information Center. Completed forms are to be placed in the drop off box labeled "Requests".

## DISTRIBUTION OF INCOMING MAIL

Incoming flat mail will be distributed within 24 hours and packages within 48 hours of receipt when arriving during normal business hours. Incoming packages received on weekends and holidays will be distributed the next administrative business day. All incoming mail should list the resident's name and A number and have an accurate return address. Incoming general mail will be opened and inspected for contraband only in the presence of the resident, unless waived by the resident or authorized by the Center Administrator for security reasons. Incoming general mail

may also be read when a specific documented security concern arises with respect to an individual resident. Mail may be rejected if it contains contraband, other items of a security threat or perishable items. Both sender and intended receiver shall be provided written notice with an explanation as to why the mail is rejected and that the mail will be disposed of in accordance with the contraband section in this handbook. The resident and RSC will be consulted before religious articles are confiscated. Identify documents mailed to the resident will be turned over to ICE for placement in the Resident's A file. Residents should contact ICE for a certified copy of the document. See the section on contacting immigration for more information.

## POSTING OF OUTGOING MAIL

Outgoing mail will not be opened, inspected, or censored unless it is addressed to another resident or alien in a detention facility, or there is reason to believe the item may pose a threat to the facility's security or orderly operation, endanger the recipient or the public or facilitate criminal activity. Outgoing mail will be posted within 24 hours of the time the mail was turned over to the Center by the resident, excluding weekends and holidays: then it will be posted the next administrative business day. Outgoing mail (containing appropriate postage) may be placed into the drop off box labeled "Mail" at your dormitory's Resident Information Center. If mail is placed into the drop off box without proper postage, it will be returned to the resident, unless they are indigent. See the section on indigent mail for more information. Mail that does not fit into the slot may be handed to staff for processing.

## NOTARY PUBLIC

Notary public assistance may be obtained by filling out a Resident Request form. These forms are located at your dormitory's Resident Information Center. Completed forms are to be placed in the drop off box labeled "Requests".

## PHOTOCOPIES

Photocopies may be obtained by speaking to a staff member, case worker or filling out a Resident Request form. These forms are located at your dormitory's Resident Information Center. Completed forms are to be placed in the drop off box labeled "Requests". Photocopying services for legal material is available free of charge.

## MONEY ORDERS

Residents wishing to send money orders should complete a Resident Request form. These forms are located at your dormitory's Resident Information Center. Completed forms are to be placed in the drop off box labeled "Requests".

## HAIR CARE SERVICES

Residents have the opportunity receive a haircut or other hair care service on a regular basis. Hair care services information and sign-up sheet is located at your dormitory's Resident Information Center. For information about the hair care services, complete a Resident Request form. These

forms are located at your dormitory's Resident Information Center. Completed forms are to be placed in the drop off box labeled "Requests".

## RECREATIONAL PROGRAM

There are a variety of recreation activities offered to residents during their stay at the Center. Residents are expected to take care of supplies and equipment issued to them and to return the items after use. Residents will be held accountable for any recreational or leisure item until it has been returned. The staff schedules specific activities for pleasure and fitness and ask that you cooperate and participate in these activities; and encourage your children to participate. Some activities on site activities scheduled on particular days and times and others are available for use independently. For more information, see the recreation postings, information and schedules at your dormitory's Resident Information Center.

This handbook has been reviewed and approved by:

| | |
|---|---|
| (b)(6), (b)(7)(c) Center Administrator | Date |
| JFRMU Representative | Date |

# ARTESIA FAMILY RESIDENTIAL CENTER

# INFORMATIONAL PAMPHLET

**Artesia Family Residential facility**: The staff at this facility recognizes that this environment and your present immigration situation can and will make you feel extremely stressed out at times. The following information will help you familiarize yourself with the medical/mental health services available to you and your family, and will offer you helpful tips on how to cope. It is equally important to make you aware that we have a **ZERO TOLERANCE** policy with respect to corporal punishment (hitting or spanking with a hand or instrument) of your children. You can find more information about this rule in your Resident Handbook under resident program rules. This pamphlet will also illustrate alternatives to spanking as recommended by the State of New Mexico Children, Youth and Families Department. **All persons in the state of New Mexico are mandatory reporters of child abuse and neglect.** Therefore, the staff at this facility (ICE officers, medical personnel) has a duty to report and will report any and all suspected cases of child abuse.

**Medical services:** This facility provides access to medical care 24 hours a day, 7 days a week. A team of highly skilled and experienced nurses, nurse practitioners, physician assistants, and doctors are available to care for you and your child.

**Mental health Services:** While residing at this facility you will also have access to mental health clinicians that can help you and your child with issues related to coping with stress, depression, parenting, and any other issues that may be of clinical concern. The mental health team also conducts weekly wellness check on all children residing in this facility and this offers parents another avenue to access services. It is important you are aware that the medical or mental health staff cannot assist you with any legal issues, or in any way influence the court decision on your case. You will need to direct all your questions or concerns regarding your immigration case to the ICE officer in charge of your case or your lawyer.

**Stress and sleep:** These are common complaints of individuals in this type of setting. In many instances your worries about your case, family separation, concerns with the well-being of love ones left behind, and the new environment will affect your ability to sleep at night. This is normal under these circumstances and there are several techniques you can utilize to help you sleep, and relieve stress. Medication may seem like the solution, but pills should never be the first choice. Your children may experience some sadness, stress, difficulty sleeping at night and even nightmares. Depending on their age they may express their emotions

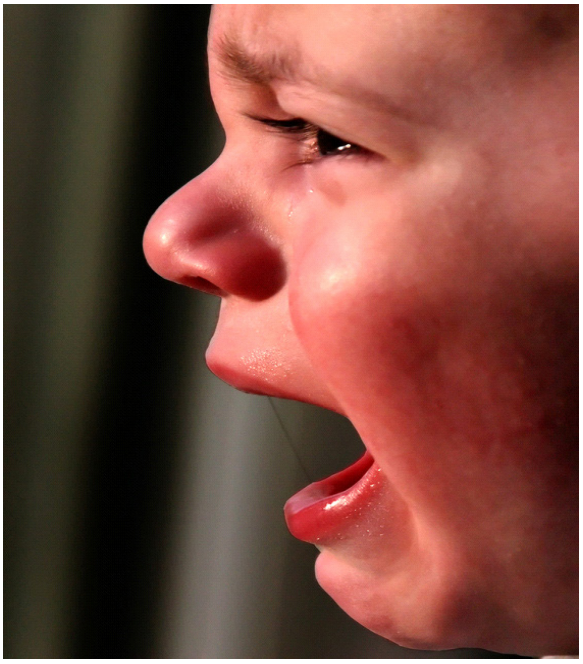
by acting out, fighting, and may even become rebellious. Toddlers, behave based on the emotional, verbal and nonverbal cues they get from their parents. Try to practice relaxation techniques, and establish a daily routine that will keep you and your child distracted during the day. Socialize with other residents, participate in whatever activates may be available, maintain good nutrition and hydration, and avoid sleeping during the day. Ask the medical staff for copies of handouts on how to cope with stress.

**When to seek Help**: There are times that despite our best efforts, the help of a trained professional is required to help us cope. If you notice that your symptoms are worsening and you are experiencing increased levels of stress, depression or anxiety, seek help immediately. Remember that how you feel emotionally will also impact how well you are able to respond to your child's needs. The mental health staff is available to help you cope with whatever emotional or psychological problems you may be having. You can access mental health services by self-referring, or simply asking a medical staff or ICE officer that you would like to speak with mental health.

**Self-help Tips:**

- **Read pamphlet on how to cope with stress.**
- **Engage in recreational activities during the day, and religious services.**
- **Establish a daily routine for you and your child to have a sense of structure.**
- **Think positive.**
- **Socialize with other residents, and encourage them to participate in recreational activities with you.**
- **Exercise and good nutrition are important. Take walks with your child.**
- **Set time to play and read to your child.**
- **Seek help as needed.**

**Alternatives to spanking:** **(Adapted from the State of New Mexico, CYFD)**



**The next time everyday pressure builds up to the point where you feel like lashing out – STOP! Try any of these simple alternatives. You'll feel better…and so will your child.**

1. **Take a deep breath ... and another. Then remember you are the adult.**
2. **Close your eyes and imagine you're hearing what your child is about to hear.**
3. **Press your lips together and count to 10 … or better yet, to 20.**
4. **Put your child in a time-out (remember this rule: one time-out minute for each year of age.)**
5. **Put yourself in a time-out. Think about why you are angry: is it your child, or is your child simply a convenient target for your anger?**
6. **Phone a friend or talk to another resident.**
7. **If someone can watch the children, go outside and take a walk.**
8. **Take a warm shower or splash cold water on your face.**
9. **Exercise. Do some pushups or jumping jacks.**
10. **Turn on some relaxing music, or sing.**
11. **Pick up a pencil and write down as many helpful words as you can think of. Save the list.**

**From:** (b)(6), (b)(7)(c)
**To:**
**Subject:** Artesia Staffing Plan
**Date:** Wednesday, October 29, 2014 3:07:45 PM
**Attachments:** image001.jpg

# ANNUAL REVIEW

Health Services Administrator / Date

Unit Chief of Health Operations / Date

Artesia

## Artesia Staffing Plan

| Position | CTR | |
|---|---|---|
| HSA | | |
| AHSA | | |
| Admin Asst | | |
| LPN/LVN | | |
| MHP | | |
| MLP | | |
| MRT | | |
| Nurse Mgr | | |
| Pharm Tech | | |
| Pharmacist | | (b)(7)(e) |
| Physician | | |
| Psychiatrist | | |
| RN | | |
| RDH | | |
| RAD-TECH | | |
| DA | | |
| DDS | | |
| **Total** | | |

Very respectfully,
2012_09_06_09_39_32

CDR (b)(6), (b)(7)(c) MHA, RDH, CCHP

Chief of Health Operations
ICE Health Service Corps
500 12th St. SW, Suite 2241
Washington, DC
20536

(202)732 (b)(6), (b)(7)(c) Office
(202)210 (b)(6), (b)(7)(c) BB
(b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c)
**To:** Davis, Mike P
**Cc:** (b)(6), (b)(7)(c)
**Subject:** FW: Artesia medical staffing issues
**Date:** Wednesday, October 29, 2014 4:43:00 PM
**Attachments:** Artesia Family Resident Handbook 2014 from JFRMU Final.docx
ARTESIA FAMILY RESIDENTIAL CENTER pamphlet.docx
Artesia Staffing Plan.msg
medicalcare.pdf

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Mike:

Sandy's email below provides a summary of the medical care provided by IHSC at Artesia and supplemental documentation.

(b)(6), (b)(7)(c)
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-732(b)(6), (b)(7)(c)
BB: 202-246(b)(6), (b)(7)(c)



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**From:** (b)(6), (b)(7)(c)
**Sent:** Wednesday, October 29, 2014 4:28 PM
**To:**
**Cc:** (b)(6), (b)(7)(c)
**Subject:** RE: Artesia medical staffing issues

(b)(6), (b)(7)(c)

(b)(5)

(b)(5)

The paragraph generally provided by IHSC in response to similar inquiries is as follows:

(b)(5)

I can provide a more refined response if needed but given the time frame believe that you might want to have this now. Shall I further refine?

Thank you – Best number (please call if you need anything) 301 712 (b)(6), (b)(7)(c) I will also monitor email.

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Associate Legal Advisor, Detention and Removal Law Section
Enforcement and Removal Law Division
Office of the Principal Legal Advisor
DHS U.S. Immigration and Customs Enforcement
202(b)(6), (b)(7)(c) Office) 202(b)(6), (b)(7)(c) Main)
(b)(6), (b)(7)(c)



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**From:** (b)(6), (b)(7)(c)
**Sent:** Wednesday, October 29, 2014 2:42 PM
**To:** (b)(6), (b)(7)(c)
**Subject:** Artesia medical staffing issues

(b)(6), (b)(7)(c)

In preparation for a meeting with *Flores* counsel tomorrow Mike Davis asked for some facts on the medical staff at Artesia and for information responsive to 4 specific questions raised by plaintiff's counsel concerning monitoring weight loss, mental health, respiratory illness, and fever (see attachment at pp. 14-15 ). In response to Mike, I'm hoping to provide a brief overview of medical staff at Artesia and a short summary of how issues such as weight loss would be identified and monitored.

5(n) Do defendants have written standards regarding monitoring and treatment of weight loss and/or failure to thrive in minors held in family detention facilities?

5(o) Do defendants have written standards regarding the monitoring and treatment of the mental health of mothers and minors in family detention facilities?

5(p) Do defendants have written standards regarding monitoring and treatment of respiratory illnesses in minors held in family detention?

5(q) Do defendants have written standards regarding monitoring and treatment of fever in children held in family detention?

Our draft response to these questions is "**ICE has written standards for routine and emergency health care, including complete medical examinations of incoming residents. The standards are available at http://www.ice.gov/detention-standards/family-residential**" but Mike asked for any additional specifics he may be able to provide should it come up during the meeting tomorrow.

Sorry for the short turnaround. Let me know if you have any questions.

(b)(6), (b)(7)(c)
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-732-(b)(6), (b)(7)(c)
BB: 202-24(b)(6), (b)(7)(c)

# ICE/DRO RESIDENTIAL STANDARD

## MEDICAL CARE

I. **PURPOSE AND SCOPE. Residents have access to health care maintenance services, including those related to mental health, dental care, prevention, health education, and emergency care in a timely and efficient manner.**

**In many facilities, medical care for ICE/DRO residents is provided by the Public Health Service's Division of Immigration Health Services (DIHS). The term "DIHS-staffed facility" refers to a residential facility in which medical care is provided by DIHS.**

II. **EXPECTED OUTCOMES.** The expected outcomes of this Standard are as follows:

1. Residents will have access to health care education and maintenance services that are determined by the health care authority to be necessary and appropriate. Services will include prevention, diagnosis, and treatment of medical, dental, and mental health conditions.
2. Newly admitted residents will be informed how to access health services, in a language they can understand.
3. Residents will be able to initiate requests for health services.
4. Residents will have access to the care determined necessary by the health care authority from a resident's admission to the residential facility until they are discharged from treatment, transferred to another facility, or removed from the United States. When indicated, care shall include referral to community-based providers.
5. A transportation system will be available that ensures timely access to health care services, determined necessary by the health care authority, that are only available outside the facility.
6. A resident who requires close, chronic or convalescent medical supervision will be treated in accordance with a plan approved by licensed physician, dentist, or mental health practitioner that includes directions to health care providers and other involved personnel.
7. Residents will have access to specified 24-hour emergency medical, dental, and mental health services.

8. Female residents will have access to pregnancy testing and specified pregnancy management services.
9. All possible steps will be taken to ensure infectious and communicable diseases, including tuberculosis, hepatitis, and HIV/AIDS, are prevented or managed.
10. New direct-care staff will receive tuberculosis tests prior to their job assignment and periodically thereafter, and will be required to obtain the hepatitis B vaccine series.
11. Biohazard waste will be managed and medical and dental equipment decontaminated in accordance with sound medical standards and in compliance with applicable local, state, and federal regulations.
12. Residents with chronic conditions (such as hypertension and diabetes) will receive chronic care and treatment that includes monitoring of medications, laboratory testing, and chronic care clinics. Other residents will be scheduled for routine medical examinations, as determined by the health authority.
13. The facility administrator, or other designated staff, will be notified in writing of any resident whose medical or mental health needs require special consideration in such matters as housing, transfer, or transportation.
14. Residents will have access to emergency and specified routine dental care, provided under direction and supervision of a licensed dentist.
15. Residents will be provided health education and wellness information.
16. Each newly admitted resident (including transfers) will immediately receive a documented medical and mental health screening. Each facility's health care provider shall conduct a health appraisal and physical examination on each adult resident within 7 days of arrival, and on each minor within 24 hours of arrival.
17. Residents with mental health conditions will be referred, as necessary, for detection, diagnosis, treatment, and stabilization to prevent psychiatric deterioration while confined.
18. Crisis intervention services will be available for residents who experience acute mental health episodes.
19. Restraints for medical or mental health purposes will be authorized only by a qualified medical or mental health provider, in accordance with the requirements specified in this Residential Standard.
20. Residents whose mental health needs exceed the capabilities of the facility will be transferred to facility with the capacity to meet their needs.

21. Prior to placement in a non-residential facility specifically designated for the care of the severely mentally ill or developmentally disabled, a resident shall be afforded due process in compliance with applicable federal, state, and local laws.

22. Prescription and nonprescription medicines will be stored, inventoried, dispensed, and administered in accordance with sound standards, and facility needs for safety and security.

23. Health care services will be provided by a designated health authority, and clinical decisions will be the sole province of the responsible clinician.

24. Health care services will be provided by trained and qualified personnel whose duties are governed by job descriptions and who are properly licensed, certified, credentialed, and/or registered in compliance with applicable state and federal requirements.

25. Residential and health care personnel will be trained, at least annually, to respond to health-related emergency situations within four minutes of notification, and to properly use first aid kits, available in designated areas.

26. Information about each resident's health status will be treated as confidential. Active health records will be maintained in accordance with accepted standards, separate from other residents' residential files, and shall be accessible only in accordance with written procedures and applicable laws.

27. The informed consent standards of the facility's jurisdiction will be observed and adequately documented at the facility.

28. Medical and mental health interviews, examinations, and procedures will be conducted in settings that respect residents' privacy, and a female resident will be provided with a female observer for health care performed by male health care providers.

29. Health record files on each resident will be well organized, available to all practitioners, and properly maintained and safeguarded.

30. When a resident is transferred to another facility, the transferring facility will ensure appropriate records are transferred in accordance with established ICE policy.

31. Where required, residents have regular access to translation services and/or are provided information in a language that they understand.

32. The standard complies with federal laws and with DHS regulations regarding residents with special needs.

III. **DIRECTIVES AFFECTED. None**

IV. **REFERENCES**

American Correctional Association 4th Edition Standards for Adult Detention Facilities: 4-ALDF-2A-15, 4C-01 through 4C-31, 4C-34 through 4C-41, 4D-01 through 4D-21, 4D-23 through 4D-28, 2A-45, 7D-25.

Residential Standard on "**Admission and Release.**"

Residential Standard on "**Environmental Health and Safety**," particularly in regard to:

- Storing, inventorying, and handling needles and other sharp instruments,
- Standard ("universal") precautions to prevent contact with blood and other body fluids,
- Sanitation and cleaning to prevent and control infectious diseases, and
- Disposing of hazardous and infectious waste.

Residential Standard on "**Sexual Abuse and Assault Prevention and Intervention**."

Residential Standard on "**Suicide Prevention and Intervention**."

Residential Standard on "**Hunger Strikes**."

Residential Standard on "**Terminal Illness, Advance Directives, and Death.**"

United States Public Health Service (USPHS) Division of Immigration Health Services (DIHS) Policies and Procedures Manual.

National Commission on Correctional Health Care, Standards for Health Services in Jails.

Flores v. Reno

V. **EXPECTED PRACTICES**

**1. General**

Every facility shall directly or contractually provide to its resident population:

- Initial medical screening
- Cost-effective primary medical and dental care as required by the health authority to maintain the health of the resident.
- Emergency care

- Specialized health care, as deemed necessary by the health authority to maintain the health of the resident
- Mental heath care
- Hospitalization as needed within the local community

A designated health authority shall have the overall responsibility for health care services pursuant to a written agreement, contract, or job description. The health authority may be a physician, health services administrator, or health agency. When the health authority is other than a physician, final clinical judgment shall rest with a single, designated, responsible physician, referred to in this Residential Standard as the clinical director.

The health authority shall be authorized and responsible for making decisions about the deployment of health resources and the day-to-day operations of the health services program.

All facilities shall employ, at a minimum, a medical staff and support personnel large enough to perform basic exams and treatments for all residents. The essential positions needed to perform the health services mission and provide the required scope of services shall be described in a staffing plan that is reviewed at least annually by the health authority.

Health care personnel shall perform duties for which they are qualified by training, licensure, certification, job descriptions, and/or written standing, or by direct orders by personnel authorized by law to give such orders. The facility administrator, with the cooperation of the health care authority, shall negotiate and keep current arrangements with nearby medical facilities or health care providers to provide required health care not available within the facility, including securing appropriate custodial staffs to transport and remain with residents for the duration of any off-site treatment or hospital admission.

Ordinarily, clinical decisions shall be made by the responsible physician and shall not be countermanded by non-clinicians. If there is disagreement on the type or extent of treatment that is medically necessary, JFRMU shall make the determination, in consultation with the clinical director and in accordance with the policies and procedures of DIHS. The health care program and the medical facilities shall be under the direction of a health services administrator (HSA) and shall be accredited and maintain compliance with the standards of the Joint Commission on the Accreditation of Health Care Organizations (JCAHO).

## 2. Communicable Disease and Infection Control

### a. General

Each facility shall have a written plan (or plans) that address the management of infectious and communicable diseases, including prevention, education, identification, surveillance, immunization (when applicable), treatment, follow-up, isolation (when indicated), and reporting to local, state, and federal agencies.

Plans shall include:

- Coordination with public health authorities
- Ongoing education for staff and residents
- Control, treatment, and prevention strategies
- Protection of individual confidentiality
- Media relations
- Management of tuberculosis; hepatitis A, B, and C; HIV infection; and avian influenza
- Reporting communicable diseases to local and/or state health departments in accordance with local and state regulations

In regard to the avian influenza, reference is made to the March 2006 32-page Avian Influenza Implementation Plan from DRO Director John P. Torres. The plan establishes guidelines and procedures in anticipation of an influenza pandemic in North America.

In the Quarterly Administrative Meetings described later in this Residential Standard, communicable disease and infectious control activities shall be reviewed and discussed.

In accordance with the Residential Standard on **"Environmental Health and Safety,"** management of biohazard waste and decontamination of medical and dental equipment shall comply with applicable local, state, and federal regulations.

### b. Additional Requirements Regarding Tuberculosis

As indicated below in the section on **Medical Screening of New Arrivals**, screening for tuberculosis is initiated at intake, and in accordance with CDC guidelines.

For all **confirmed and suspected** active tuberculosis cases, designated medical staff shall report:

- All cases to local and/or state health departments in accordance with local and state regulations, identified by the custodial agency and the resident's identifying number of that agency. (ICE residents are reported as being in ICE custody and identified by their Alien Numbers.)
- All ICE residents, as well as residents expected to transfer into ICE custody, cases to the DIHS Epidemiology Unit,:
    - By phone to (202) 732 (b)(6), (b)(7)(c) or
    - By faxing a health department notification form to (202) 732-0095.

  Reporting shall include identifying information, Alien Number, case status, available diagnostic results, and treatment status.
- Any movement of ICE residents, including hospitalizations, facility transfers, releases, or removals/deportations shall be reported to the local and/or state health department and the DIHS Epidemiology Unit. If any confirmed or suspected active ICE resident is released or removed prior to the completion of treatment, designated medical staff shall facilitate post-custody case management and continuity of therapy by coordinating with the Epidemiology Unit and the local and/or state health department.

Designated medical staff shall collaborate with the local and/or state health department on tuberculosis and other communicable disease contact investigations.

### c. Varicella (chickenpox)

Designated medical staff shall notify DIHS of any varicella cases among ICE residents, and of any ICE residents exposed to active varicella who do not have a history of prior varicella or varicella immunization.

### d. Employee Health

The medical authority shall:

- Ensure that all new direct care medical staff members are tested for tuberculosis prior to their job assignments and periodically thereafter.
- Ensure that all new medical staff members have received the hepatitis B vaccine series.

The facility administrator shall:

- Ensure that all new direct care program staff are tested for tuberculosis prior to their job assignments and periodically thereafter.
- Ensure that all new direct care program staff have received the hepatitis B vaccine series. If required staff who are not medical providers, it shall be conducted through an independent health provider service.

## 3. Notifying Residents About Health Care Services

In accordance with the Residential Standard on **"Resident Handbook,"** the facility shall provide each resident, upon admittance, a copy of the resident handbook or equivalent, in which procedures for access to health care services are explained.

In accordance with the section on **Orientation** in the Residential Standard on **"Admission and Release,"** access to health care services shall be included in the orientation curriculum for newly admitted residents.

## 4. Facilities

### a. Examination and Treatment Area

Adequate space and equipment shall be furnished in all facilities so that all residents may be provided basic health examinations and treatment in private.

The medical facility shall:

- Be located within the primary perimeter, in an area restricted from general resident access.
- Have its own perimeter to ensure restricted access.

A waiting area shall be located at the entrance to the medical facility that is under the direct supervision of custodial staffs and not medical staff. A resident toilet and drinking fountain shall be accessible from the waiting area.

### b. Medical Records

Medical records shall be kept separate from residents' residential records, and stored in a securely locked area within the medical unit.

### c. Medical Housing

If there is a specific area, separate from other housing areas, where residents are admitted for health observation and care under the supervision and direction of health care personnel, the following minimum standards shall be met:

#### 1). Care

- A clearly defined scope of care services available.
- A physician on call or available 24 hours per day.
- Health care personnel have access to a physician or registered nurse and are on duty 24 hours per day when patients are present.
- All patients within sight or sound of a staff member.
- A care manual that includes nursing care procedures.
- A housing record that is a separate and distinct section of the complete medical record.
- Compliance with applicable federal and state statutes and local licensing requirements.

#### 2). Wash Basins, Bathing Facilities, and Toilets

- Residents have access to operable washbasins with hot and cold running water at a minimum ratio of one for every 12 occupants, unless state or local building codes specify a different ratio.
- Sufficient bathing facilities are provided to allow residents to bathe daily, and at least one bathing area is configured and equipped to accommodate residents with physical impairments or who need assistance to bathe. Water is thermostatically controlled to temperatures ranging from 100° F to 120° F degrees.
- Residents have access to toilets and hand-washing facilities 24 hours per day and are able to use toilet facilities without staff assistance. Unless state or local building or health codes specify otherwise:
    - Toilets are provided at a minimum ratio of one to every 12

residents in male toilet facilities and one for every 8 in female toilet facilities.

- All housing units with three or more residents have a minimum of two toilets.

**5. Pharmaceutical Management**

Each facility shall have written policy and procedures for the management of pharmaceuticals that include:

- A formulary of all prescription and nonprescription medicines stocked or routinely procured from outside sources.
- A method for obtaining medicines not on the formulary.
- Prescription practices, including requirements that medications are prescribed only when clinically indicated, and those prescriptions are reviewed before being renewed.
- Procurement, receipt, distribution, storage, dispensing, administration, and disposal of medications.
- Secure storage and perpetual inventory of all controlled substances (DEA Schedule II-V), syringes, and needles.

  All pharmaceuticals shall be stored in a secure area with the following features:

  - A secure perimeter
  - Access limited to authorized medical staff (never residents)
  - Solid walls from floor to ceiling and a solid ceiling
  - A solid core entrance door with a high security lock (with no other access)
  - A secure medication storage area

  The pharmacy shall also have a locking pass-through window.
- Administration and management in accordance with state and federal law.
- Supervision by properly licensed personnel.
- Administration of medications by personnel properly trained, and under the supervision of the health services administrator, or equivalent.
- Accountability for administering or distributing medications in a timely manner and according to physician orders.

## 6. Nonprescription Medications

Generally, all medications expected to be used by residents shall be approved by the medical department. Residents may, as needed, have access to general over the counter medications such as Tylenol, Motrin, or other nonprescription medications. Because children are routinely present in a family residential facility, care must be taken to provide lockable boxes or locations within each housing area to secure nonprescription medications that may be used by residents.

## 7. Medical Personnel

All health care staff shall have valid professional licenses and/or certifications. DIHS shall be consulted to determine the appropriate credentials requirements for health care providers.

Medical personnel credentialing and verification shall comply with the standards established by JCAHO.

## 8. Medical Screening of New Arrivals

### a. Medical Screening

Immediately upon their arrival, all newly admitted residents shall receive initial medical and mental health screening by a health care provider.

Screening shall include observation and interview items related to the resident's potential suicide risk and possible mental disabilities. For further information, see the Residential Standard on **"Suicide Prevention and Intervention."**

If at any time during the screening process there is an indication of, or request for, mental health services, the health authority must be notified within 24 hours to assess whether a full mental health evaluation is indicated. See the section on **Mental Health Program** below.

To the extent practicable, medical and mental health interviews and examinations shall be conducted in settings that respect residents' privacy.

If language difficulties prevent the health care staff from sufficiently communicating with the resident complete the intake screening, the staff shall obtain interpreter assistance.

- Such assistance may be provided by another staff or by a professional service, such as a telephone interpreter service.
- Only in emergency situations may a resident be used for interpreter

assistance, and then only if the interpreter is proficient and reliable, and only with the consent of the resident being screened.

- During in-processing and prior to the resident's placement in a housing unit, the health care provider shall complete the Intake Screening form I-794 (or facility equivalent) and record all findings of the medical screening process.

**b. Physical Exam**

Each facility's health care provider shall conduct a physical examination on each adult resident within 7 days of arrival, and on each minor within 24 hours of arrival. Medical and mental health interviews, examinations, and procedures shall be conducted in settings that respect residents' privacy. All female residents should be provided with a female escort for medical examinations with male health care providers.

Residents diagnosed with a communicable disease shall be isolated according to local medical procedures.

**c. Tuberculosis Screening**

All new arrivals shall receive TB screening in accordance with guidelines of the Centers for Disease Control (CDC). A chest x-ray is the primary screening method. The PPD (mantoux method) shall be the secondary screening method.

Residents with symptoms suggestive of active TB shall be placed in a negative pressure isolation room and promptly evaluated for TB disease.

Also see the earlier section on **Communicable Diseases and Infection Control**, specifically the **Additional Requirements Regarding Tuberculosis**.

**d. Substance Abuse and Dependence**

All residents shall be evaluated through the initial intake screening for their use of or dependence on mood and mind-altering substances – such alcohol, opiates, hypnotics, sedatives, etc., that were not administered under a doctor's care. Any resident determined to be abusing or dependent on such substances will not be admitted to a family residential facility.

## 9. Mental Health Program

**a. Mental Health Services Required**

Each facility shall have an in-house or contractual mental health program,

approved by the appropriate medical authority that provides:

- Intake screening for mental health or illness
- Referral, as needed, for detection, diagnosis, and treatment of mental conditions
- Crisis intervention and management of acute mental health episodes
- Stabilization of mentally ill residents and prevention of psychiatric deterioration while confined
- Transfer of residents whose mental health needs exceed the capability of the facility, to a facility with the capacity to meet those needs.

**b. Mental Health Provider**

The term "mental health provider" includes a psychiatrist, psychologist, social worker and other mental health practitioner.

**c. Mental Health Screening**

Newly admitted residents are to receive initial mental health screening by a health care provider as part of the overall medical intake screening. If there is indication of a thought or mood disorder, a referral shall be made to the mental health provider using form DIHS 812-1.

Screening is done prior to the resident's placement in a housing unit.

**d. Mental Health Examinations and Appraisal**

Based on in-processing screening, medical documentation, or subsequent observations by residential staff or medical personnel, the health authority shall immediately refer any resident who has or may have an acute or chronic mental illness or disability to a mental health provider for a mental health examination and appraisal.

Such examinations and appraisals shall:

- Review available documentation regarding such factors as mental health treatment, psychotropic medications, drug or alcohol treatment, and sexual abuse victimization.
- Review available documentation regarding predatory behavior.
- Assess for any differential diagnoses, such as pertinent physical

conditions, head traumas, or organic brain disorders.

- Assess the resident's current mental health status and condition; suicide and violence potential; and drug and alcohol abuse or addiction.
- Recommend an appropriate level of care, for example:
    - Remain in general population with appropriate treatment plan.
    - Transfer to a facility with the capacity to meet the needs of patients who cannot reside in a general population.
    - Short-term community hospitalization until a plan for the placement of the patient and remaining family members can be implemented.
- Recommend and/or implement a treatment plan, including such matters as transfer, housing, voluntary work, and other program participation.

### e. Referrals and Treatment

Any resident referred for mental health treatment shall receive a comprehensive evaluation by a licensed mental health provider, as soon as possible and no later than 14 days.

The provider shall develop an overall treatment and management plan, which may include transfer to a mental health facility if the resident's mental illness or developmental disability needs exceed the treatment capability of the facility.

The medical authority shall ensure due process in compliance with applicable federal, state, and local laws prior to a transfer.

### f. At Risk Residents

Residents who have been identified as posing a continuing risk to themselves or others shall be removed from a family residential facility and placed in an appropriate facility.

### g. Restraints

Restraints for medical or mental health purposes may be authorized only by a qualified medical or mental health provider, after reaching the conclusion that less restrictive measures are not successful. The facility shall have written procedures that specify:

- The conditions under which restraints may be applied

- The types of restraints to be used
- How a resident in restraints is to be monitored
- The length of time restraints are to be applied
- Requirements for documentation, including efforts to use less restrictive alternatives
- After-incident review

In all facilities, the medical authority or mental health provider shall complete a Post-Restraints Observation Report.

### h. Involuntary Administration of Psychotropic Medications

Involuntary administration of psychotropic medications will only occur under the care of a physician at a hospital or alternative medical facility appropriate to the needs of the resident.

The medical provider will provide emergency medical treatment to a resident who presents a risk to himself or others. The medical provider will not provide medical treatment to a resident solely for the purposes of restraint, unless a medical professional determines that they present a danger to themselves or to others.

If a resident is likely to present a safely concern to DRO or facility personnel ,the Field Office should work with their Chief Counsel Office and the U.S. Attorney's Office to obtain a court order to authorize involuntary medical treatment to facilitate the removal process.

### i. Telepsychiatry

Telepsychiatry is the use of electronic communication and information technology to provide or support clinical care at a distance. For telepsychiatry consultation, informed consent from the resident is required, just as would be required for a face-to-face encounter with a mental health provider. See the section on **Informed Consent and Forced Treatment** later in this Residential Standard.

If telepsychiatry services are offered, the facility's medical authority shall have written procedures that cover such matters as authorization, resident consent, refusal of treatment (including premature termination of an interview), communication arrangements, resident privacy, medical records documentation, and follow-up.

## 10. Periodic Health Examinations

The clinical director or health services administrator (or their equivalents) may determine that residents not covered below in the section on **Special Needs and Close Medical Supervision** are to be scheduled for periodic routine medical examinations (annually, for example).

## 11. Dental Treatment

An initial dental screening exam should be performed within 14 days of the resident's arrival. The initial dental screening may be performed by a physician, physician's assistant, or nurse practitioner - if trained by a licensed dentist.

Residents shall be afforded only authorized dental treatment (in accordance with the DIHS dental benefits package):

- **Emergency dental treatment** shall be provided for:
  - Immediate relief of pain, trauma, and acute oral infection that endangers the health of the resident, and
  - Repair of prosthetic appliances when there is adequate documentation supporting the inability of the resident to maintain reasonable caloric intake.

**Routine dental treatment** may be provided to residents for whom dental treatment is inaccessible for prolonged periods of confinement, including amalgam and composite restorations, prophylaxis, selected root canals, extractions, x-rays, the repair and adjustment of prosthetic appliances, and other procedures required to maintain the

resident's health. Accessory dental treatment is not provided which includes: fixed prosthodontics (crowns, implants, etc), fabrication of complete and partial dentures, or orthodontic treatment.

### 12. Sick Call

Each facility shall have:

- Regularly scheduled "sick call" times when medical personnel are available to see residents who have requested medical services.
- A procedure that allows residents the opportunity to request health care services (including mental health services) provided by qualified medical staff in a clinical setting.

If the procedure is a written request slip, they shall be provided in English and the most common languages spoken by the resident population of that facility. If necessary, residents, especially those illiterate or non-English speaking, shall be provided assistance to complete a request slip.

Request slips shall be:

- Freely available for residents to request health care services on a daily basis
- In English and the foreign languages most widely spoken among the residents
- Be completed by the resident or a minor's parent or guardian
- Contain the resident's name, A-number (or other facility ID number), gender, age, and reason for requesting a medical appointment
- Be dated and signed by the resident or a minor's parent or guardian.

All facilities must have a procedure in place to ensure that request slips are received by the medical department the same day that the resident submits the request, or no later than the following morning. For an urgent situation, the housing unit staff or other staff (such as a work detail supervisor) shall call the medical department or refer the matter to a staff supervisor.

The designated health care provider shall review the request slips and determine when the resident will be seen.

Sick call shall be held 7 days a week during regular working hours, except federal holidays.

All facilities shall maintain a permanent record of all sick call requests. The health

authority in DIHS-staffed facilities shall maintain sick call records within the resident's file.

### 13. 24-Hour Emergency Medical Treatment

Each facility shall have a plan for the delivery of 24-hour emergency health care when immediate outside medical attention is required.

A plan shall be prepared in consultation with the facility's routine medical provider, to include:

- An on-call provider;
- A list, available to all staff, of telephone numbers for local ambulances and hospital services

### 14. First Aid and Medical Emergencies

In each residential facility, the designated health authority and facility administrator shall determine the contents, number, location(s), use protocols, and monthly inspections procedures of first aid kits.

An automatic external defibrillator should be available for use at the facility.

Residential staff shall be trained at least annually to respond to health-related emergencies within four minutes of notification. The training shall be provided by a responsible medical authority in cooperation with the facility administrator and shall include:

a. Recognizing of signs of potential health emergencies and the required responses.

b. Administering first aid and cardiopulmonary resuscitation (CPR).

c. Obtaining emergency medical assistance through the facility plan and its required procedures.

d. Recognizing signs and symptoms of mental illness, suicide risk, retardation, and chemical dependency.

e. The facility's established plan and procedures for providing emergency medical care including the safe and secure transfer of residents for appropriate hospital or other medical services, such as by ambulance when indicated. The plan must provide for expedited entrance to and exit from the facility.

When an employee is unsure whether emergency care is required, he or she shall immediately notify the on-duty supervisor, and if the supervisor has any doubt about whether emergency care is required, he or she shall immediately contact a health care provider to make the determination.

### 15. Delivery of Medication

Distribution or administration of medication shall be in accordance with specific instructions and procedures established by the health care provider. Written records of all medication given to residents shall be maintained.

Medication may not be delivered or administered by residents.

### 16. Health Education and Wellness Information

The health authority shall provide residents with education and wellness information on such topics as self medication dangers, personal hygiene and dental care, prevention of communicable diseases, smoking cessation, family planning, self care for chronic conditions, self examination, and the benefits of physical fitness.

### 17. Special Needs and Close Medical Supervision

The medical care provider for each facility shall notify the ICE facility administrator in writing when a resident has been diagnosed as having a medical or psychiatric condition requiring special attention. Such conditions may include, for example, chronic illness, mental illness, physical disability, pregnancy, special diet, medical isolation, HIV/AIDS, etc.

When a resident has been diagnosed as having a medical or psychiatric condition requiring special attention, the medical care provider shall notify the facility administrator via a Resident Special Need(s) Form I-819 or similar form.

When a resident requires close medical supervision, including chronic and convalescent care, a treatment plan that includes directions to health care and other personnel regarding care and supervision shall be developed and approved by the appropriate physician, dentist, or mental health practitioner.

Female residents shall have access to pregnancy testing. Pregnant females will have access to pregnancy management services that include routine prenatal care, counseling and assistance, nutrition, and postpartum follow-up.

Exercise areas will be available to meet exercise and physical therapy requirements of individual's treatment plans.

## 18. HIV/AIDS

An HIV/AIDS diagnosis may be made only by a licensed physician, based on a medical history, current clinical evaluation of signs and symptoms, and laboratory studies.

### a, Clinical Evaluation

When current symptoms are suggestive of HIV/AIDS infection, the following shall be implemented:

1). Clinical evaluation shall determine the medical need for isolation.

The health authority shall not recommend to ICE/DRO that the resident be separated from the general population, either pending a test result or after a test report, unless clinical evaluation reveals a medical need for isolation.

2). Following a clinical evaluation, if a resident manifests symptoms requiring treatment beyond the facility's capability, the provider shall recommend resident transfer to a hospital or other appropriate facility for further medical testing, final diagnosis, and acute treatment as needed, consistent with local medical procedures.

3). Any resident with active tuberculosis should also be evaluated for possible HIV/AIDS infection.

4). An HIV positive diagnosis must be reported to government bodies according to state and federal requirements. Reports of AIDS, and not HIV infection, are required by the CDC. State laws differ considerably, and the clinical director is responsible for ensuring that all applicable state requirements are met.

### b. Exposure

Exposure of a resident to potentially infectious body fluids, such as needle sticks or bites, shall be reported as soon as possible to the clinical director.

Staff exposed to potentially infectious body fluids should seek medical assistance and report the incident as soon as possible to the clinical director.

### c. Precautions

All residents should be assumed to be infectious for blood-borne pathogens, and standard ("universal") precautions are to be used at all times when caring for all residents. No additional special precautions are required for the care of HIV positive residents.

The **Standard Precautions** section of the Residential Standard on **"Environmental Health and Safety"** provides more detailed information.

## 19. Informed Consent and Forced Treatment

As a rule, medical treatment shall not be administered against a resident's will.

- Except in emergency circumstances, the facility health care provider shall obtain signed and dated consent forms from all residents, parents or guardians before administering any special medical procedures not delineated in the general consent form signed upon admission.
- Informed consent standards of the jurisdiction shall be observed, and consent forms shall either be in a language understood by the resident, or interpreter assistance shall be provided and documented on the form.

  If the resident refuses to consent to treatment, medical staff shall make reasonable efforts to convince the resident to voluntarily accept treatment.

  - Medical staff shall explain the medical risks if treatment is declined and shall document their efforts and the refusal of treatment in the resident's medical record.
  - When recommended by the medical staff, a resident who refuses examination or treatment may be removed from the facility if his or her refusal poses a risk to the general population, staff and visitors.
  - Forced medical treatment shall not be conducted at family facilities. (See section on **Special Provisions for Care of Children**).
  - In the event of a hunger strike, see the Residential Standard on "**Hunger Strikes**."

The Residential Standard on **"Terminal Illness, Advance Directives, and Death"** provides details regarding living wills and advance directives, organ donations, and "do-not-resuscitate" orders.

## 20. Special provisions for care of children

### Medical Care of Children (infant to 11 years)

Each child upon arrival at the facility will be enrolled in a Well Baby or Well Child Clinic. The physical exam and periodic well-child checks will follow the same format each visit. These exams shall be documented on the DIHS Pediatric Physical Assessment Form. These exams will start with the initial visit, then follow at regular intervals as follows: 2 to 4 weeks of age; 2 months old; 4 months; 6 months; 9 months; 12 months; 15 months; 18 months; 2 years; then annually from 3 to 10 years of age. At 11 years of age, the assessment will be documented on the adult physical exam sheet.

The format for the exams is the same at each age level but will put emphasis on the differences for each age group, and will include the following.

1. Developmental Tasks
   - Physical
   - Behavioral
   - Mental
2. Diet and Nutrition
   - Adequate
   - Appropriate for age/development
3. Immunizations
   - Up to date
   - Documentation
4. Subjective Data: includes previous medical history, any current medical problems, medications, and allergies
5. Objective Data:
   a. Vital signs: includes blood pressure, temperature, pulse, respirations, height and weight. In children up to 23 months this will also include head circumference.
   b. Physical exam, head to toe, to include dental health
6. Assessment: shall include a discussion of findings with the parent or guardian.
7. Plan: includes timing of follow up, medications and laboratory tests (if indicated), referral to next level of care (if indicated), and next exam.
8. Anticipatory guidance: instructions to parents on what to expect in their child's development and how to deal with changes in a residential setting. Includes injury prevention, nutrition, educating child.

9. Child and parent education regarding dental hygiene, use of any medications, follow-up, and sick call procedures

**Medical Care of Adolescents (12 to 18 years)**

In addition to the above exam process, the adolescent exam shall include a special emphasis on preventive services in order to reduce serious morbidity and premature mortality. The five categories included in preventive services screening and counseling will include:

1. Screening for risk factors for injury, chronic illness, and need for immunizations

   Counseling about the following to reduce health risks:

   - Cardiovascular diseases
   - Smoking cessation
   - Obesity/Nutrition
   - Hypertension
   - Hyperlipidemia

2. Counseling regarding health risk behaviors:
   - Alcohol and drug use
   - Sexually Transmitted Diseases (age-appropriate)
3. Immunizations against HPV and Meningococcal meningitis
4. General health guidance and recommendation for frequency of health visits
5. Dental health.

   Anticipatory Guidance for parents of adolescents will include but not be exclusive to:

   - Appropriate parental decisions
   - Adapting parental practices to meet changing needs of the child and the family
   - Health guidance throughout child-rearing spectrum

## 21. Medical Records

### a. Health Record File

The health authority shall maintain a complete health record file on each resident that is:

- Organized uniformly in accordance with recognized medical records standards.
- Available to all practitioners and used for all health care documentation.
- Properly maintained and safeguarded in a securely locked area within the medical unit.

### b. Confidentiality and Release of Medical Records

All medical providers shall protect the privacy of resident's medical information to the extent possible, while permitting the exchange of health information required to fulfill program responsibilities and to provide for the well-being of residents. These protections apply not only to records maintained on paper, but also to electronic records.

In general, information about resident's health status is confidential, and the active medical record shall be maintained separately from other residential records and be accessible in accordance with sound medical practice and applicable laws.

The health authority shall, however, provide the facility administrator and designated staff information that is necessary:

- To preserve the health and safety of the resident, other residents, staff, or any other person.
- For such administrative and residential decisions as housing, voluntary work assignments, security, and transport.
- For such management purposes as audits and inspections.

When information is covered by the Health Information Privacy Act (HIPA), specific legal restrictions govern the release of medical information or records.

Copies of health records may be released by the facility health care provider directly to a resident or any person designated by the resident, upon receipt by the facility health care provider of a written authorization from the resident. Form I-813 may be used for this purpose.

In absence of an I-813 Form, a written request may serve as authorization for the release of health information, as long as it includes the following (and meets any other requirements of the facility health care provider):

- Address of the facility to release the information
- Name of the individual or institution to receive the information
- Resident's full name, A-number (or other facility identification number), date of birth, and nationality
- Purpose or need for the release
- Nature of the information to be released with inclusive dates of treatment
- Resident's signature and date

Following the release of health information, the written authorization shall be retained in the health record.

Facilities are required to notify JFRMU each time a resident's medical records are released.

Residents who indicate they wish to obtain copies of their medical records shall be provided with the appropriate form. The facility staff shall provide the resident with basic assistance in making the written request (if needed), and assist in transmitting the request to the facility health care provider.

If facility staff receives a request for a resident's medical records:

- The request shall be forwarded to the facility health care provider, or
- The requester (if other than the resident) shall be advised to redirect the request and be provided with the appropriate name and address.

### c. Inactive Health Record Files

Inactive health record files shall be retained as permanent records in compliance with DIHS established procedures.

## 22.. Transfer and Release of Residents

ICE/DRO shall make appropriate notifications to the facility and medical staff when residents are to be transferred or released.

**Medical/Psychiatric Alert.** Medical staff shall notify the facility administrator in writing when they determine that a resident's medical or psychiatric condition requires:

- Clearance by the medical staff prior to release or transfer, or
- Medical escort during removal or transfer.

**Notification of Transfers, Releases, and Removals**. The facility health care provider shall be given advance notice prior to the release, transfer, or removal of a resident, so that medical staff may determine and provide for any medical needs associated with the transfer or release.

**Transfer of Health Records.** In advance of a resident's transfer, the resident's medical records or copies shall be mailed to the receiving facility's medical department in a sealed envelope or other container, labeled with the resident's name and A-number and marked "MEDICAL CONFIDENTIAL." The medical records are to arrive at the receiving facility in advance of the resident's arrival.

Immunization records of a minor shall be provided to the parent or guardian upon release. Other requirements for the transfer of records are contained in the Residential Standard on **"Transfers of Residents."**

## 23. Terminal Illness, Fatal Injury, or Death of a Resident

Procedures to be followed in the event of a resident's terminal illness, fatal injury, or death are in the Residential Standard on **"Terminal Illness, Advance Directives, and Death."** That Residential Standard also addresses resident organ donations.

## 24. Medical Experimentation

Residents may not participate in medical, pharmaceutical or cosmetic experiments or research.

## 25. Administration of the Medical Department

### Quarterly Administrative Meetings

The facility administrator and health services administrator shall meet at least quarterly and include other facility and medical staff as appropriate.

The meeting agenda shall include, at a minimum:

a. An account of the effectiveness of the facility health care program

b. Discussions of health environment factors that may need improvement

c. Review and discussion of communicable disease and infectious control activities

d. Changes effected since the previous meetings

e. Any necessary recommended corrective actions

Minutes of each meeting shall be recorded and kept on file.

**Health Care Internal Review and Quality Assurance**

The health authority shall implement a system of internal review and quality assurance. Elements of the system shall include:

- Participating in a multidisciplinary quality improvement committee.
- Collecting and analyzing data combined with planning, intervening, and reassessing.
- Evaluating defined data.
- On-site monitoring of health service outcomes on a regular basis through:

  a. Chart reviews by the responsible physician or his or her designee, including investigation of complaints and quality of health records.

  b. Review of prescribing practices and administration of medication practices.

  c. Systematic investigation of complaints and grievances.

  d. Monitoring of corrective action plans.

  e. Reviewing all deaths, suicide attempts, and illness outbreaks.

  f. Developing and implementing corrective action plans to address and resolve identified problems and concerns.

  g. Re-evaluating problems or concerns to determine whether the corrective measures have achieved and sustained the desired results.

  h. Incorporating findings of internal review activities into the organization's educational and training activities.

  i. Maintaining appropriate records of internal review activities.

  j. Issuing a quarterly report to the health services administrator and facility administrator of the findings of internal review activities.

  k. Ensuring records of internal review activities comply with legal requirements on confidentiality of records.

**Peer Review**

The health authority shall implement an external peer review program for physicians, mental health professionals, and dentists, with reviews conducted at least every two years.

## 26. Examinations by Independent Medical Service Providers and Experts

On occasion, medical and/or mental health examinations by a practitioner or expert not associated with ICE/DRO or the facility may provide a resident with information useful in administrative proceedings before the Executive Office for Immigration Review and ICE/DRO.

If a resident seeks an independent medical or mental health examination, the resident or his or her legal representative shall submit to the JFRMU a written request that details the reasons for such an examination. The Chief JFRMU shall approve the examination, as long as it would not present an unreasonable security risk. If a request is denied, the JFRMU shall advise the requester in writing of the rationale.

Neither ICE/DRO nor the facility may assume any costs of the examination, which shall be at the resident's expense. The facility shall provide a location for the examination but no medical equipment or supplies, and the examination must be arranged and conducted in a manner consistent with security and good order.

Should the independent examination result in treatment recommendations that would involve increased costs or services not covered by DIHS policy, the facility's medical authority shall consult with DIHS.

**Standard Approved:**

_____ _____

**John P. Torres** **Date**
**Director**
**Office of Detention and Removal**

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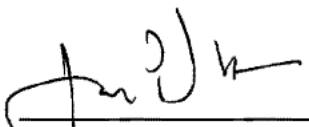
**Standard Approved:**



DEC 2 1 2007

**John P. Torres**
**Director**
**Office of Detention and Removal**

**Date**

**From:** (b)(6), (b)(7)(c)
**To:**
**Subject:** FW: Conf Call. Re: Counsel Site Visits to Nogales and Artesia
**Date:** Wednesday, July 02, 2014 5:07:00 PM
**Importance:** High

(b)(5)

(b)(6), (b)(7)(c)
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-[illegible] (b)(6), (b)(7)(c)
BB: 202-[illegible] (b)(6), (b)(7)(c)



**From** (b)(6), (b)(7)(c)
**Sent:** Wednesday, July 02, 2014 4:44 PM
**To** (b)(6), (b)(7)(c) Pincheck, Catherine
**Cc** (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
**Subject:** RE: Conf Call. Re: Counsel Site Visits to Nogales and Artesia
**Importance:** High

(b)(6), (b)(7)(c) and Catherine,

Can you please review right away, and send you comments to the whole group. Thanks.

Here is the draft response to review:

(b)(6), (b)(7)(c)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

Best,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Attorney Advisor
Legal Counsel Division
Office of the General Counsel
U.S. Department of Homeland Security
202.282 (b)(6), (b)(7)(c) (office)
202.684 (mobile)
202.282.9186 (facsimile)
(b)(6), (b)(7)(c)



---

**From:** (b)(6), (b)(7)(c)
**Sent:** Wednesday, July 02, 2014 4:33 PM
**To:** (b)(6), (b)(7)(c)
**Cc:** (b)(6), (b)(7)(c) Pincheck, Catherine; (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

**Subject:** RE: Conf Call. Re: Counsel Site Visits to Nogales and Artesia

Here is a proposed response based on our emails and yesterday's call. Please send me your comments ASAP, but in any event by 6 PM today (and if you need longer please at least let me know by then when you think you will have them ready). Thanks all!

(b)(6), (b)(7)(c)

(b)(5)

(b)(6), (b)(7)(c)
Trial Attorney
Office of Immigration Litigation – District Court Section
(202) 532(b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c)
**Sent:** Wednesday, July 02, 2014 3:00 PM
**To** (b)(6), (b)(7)(c)
**Cc:** (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c) Pincheck, Catherine; (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
**Subject:** RE: Conf Call. Re: Counsel Site Visits to Nogales and Artesia

(b)(6), (b)(7)(c)

(b)(5)

Please provide us with the draft response for our review before getting back to Orantes/Perez-Funez counsel, but the above are our answers regarding the site visit requests to Nogales (CBP) and Artesia (ICE) – (b)(5)
(b)(5) Thanks.

Best,
(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Attorney Advisor
Legal Counsel Division
Office of the General Counsel
U.S. Department of Homeland Security
202.282 (b)(6), (b)(7)(c) office)
202.684 mobile)
202.282.9186 (facsimile)
(b)(6), (b)(7)(c)



---

**From:** (b)(6), (b)(7)(c)
**Sent:** Wednesday, July 02, 2014 2:02 PM
**To:** (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c) Pincheck, Catherine; (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
**Subject:** RE: Conf Call. Re: Counsel Site Visits to Nogales and Artesia

I am trying to make sure I have nailed down answers now, and will be back in touch in the next couple hours, I just need to confirm here.

Best,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Attorney Advisor
Legal Counsel Division
Office of the General Counsel
U.S. Department of Homeland Security
202.282 (b)(6), (b)(7)(c) (office)
202.684 (mobile)
202.282.9186 (facsimile)
(b)(6), (b)(7)(c)



---

**From:** (b)(6), (b)(7)(c)
**Sent:** Wednesday, July 02, 2014 1:28 PM
**To** (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) Pincheck, Catherine; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)
**Subject:** RE: Conf Call. Re: Counsel Site Visits to Nogales and Artesia

HHS's draft protocol is still in clearance and we have no policy as of yet for groups like the NILC to take tours.



---

**From:** (b)(6), (b)(7)(c)
**Sent:** Wednesday, July 02, 2014 12:45 PM
**To** (b)(6), (b)(7)(c)
Pincheck, Catherine; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)
**Subject:** RE: Conf Call. Re: Counsel Site Visits to Nogales and Artesia

Just a friendly reminder that I am waiting on updates from DHS and HHS about these tours. I need to tell Plaintiff's counsel something today, so please send me any information you can so I can get them something. I can do it as late as necessary today, but I do have to send them something.

I will be out of the office for a bit and back hopefully by 2, so please let me know when I can expect

to hear something, or give me a call after 2:30 PM.

Thank you.

(b)(6), (b)(7)(c)
Trial Attorney
Office of Immigration Litigation – District Court Section
(202) 532(b)(6), (b)(7)(c)

-----Original Appointment-----
**From** (b)(6), (b)(7)(c)
**Sent:** Tuesday, July 01, 2014 12:12 PM
**To:** (b)(6), (b)(7)(c) Pincheck, Catherine; Fenton, (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)
**Subject:** Conf Call. Re: Counsel Site Visits to Nogales and Artesia
**When:** Tuesday, July 01, 2014 1:30 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** 1-877-780(b)(6), (b)(7)(c) PIN: (b)(6), (b)(7)(c)

1-877-780(b)(6), (b)(7)(c)
PIN (b)(6), (b)(7)(c)

Pages 540 through 548 redacted for the following reasons:
- - - - - - - - - - - - - - - - - - - - - - - - - - -
(b)(5)

**From:**
**To:** (b)(6), (b)(7)(c)
**Cc:**
**Subject:** FW: CONOPS
**Date:** Thursday, July 17, 2014 11:07:00 AM
**Attachments:** FLETC Juvenile CONOPs 07 16 14 v1545.doc

---

Jen:

This was the document ERO put together. (b)(5)

(b)(5)

Purpose:
This memorandum requests approval for the Concept of Operations (CONOPS) to be used by U.S. Immigration and Customs Enforcement (ICE), Office of Enforcement and Removal Operations (ERO) for their participation in establishing a 1000 bed transitional facility for unaccompanied children.

(b)(6), (b)(7)(c)
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-732(b)(6), (b)(7)(c)
BB: 202-24(b)(6), (b)(7)(c)



---

**From:** Pincheck, Catherine
**Sent:** Thursday, July 17, 2014 10:16 AM
**To:** (b)(6), (b)(7)(c)
**Subject:** CONOPS

Final OPLA response is under "full service draft"

Catherine M. Pincheck
Acting Deputy Director
Field Legal Operations
Office of the Principal Legal Advisor

Desk: (202)732
Cell: (313)399 (b)(6), (b)(7)(c)

**From:**
**To:** (b)(6), (b)(7)(c)
**Cc:**
**Subject:** FW: Dilley preoccupancy issues
**Date:** Tuesday, December 09, 2014 6:17:00 PM
**Attachments:** Pre Occupancy Status - Dilley.docx

---

The yellow items were identified as must-haves before Dilley opens.

---

**From** (b)(6), (b)(7)(c)
**Sent:** Tuesday, December 09, 2014 4:59 PM
**To:** (b)(6), (b)(7)(c)
**Subject:** FW: Dilley preoccupancy issues

Fysa.

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Tuesday, December 09, 2014 4:54 PM
**To:** (b)(6), (b)(7)(c) Jennings, David W; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) Johnson, Tae D; (b)(6), (b)(7)(c) (b)(6), (b)(7)(c)
**Subject:** FW: Dilley preoccupancy issues

Attached

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Tuesday, December 09, 2014 4:49:51 PM
**To:** (b)(6), (b)(7)(c)
**Subject:** Dilley preoccupancy issues

**South Texas Family Residential Center**
**Pre occupancy status December 9, 2014**

Life, Health, Safety Concerns (**Must be corrected prior to resident admissions**)

- Facility emergency plans were not provided.
- Emergency evacuation diagrams for all areas of the center including education, housing medical, etc. are not in place.
- Fire inspection reports and related corrective action plans were not provided.
- Chemical control plan is not in place.
- Chemicals cabinets and cleaning carts are not in place.
- Contracted cleaning service staff training certification was not provided.
- Generators in the resident campus area are not fenced off and have exposed cabling running from the generator to electrical boxes.
- A propane tank next to "tot lot" is not secured: The fence surrounding the propane tank is too low; the gate is not locked nor is the propane tank locked.
- General uneven exterior campus surfaces pose trip hazards.
- Uncovered sewer stubs pose trip hazards.
- Uncovered drainage line pipes pose trip hazards.
- Exposed metal brackets and mounting hardware on electrical box mounting brackets pose a safety hazard.
- CCTV coverage has not been confirmed.
- CCTV coverage has not been reviewed for PREA compliance.
- Exposed wiring and electrical boxes exposed pose a safety hazard.
- Library book cases are not secured to the walls
- Deck nails are not flush on several porches.
- Water meters are not secured and are exposed.
- Water temperatures have not been certified. Some cabins have scalding water, some have no hot water.
- At least one opening between two trailers poses a safety hazard for small children.

Intake:

- Lack of privacy in intake shower area presents PREA/SAAPI issues. Alternate layout has been developed but not finalized.
- Hooks / benches in showers not in place.
- Bathrooms do not contain changing tables or diapering supplies.
- Process not in place for clothing issuance.
- Hygiene bags do not contain a hairbrush
- A process has been developed to transport residents with initial clothing issuance to their cabins but it is not finalized.
- Child play area does not afford observation as the window is placed too high from the floor. Plan developed to move child play area to an open space.

- Orientation materials were not provided for review.
- SAPPI education materials not in place
- Resident Handbook has not been finalized.

Cottages

- Bunk beds are not appropriate. The bottom bunk is too high and the top bunk does not have adequate head room
- Bunks are not secured to walls
- Bedroom storage units are not secured to prevent a safety hazard
- Mini blinds cords present a strangulation hazard
- Bed rails are not sufficient on the bottom bunk and not in place on the top bunk.
- Bunk ladder is not of appropriate design.
- Bedroom lighting is no appropriate.
- Proposed cottage assignment plan poses numerous challenges in complying with Flores and managing potential SAAPI violations.
- "ADA" cottages are not ADA compliant.
- Oven doors are not secured.
- Closet doors present a safety hazard.
- Electric panels in bedrooms are not secure.
- Seating in common room is not sufficient for proposed occupants.
- Porch and front door steps pose a tripping hazard and may not be safety code compliant.
- Fire extinguishers are not secured (in cases).

Corrective action on the cottages has been developed but not finalized. The corrective action may reduce bed space capacity.

Library

- Task reading lighting is not present in social library
- There is children's seating in the social library

Law Library

- Law library PCs and related materials are not in place.
- Law library space is open to the social library space and doesn't provide any auditory privacy.

Education

- Classrooms are separated by dividers which will not deaden sound
- Classrooms are not large enough to accommodate 20 students and related supplies, resources
- Number of classrooms may be inadequate to service the school age population.

Outdoor Recreation

- Rubber play structure mulch will become extremely hot in the TX climate
- Covered slides on play structure—presents line of site issue potential PREA issue
- Gravel surfaces prohibit stroller use.
- There is generally no outdoor seating.
- There is no outdoor covered seating.
- There is no seating near outdoor recreation spaces for adult residents to supervise their small children.
- Inadequate nighttime lighting to support open movement after dusk.

Visitation

- Attorney client rooms are not sufficient for proposed population.
- Visitation furniture is not in place.
- The child play room vision panel was placed too high to observe the children.
- Visitation rules are not posted
- Talton phone kiosk is not functioning

EOIR

- VTC / circuit not in place.

General

- Dining room chairs are not appropriate for residents. They are of a flimsy design, are not stable and are too low and are not an appropriate height for the tables provided.
- Booster seats will not function on the chairs provided.
- Resident information posting areas have not been established.
- Required postings are not in place.
- Resident communication boxes are not in place.
- No children's furniture is in place.
- There is no established indoor day room / programing space on site
- There is only one indoor space for congregation (the dining hall) and is already scheduled for concurrent use as religious use space and LOP presentations.
- There is no ICE space identified in the resident campus.
- There is no identified storage space for infant / toddler needs in the resident campus.
- Attorney client rooms in visitation are insufficient for proposed population.

- Parking stops that are tripping hazardous outside education and laundry
- Daily and recreation schedules have not been finalized and in place.
- Staffing plan / posts / roving SOP not provided for review

IHSC Punch List

| ITEMS NEEDED | QUANTITY | LOCATION | COMMENTS |
|---|---|---|---|
| Solid walls | 2 walls | Pharmacy (room 115) | Solid Walls needed in Pharmacy. The two walls are not solid |
| Ward-Shower and second bed concern | 1 | Room 109 | |
| Sink | 1 | 120 | |
| Eye wash station<br>Two doors<br>Curtains<br>Partition | | 101-urgent care room | |
| Soap dispenser | | All exam and patient care rooms | None in all the rooms |
| Paper towel dispenser | | All exam and patient care rooms | None in all the rooms |
| Cabinets are needed in all rooms | 1 each | Rooms 122, 123,124, 125, and 126 | Cabinets are needed in all exam rooms |
| Eye wash station | 1 each | Dental, lab, and urgent care rooms | None in clinic |
| Long table and chairs | | Kitchen | None in kitchen |
| Ceiling tiles | | Throughout | |
| Door locks | | All offices and storage rooms | |

| | | | |
|---|---|---|---|
| Evacuation plan/route | 1 each | On top of all fire hydrants and doors | |
| Exam room desks | 1 each | All exam rooms | No desks noted in exam rooms |
| Mount for sharp containers | 1 each | One in each exam room, 2 in urgent care room, and 2 in dental | |
| Dental Equipment | | In dental office | No dental supplies/ equipment received |
| Cabinets | | Dental office, pill line room, all exam rooms | |
| Dental x-ray | 1 | Dental office | |
| Curtains | 1 each | All exam rooms, 1 in urgent care room, 1 in dental office | |
| Play area | | Waiting room | No play area noted in medical |
| Negative Pressure Room | | Potential temperature issues | Low heating might be a concern |

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT**
**ENFORCEMENT AND REMOVAL OPERATIONS**
**OFFICE OF STATE, LOCAL, AND TRIBAL COORDINATION**

# Stakeholder Procedures for Requesting a Detention Facility Tour and/or Visitation

When requesting a Detention Facility Tour, Visitation, or Tour with Visitation, you should provide a written request to the Enforcement and Removal Operations (ERO) Field Office Director (FOD) or his or her designee, or the ICE Office of State, Local, and Tribal Coordination (OSLTC), division of Public Engagement, at least fourteen (14) days in advance of the requested tour/visit.

The written request on your organization's letterhead may be received and responded to by electronic mail or regular mail. The request should include:

(a) the type of request:
  (i) Detention facility tour (tour);
  (ii) Stakeholder visitation with detainees; or
  (iii)Detention facility tour *and* visitation with detainees.
(b) the purpose of the stakeholder: tour, visit, or tour and visitation;
(c) at least three (3) proposed dates and desired times for the tour/visit;
(d) the background information required by the ICE detention standards governing the facility;
(e) a completed ICE Stakeholder Tour/Visit Notification Flyer;
(f) an ICE Sign Up Sheet;
(g) a signed ICE Stakeholder Visitor Code of Conduct form for each stakeholder participant; and
(h) a copy of the stakeholder consent form for review by the field office (Note: It is your responsibility, not the facility or field office, to provide consent forms to detainees to inform them about how you may use or share information he/she provides.)

When requesting visitation or a tour with visitation, you may pre-identify any detainee with whom you may wish to speak by providing ICE with a list of specific detainees in advance. This pre-identification shall include: a) the detainee's full name and b) the last three (3) digits of the A-number (when available).

**Please note you are not required to pre-identify a detainee(s) with whom you may wish to meet during your tour and/or visit.**

In order to meet with detainees who have not been pre-identified, you must provide a sign-up sheet to the field office, which will be posted alongside the Stakeholder Visitation Notification Flyer at least 48 hours in advance of the visit.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

# 11012.1: Stakeholder Detention Facility Tours, Visitation, or Tours with Visitation

**Issue Date:** September 28, 2011
**Effective Date:** September 28, 2011
**Superseded:** NONE
**Federal Enterprise Architecture Number:** 306-112-002b

1. **Purpose/Background.** The purpose of this directive is to provide Enforcement and Removal Operations (ERO) Field Office Directors, or their supervisory designees, and field offices with policy, procedures, and forms to facilitate detention facility tours, visitation, or tours *with* visitation (tour/visit) for non-governmental organizations (NGOs) and other agency stakeholders.

   This directive does not supplant other visitation procedures found in the applicable Immigration and Customs Enforcement (ICE) detention standards. This directive applies to all Service Processing Centers (SPCs), Contract Detention Facilities (CDFs), dedicated Inter-Governmental Service Agreement (IGSA) facilities, and to the extent practicable, other ICE detention facilities.

   This directive does not apply to (1) Legal Orientation Program or Know Your Rights presentation providers; (2) law firms, organizations, or sole attorney practitioners providing or seeking to provide legal representation; and (3) health care practitioners with a request from a detainee's counsel to conduct an examination relevant to the detainee's case.

2. **Policy.** In fulfillment of the agency's detention reform goals of providing more transparency and accountability in the detention process, ERO will maintain an open and transparent approach to its detention program through managed access of stakeholders participating in approved tours, visits, or tours with visitation. ERO will generally approve stakeholder requests for tours, visits or tours with visitation, in circumstances where personnel is available, advance notice has been provided, and there are no concerns regarding safety and/or security

3. **Definitions.** The following definition applies for purposes of this directive only:

3.1. **Consent form.** A consent form is a document provided to a detainee by a stakeholder informing the detainee about how the stakeholder may use or share the information he or she provides. A consent form should be completed by both the individual detainee and the stakeholder prior to any formal conversation.

3.2. **Stakeholders.** Stakeholders include, but are not limited to, community service organizations, intergovernmental entities (e.g., United Nations High Commissioner for Refugees), faith-based organizations, members of academia, and legal representatives/associations/groups (e.g., pro bono legal service provider groups).

**4. Responsibilities.**

**4.1. Field Office Directors (FODs), or their supervisory designees,** are responsible for:

1) Ensuring that field office personnel and facility staff follow the procedures in this Directive for detention facility tours/visits;

2) Ensuring that stakeholders comply with their responsibilities for detention facility tours/visits; and,

3) Consulting with the Office of State, Local, and Tribal Coordination (OSLTC), division of Public Engagement (the principal ICE Headquarters office in charge of agency outreach to NGOs and other public stakeholders) regarding any concerns they may have regarding a NGO or stakeholder.

**4.2. Office of State, Local, and Tribal Coordination (OSLTC), division of Public Engagement** is responsible for forwarding any requests it receives from a stakeholder for a facility tour, visit, or tour/visit to the relevant FOD for approval or denial.

**5. Procedures.**

**5.1. Request Package.**

1) The FOD, or his/her supervisory designee, shall provide stakeholders with instructions on submitting a written request to the FOD or his/her supervisory designee, or ICE Headquarters (i.e., OSLTC, Public Engagement) for a tour, visitation or a tour with visitation (see Attachment 7.1). The FOD, or his/her supervisory designee, shall also provide stakeholders the Stakeholder Code of Conduct Form (see Attachment 7.4) OSLTC will promptly forward stakeholder requests sent to ICE Headquarters to ERO for consideration.

2) The FOD, or his/her supervisory designee, shall comply with Department of Homeland Security (DHS) security requirements when sending Sensitive Personally Identifiable Information (PII) (e.g., name, date of birth, Social Security Number, home address) by email. PII must be encrypted unless the individual to whom the information pertains has authorized DHS to send the information unencrypted.

3) The FOD, or his/her supervisory designee shall review the consent form (supplied by the stakeholder), a signed Stakeholder Code of Conduct for each stakeholder, and the completed ICE Stakeholder Visitation Notification Flyer (see Attachment 7.2) to ensure that the content does not depict, describe, encourage, or promote activities that could lead to physical violence or facility disruption. The FOD, or his/her supervisory designee, field office personnel, and the facility staff are not responsible for overseeing the content of the consent form or ensuring that the detainee and the stakeholder have completed it.

**5.2. Action on the Request.**

1) The FOD, or his/her supervisory designee, may consult with OSLTC Public Engagement regarding any concerns with the pending request.

2) The FOD, or his/her supervisory designee, will generally approve stakeholder requests for tours, visits or tours with visitation, in circumstances where personnel is available, advance notice has been provided, and there are no concerns regarding safety and/or security.

3) If the requested facility does not have adequate personnel to staff a tour with visitation on the same business day, as requested, the FOD, or his/her supervisory designee, will work with the stakeholder to accommodate different dates for the tour or visitation.

4) If the tour/visit is approved, the FOD, or his/her supervisory designee, or OSLTC shall promptly notify the NGO or stakeholder.

5) If denied, the FOD, or his/her supervisory designee, shall promptly provide a written explanation, to include the basis for the denial (e.g., security, resources issues).

**5.3. Posting of Notification and Sign-Up Sheet.** The FOD, or his/her supervisory designee, shall ensure:

1) At least 48 hours in advance of a stakeholder visitation, the facility staff posts an approved ICE Stakeholder Tour/Visit Notification Flyer and ICE Sign Up Sheet (see Attachments 7.2 and 7.3) in the facility in appropriate locations (e.g., message boards, housing areas).

2) The facility staff are aware that they may make appropriate oral announcements to detainees (e.g., announcement during meal times) regarding the stakeholder visitation.

3) The facility staff are aware that they are not required to inform a detainee's attorney that a stakeholder will tour/visit the facility (see Attachment 7.5).

**5.4. Procedures for Visitation.** The FOD, or his/her supervisory designee, shall ensure:

1) On the day of the visitation, the facility staff gives the stakeholder access to pre-identified detainees or detainees who have signed up in advance to speak with the stakeholder.

2) The facility staff arranges for the visitation to occur in a pre-determined common area or space.

3) The facility staff are aware that they may maintain a physical presence in the meeting room to maintain safety and security; however, private meeting rooms may be used, if available.

**6. Authorities/References.**

**6.1.** *Handbook for Safeguarding Sensitive PII*, located on DHS's website (http://dhsconnect.dhs.gov).

**6.2.** Memorandum from OPLA Ethics Office, titled "Communication with represented detainees and solicitations by attorneys," dated October 6, 2010.

**7. Attachments.**

**7.1.** Stakeholder Procedures for Requesting a Detention Facility Tour and/or Visitation.

**7.2.** ICE Stakeholder Tour/Visit Notification Flyer.

**7.3.** ICE Sign Up Sheet.

**7.4.** ICE Stakeholder Visitor Code of Conduct.

**7.5.** Memorandum from OPLA Ethics Office, titled "Communication with represented detainees and solicitation by attorneys," dated October 6, 2010.

**8. No Private Right.** These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

**Gary Mead**
**Executive Associate Director**
**Enforcement and Removal Operations**

(b)(6), (b)(7)(c)

**Harold Hurtt**
**Assistant Director**
**Office of State, Local and Tribal Coordination**

**From:** (b)(6), (b)(7)(c)
**To:**
**Subject:** FW: Follow-up on Counsel Site Visit Requests for Nogales (CBP) and Artesia (ICE)
**Date:** Wednesday, July 02, 2014 12:16:00 PM
**Attachments:** 11012.1-hd-stakeholder_access policy.pdf
11012.1-att-stakeholder_procedures.doc
11012.1 Stakeholder Code of Conduct.pdf
image001.gif

---

(b)(6), (b)(7)(c)

These are the tour requests that (b)(6), (b)(7)(c) was referencing. (b)(5)
(b)(5)
(b)(5)

(b)(6), (b)(7)(c)
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-732-(b)(6), (b)(7)(c)
BB: 202-24(b)(6), (b)(7)(c)



---

**From:** (b)(6), (b)(7)(c)
**Sent:** Wednesday, July 02, 2014 11:36 AM
**To** (b)(6), (b)(7)(c) Pincheck, Catherine
(b)(6), (b)(7)(c)
**Subject:** RE: Follow-up on Counsel Site Visit Requests for Nogales (CBP) and Artesia (ICE)

Thanks (b)(6), (b)(7)(c) attaching the relevant policy and attachments. We would use this for the tours.

(b)(6), (b)(7)(c)
Deputy Assistant Director
Custody Programs
Office of Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
202.732.(b)(6), (b)(7)(c) Direct
202.431. Cell
(b)(6), (b)(7)(c)

dhs-signature

NOTICE: This communication may contain privileged or otherwise confidential information. If you are not an intended recipient or believe you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use this information. Please inform the sender that you received this message in error and delete the message from your system.

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Wednesday, July 02, 2014 11:00 AM
**To** (b)(6), (b)(7)(c) Pincheck, Catherine
(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
**Subject:** RE: Follow-up on Counsel Site Visit Requests for Nogales (CBP) and Artesia (ICE)

(b)(6), (b)(7)(c)

(b)(5)

I've copied (b)(6), (b)(7)(c) who is involved with this issue and may be able to provide additional insight.

(b)(6), (b)(7)(c)
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-7(b)(6), (b)(7)(c)
BB: 202-2(b)(6), (b)(7)(c)



---

**From** (b)(6), (b)(7)(c)
**Sent:** Wednesday, July 02, 2014 9:10 AM
**To:** (b)(6), (b)(7)(c) Pincheck, Catherine
**Cc** (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
**Subject:** RE: Follow-up on Counsel Site Visit Requests for Nogales (CBP) and Artesia (ICE)

Adding (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Chief – Detention and Removal Law Section
Enforcement and Removal Operations Law Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-732-(b)(6), (b)(7)(c)
Blackberry: 202-500-(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)



-----Original Message-----
**From** (b)(6), (b)(7)(c)
**Sent:** Wednesday, July 02, 2014 09:09 AM Eastern Standard Time
**To:** (b)(6), (b)(7)(c) Pincheck, Catherine
**Cc** (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
**Subject:** RE: Follow-up on Counsel Site Visit Requests for Nogales (CBP) and Artesia (ICE)

I should have also said that DOJ wants me to check back with them by 12 noon today, so I am really hoping we can start to move these questions about (1) whether we will agree to site visits to Nogales (CBP) and Artesia (ICE)?; and (2) if we will provide those site visits, what will be the limitations and what they will look like? Thanks again, and apologies for the second e-mail.

Best,
(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Attorney Advisor
Legal Counsel Division
Office of the General Counsel
U.S. Department of Homeland Security
202.282-(b)(6), (b)(7)(c) office)
202.684-(b)(6), (b)(7)(c) mobile)
202.282.9186 (facsimile)
(b)(6), (b)(7)(c)

---

**From:** (b)(6), (b)(7)(c)
**Sent:** Wednesday, July 02, 2014 8:58 AM
**To** (b)(6), (b)(7)(c) Pincheck, Catherine
**Cc** (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)
**Subject:** Follow-up on Counsel Site Visit Requests for Nogales (CBP) and Artesia (ICE)

(b)(5)

Best,

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
Attorney Advisor
Legal Counsel Division
Office of the General Counsel
U.S. Department of Homeland Security
202.282 (b)(6), (b)(7)(c) office)
202.684 mobile)
202.282.9186 (facsimile)
(b)(6), (b)(7)(c)

**This communication, along with any attachments, is covered by federal and state law governing electronic communications and is intended only for the designated recipient(s). It may contain information that is subject to the attorney-client privilege, other legal privileges, or confidentiality obligations. If you are not a designated recipient, you may not review, copy, disseminate, or distribute this message or its contents. If you receive this message in error, please notify the sender immediately by reply e-mail and delete this message. Thank you.**

ICE

# Family Residential Standards

June 2014

U.S. Immigration and Customs Enforcement

Pages 567 through 659 redacted for the following reasons:
- - - - - - - - - - - - - - - - - - - - - - - - - - -
(b)(5)

**From:** (b)(6), (b)(7)(c)
**To:**
**Subject:** FW: FRS Training
**Date:** Tuesday, June 24, 2014 6:06:00 PM
**Attachments:** FRS Training June 2014.ppt
Family Residential Unit Training Completion Certificate.ppt

---

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) (b)(5)

(b)(6), (b)(7)(c)
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-732(b)(6), (b)(7)(c)
BB: 202-24(b)(6), (b)(7)(c)



---

**From:** (b)(6), (b)(7)(c)
**Sent:** Tuesday, June 24, 2014 4:54 PM
**To** (b)(6), (b)(7)(c)
**Subject:** FRS Training

Hi (b)(6), (b)(7)(c) and (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) (b)(5)

(b)(6), (b)(7)(c) (b)(5)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) (b)(6), (b)(7)(c)

Thanks both! (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)
*Senior Advisor and Chief of Staff, Field Operations*
*Enforcement and Removal Operations*
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
202(b)(6), (b)(7)(c)
(b)(6), (b)(7)(c)

Pages 1 through 9 redacted for the following reasons:
- - - - - - - - - - - - - - - - - - - - - - - - - - -
(b)(5)

**From:** (b)(6), (b)(7)c
**To:**
**Subject:** Draft No Bond message
**Date:** Thursday, August 07, 2014 9:52:56 AM

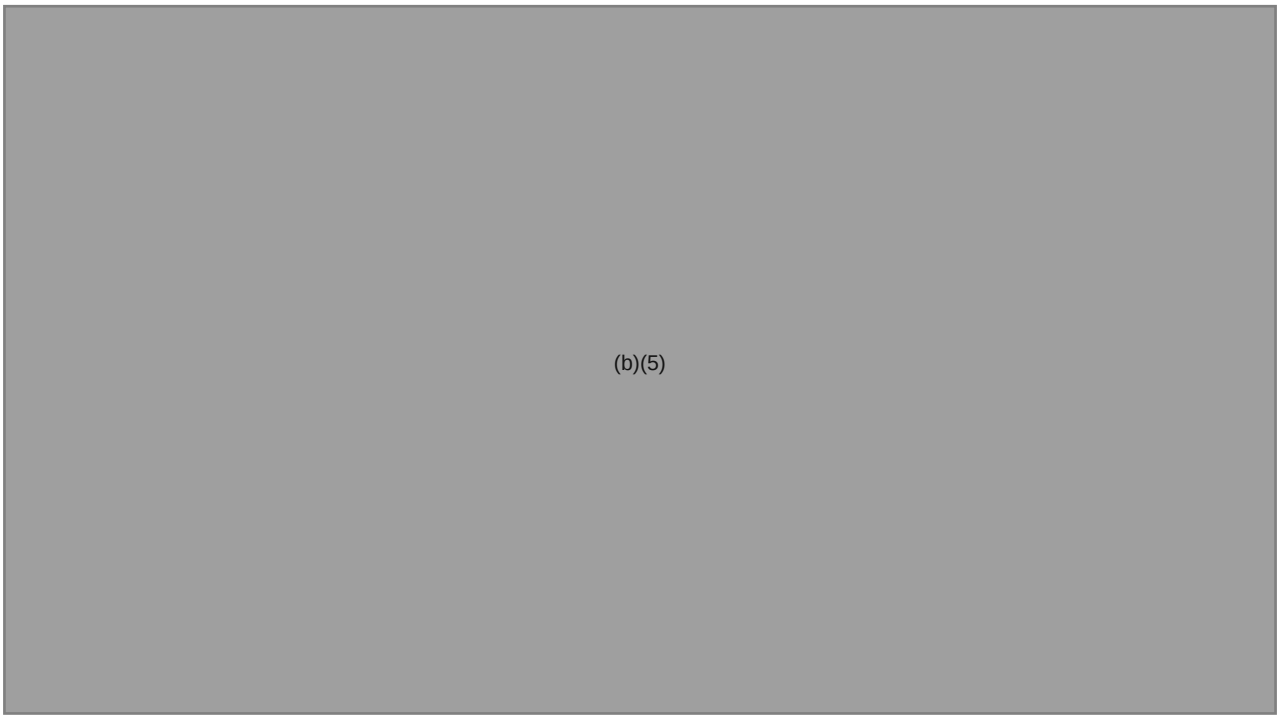
Hi (b)(6), (b)(7)c ERO leadership has approved your version of yesterday (below). Phil requests (1) Riah's written clearance and (2) assistance in elevating to DD Ragsdale for his review/clearance or any further needed PDAS/DHS clearances. Can you help facilitate? Thank you, (b)(6), (b)(7)c

***This message is sent on behalf of Philip T. Miller, Assistant Director for Field Operations:***

**To: Field Office Directors and Deputy Field Office Directors**

**Subject: Custody Determinations for Certain ER Aliens Encountered in the RGV Outside a POE**

(b)(5)

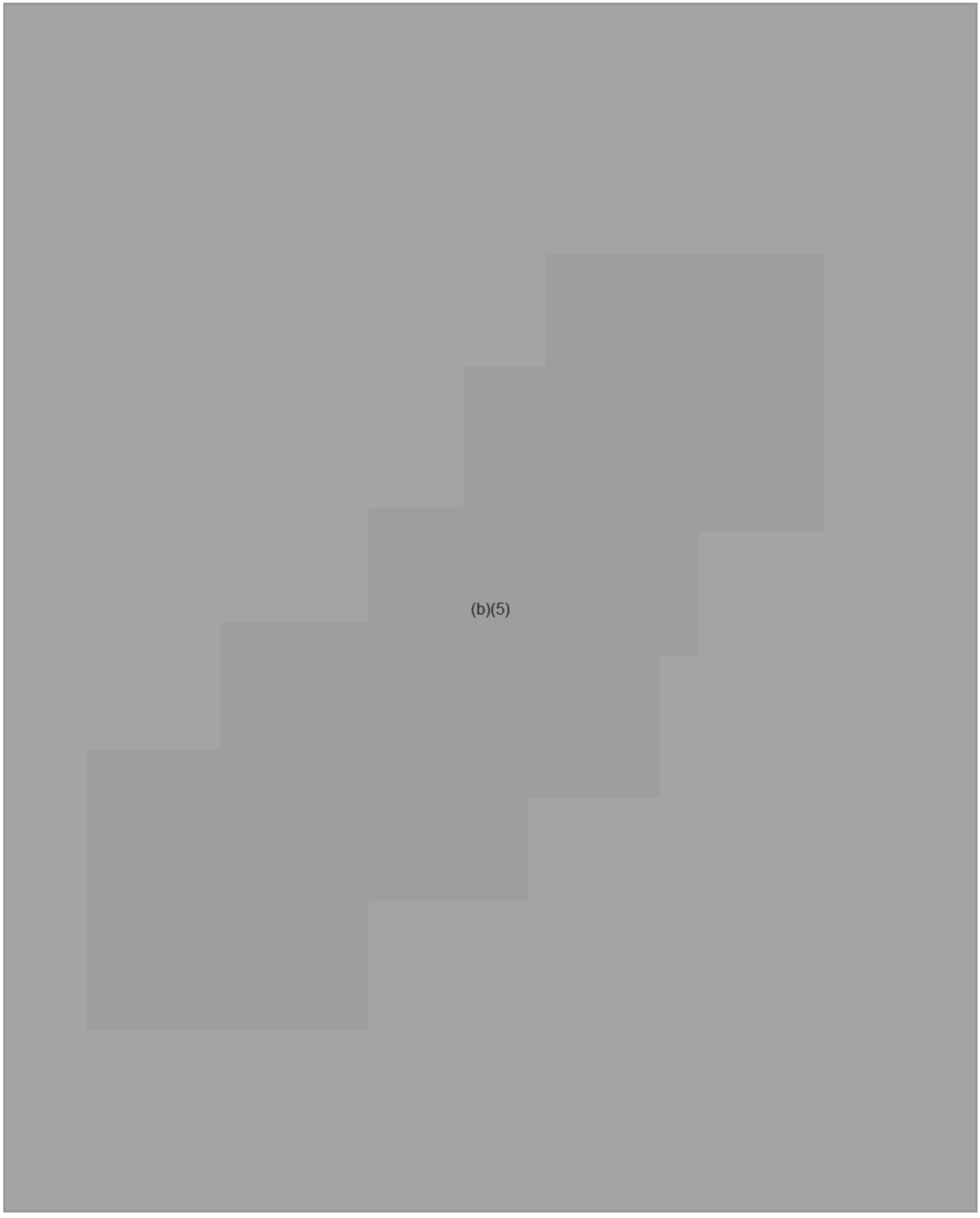


U.S. Immigration and Customs Enforcement

September 23, 2014

# Follow-up from Tour of the Artesia Family Residential Center

(b)(5)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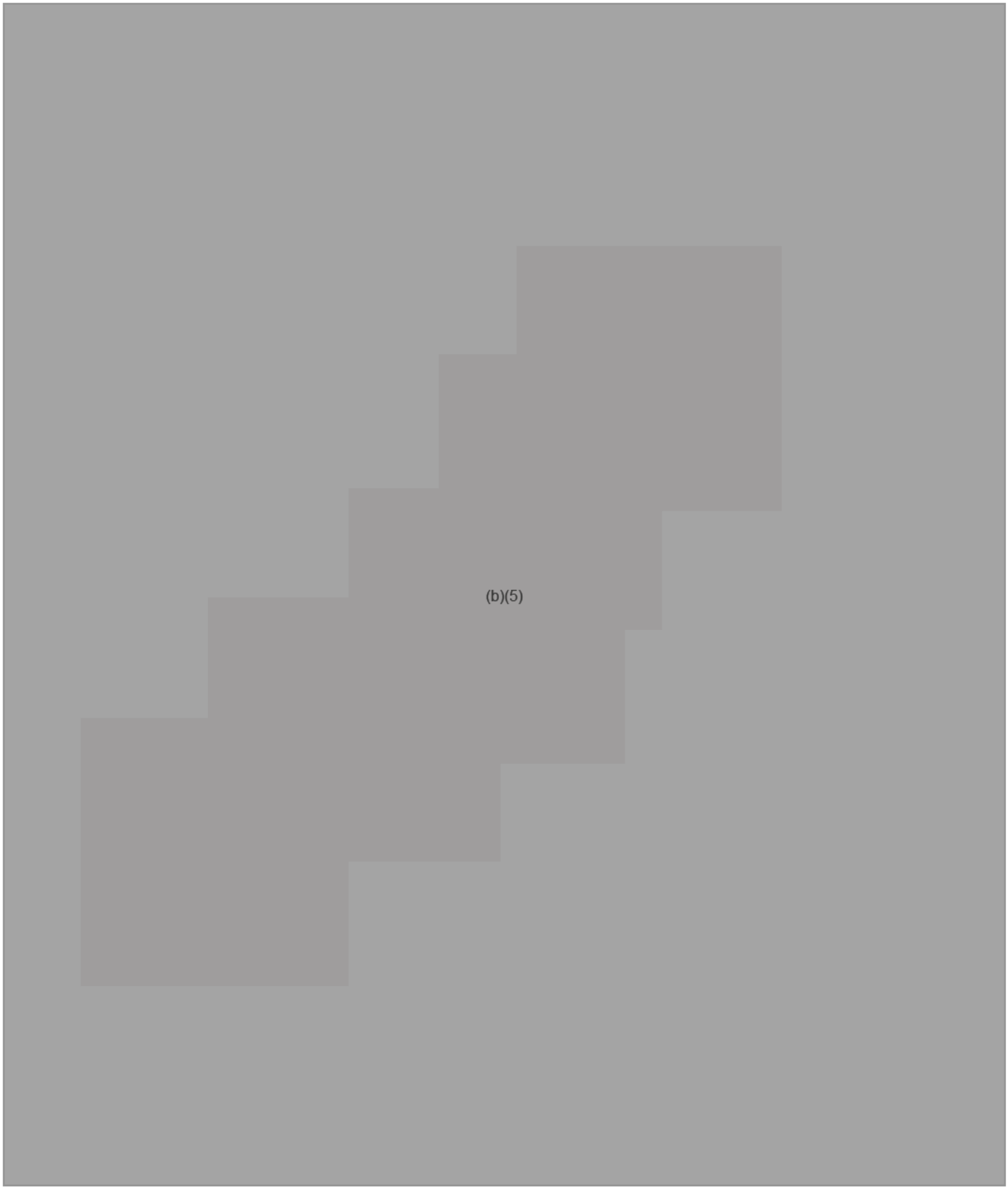
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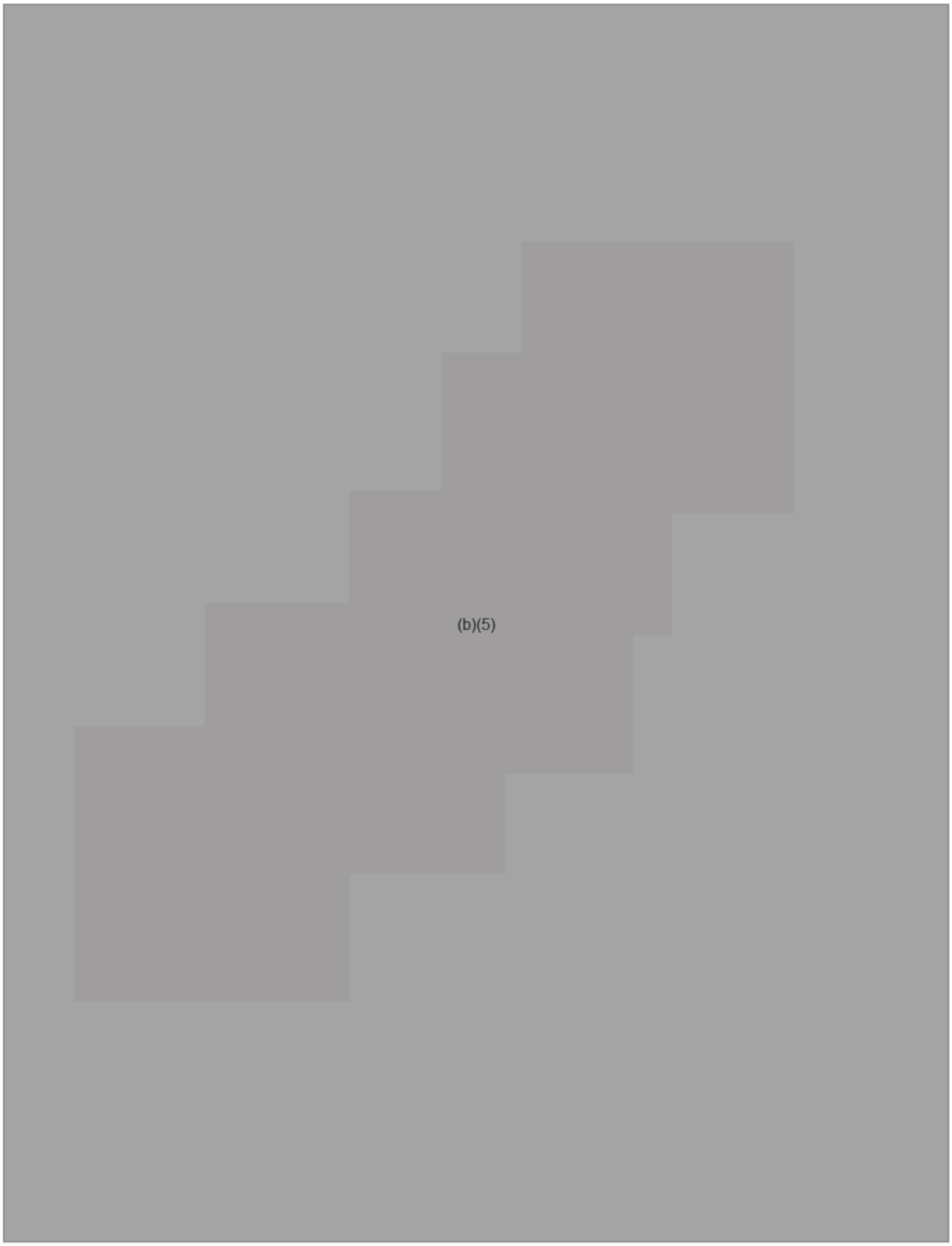
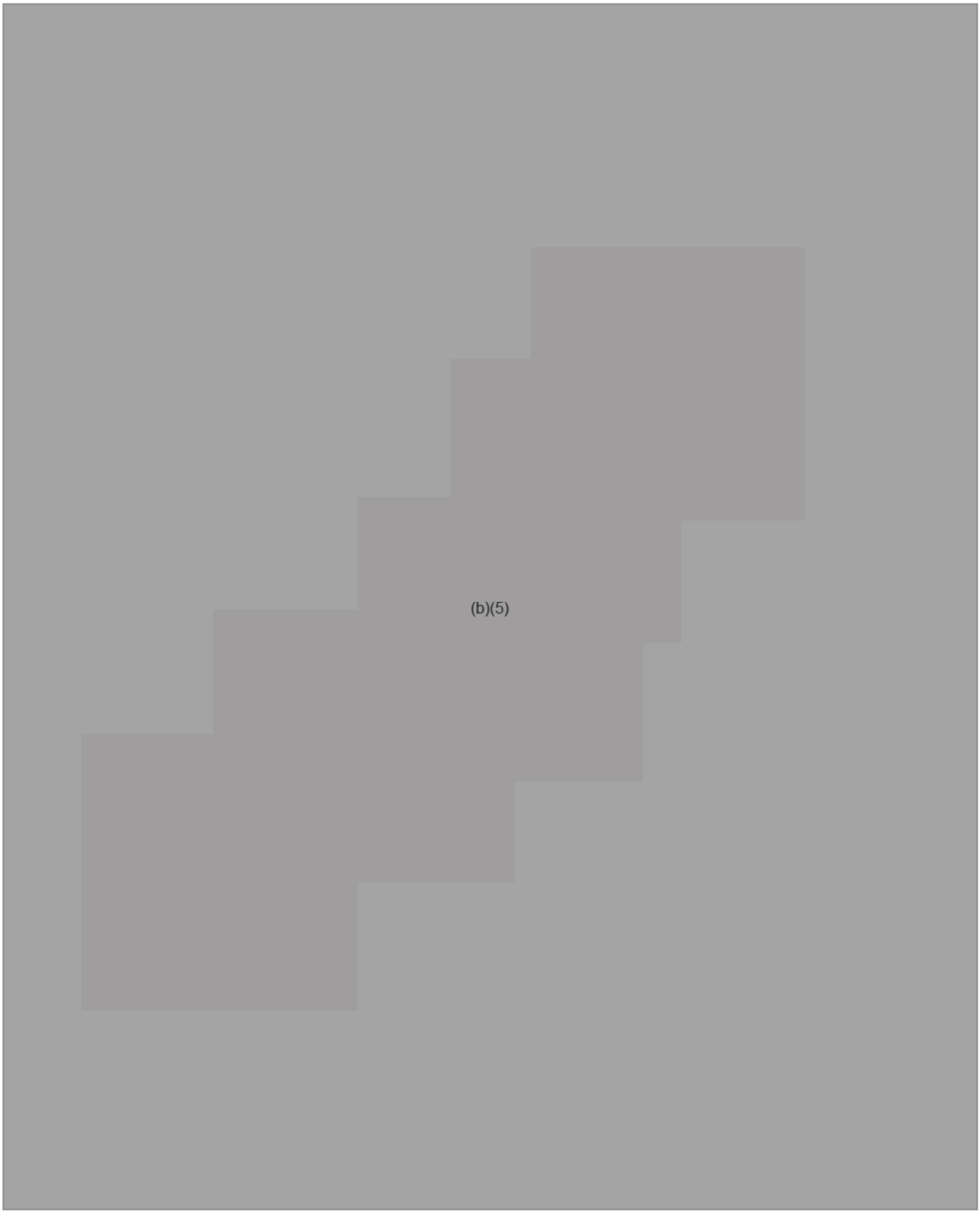
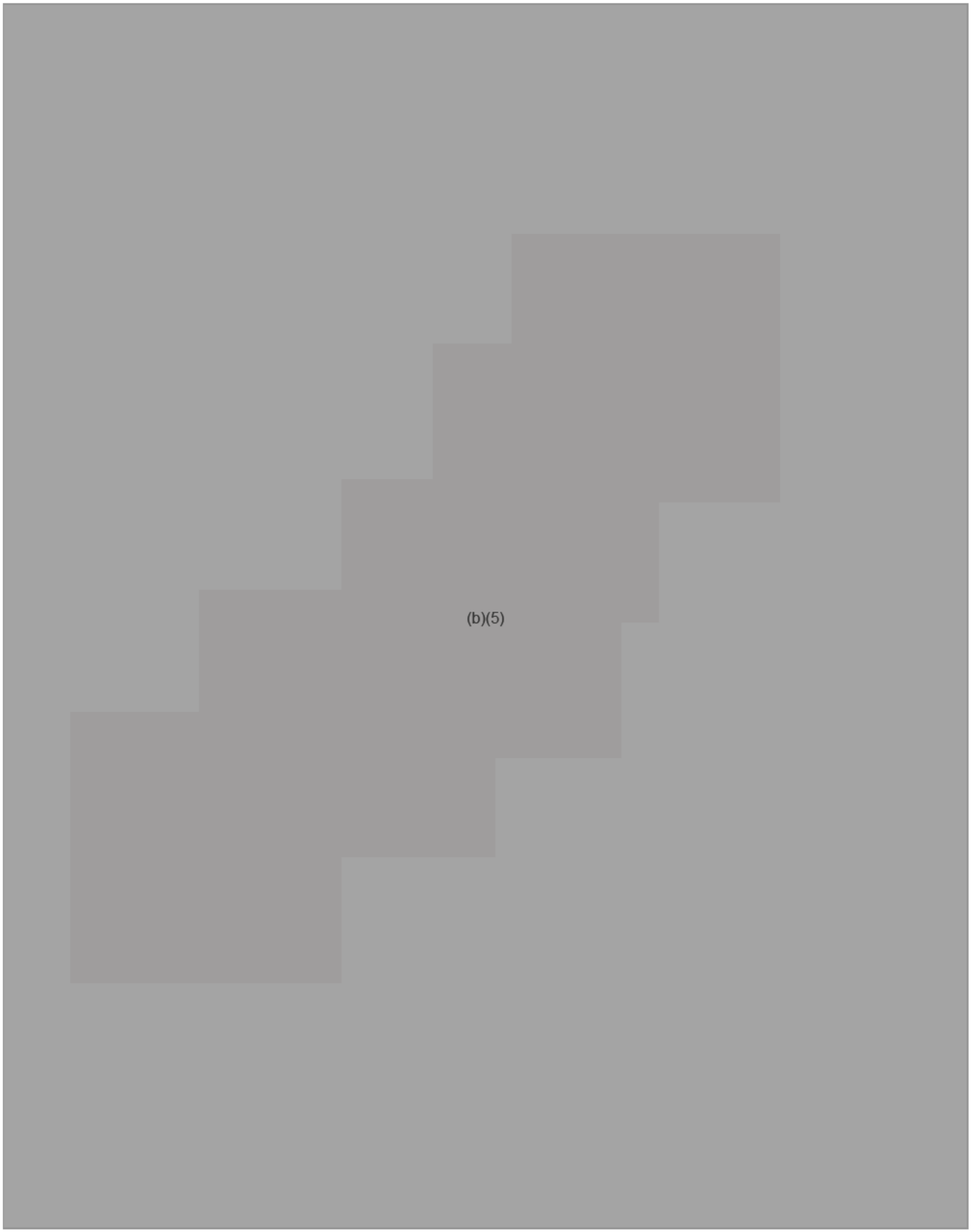
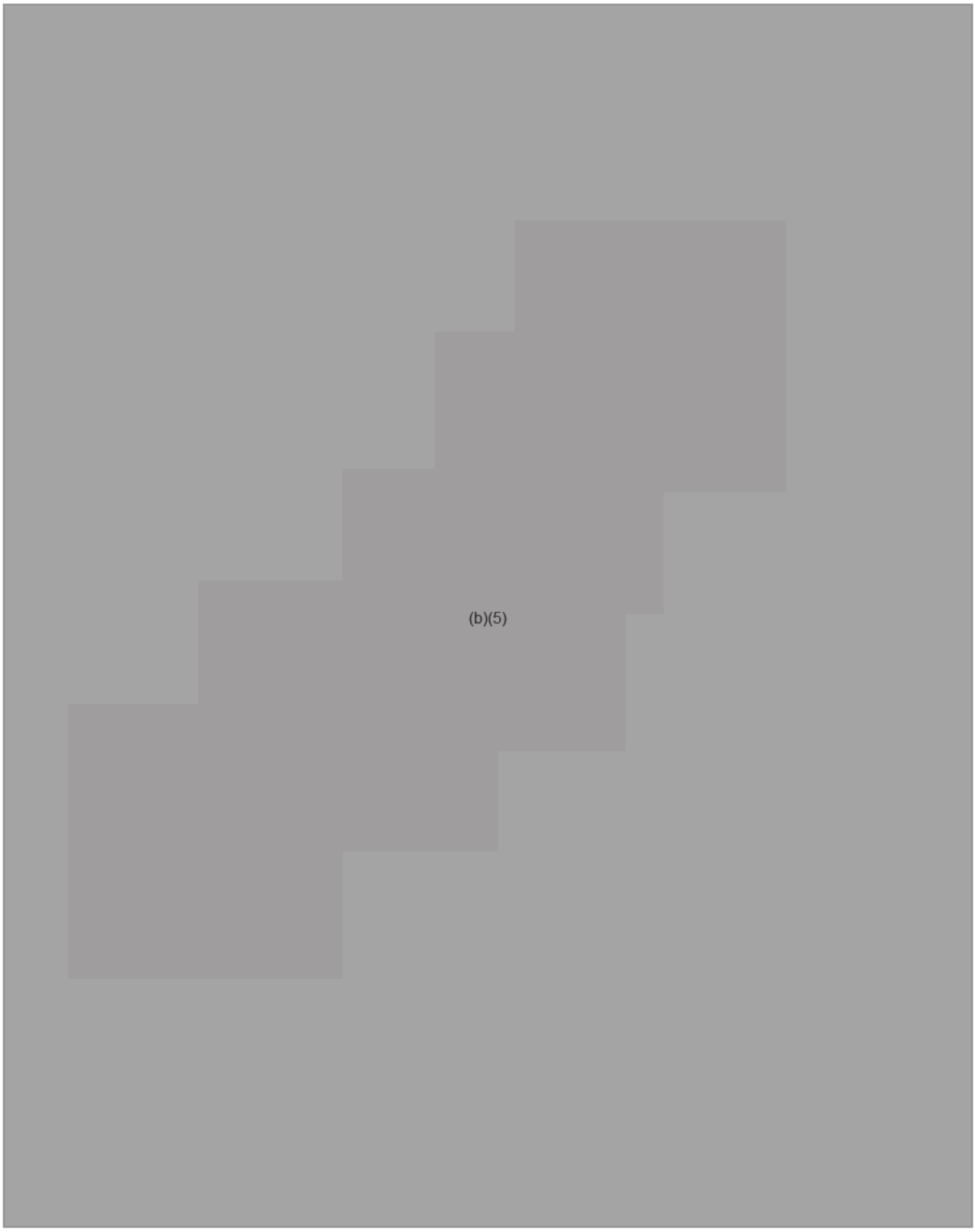

(b)(5)


(b)(5)


(b)(5)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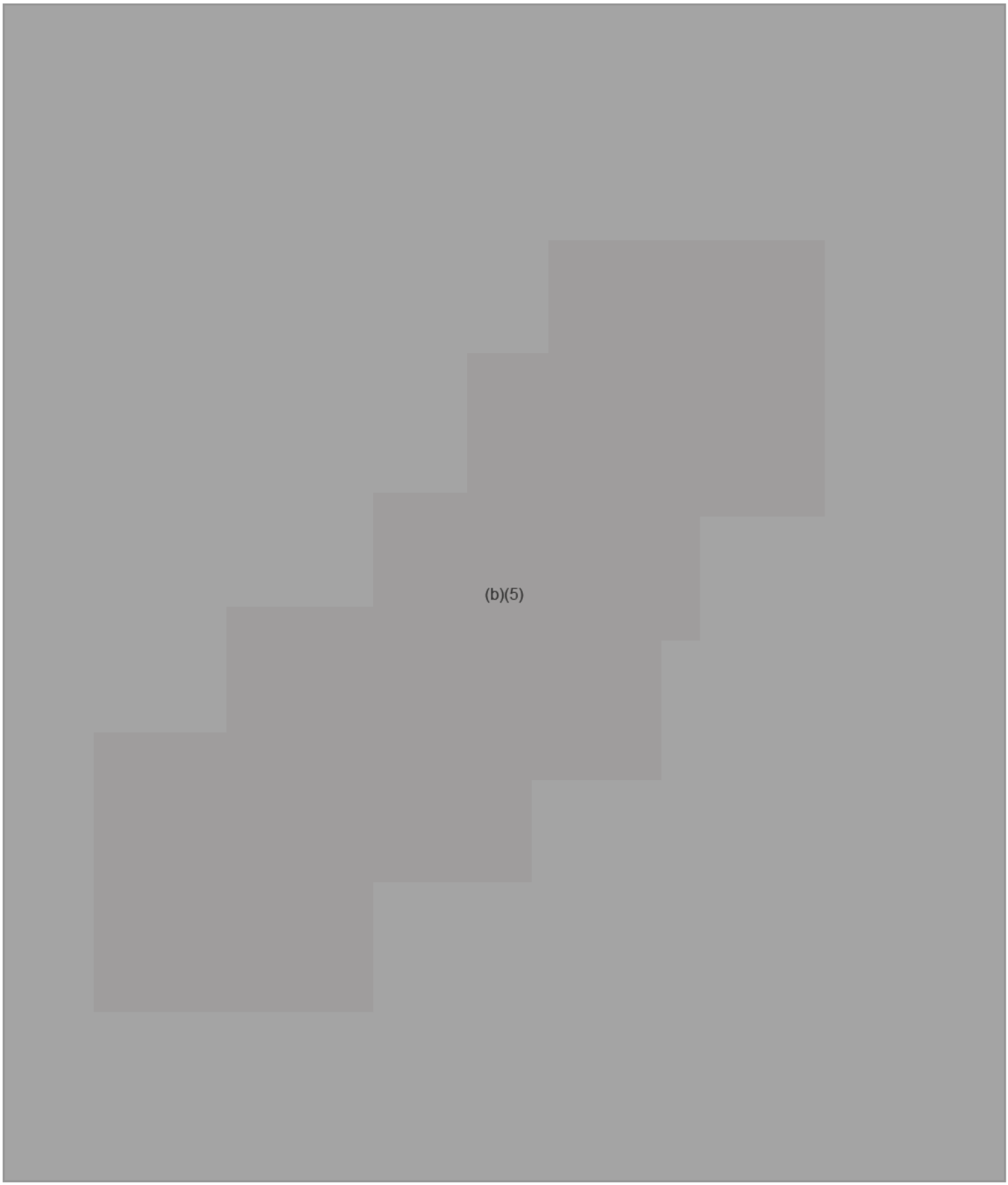
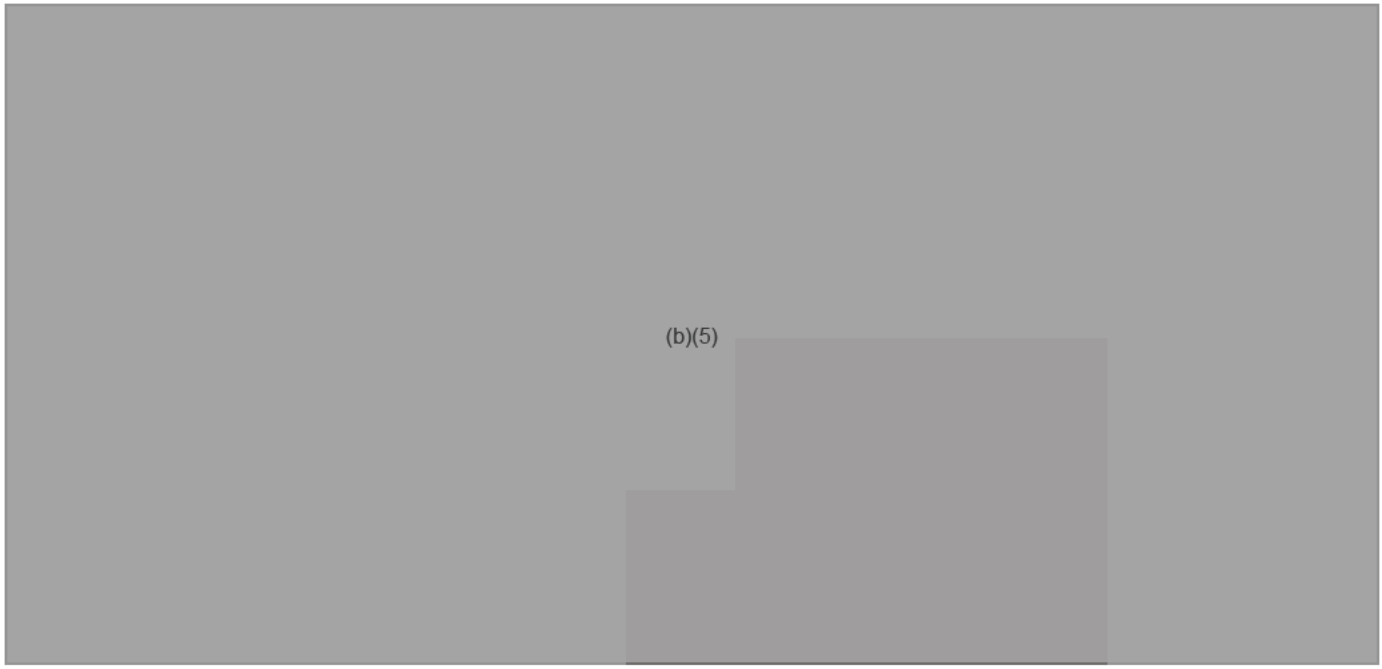
(b)(5)


(b)(5)


(b)(5)

**From:** (b)(6), (b)(7)c
**To:**
**Cc:**
**Subject:** FW: Artesia update
**Date:** Friday, September 26, 2014 6:38:07 PM
**Attachments:** Final AFRC Follow Up (092314).doc

(b)(6), (b)(7)c below are follow up question we received from (b)(6), (b)(7)c in response to the attached. ERO has provided responses below. We would obviously appreciate OPLA's review of all the responses, but in particular, please see the highlighted ones. Thank you!

On phones:

1. I had asked if ICE could give permission for off-site attorneys to speak with their clients via the cell phones of on-site AILA attorneys in the attorney access room. Right now, cell phones aren't permitted in the space where the residents are. This document doesn't address this issue. Can we get an answer to that?

(b)(5)

2. The draft refers to (b)(5) (b)(5) Do you know what's going on there?

(b)(5)

3. Is there a per call connection fee with the Talton phone system? How much does it cost a detainee to retrieve a voicemail message? is it just the 10 cents/minute rate for domestic calls? Or something else? (b)(5)

(b)(5)

(b)(5)

4. The draft states (b)(5)

(b)(5)

(b)(5)

(b)(5)

On childcare:

1. (b)(5)

(b)(5)

2. Is there any update on whether a contract might be signed with GEO that would include provision of childcare? (b)(5)

(b)(5)

(b)(5)

3. Re play areas in EOIR courtrooms: The draft states, (b)(5)

(b)(5)

(b)(5)

Couple more miscellaneous questions:

1. On Q 17, to be clear, is KYR video actually playing in the Artesia cafeteria? (b)(5)

(b)(5)

(b)(5)

2. On Q 30, the draft states (b)(5)

(b)(5)

(b)(5)

---

**From:** (b)(6), (b)(7)c
**Sent:** Thursday, September 25, 2014 3:39 PM
**To:** Ragsdale, Daniel H
**Subject:** RE: Artesia update

Sorry - one more question on the phones: is there a per call connection fee with the Talton phone system? If so, do detainees have to pay that connection fee to check to see if they have voicemails? thanks

**From:** (b)(6), (b)(7)c
**Sent:** Thursday, September 25, 2014 1:49 PM
**To:** Ragsdale, Daniel H
**Cc:** Rosen, Paul
**Subject:** RE: Artesia update

Dan – thanks for sending, and apologies for the delay. A few follow-up questions below.

On phones:

1. I had asked if ICE could give permission for off-site attorneys to speak with their clients via the cell phones of on-site AILA attorneys in the attorney access room. Right now, cell phones aren't permitted in the space where the residents are. This document doesn't address this issue. Can we get an answer to that?

2. The draft refers to (b)(5) (b)(5)

3. How much does it cost a detainee to retrieve a voicemail message? is it just the 10 cents/minute rate for domestic calls? Or something else? (b)(5) (b)(5)

4. The draft states (b)(5) (b)(5)

On childcare:

1. (b)(5)

2. Is there any update on whether a contract might be signed with GEO that would include provision of childcare? (b)(5) (b)(5)

3. Re play areas in EOIR courtrooms: The draft states, (b)(5) (b)(5)

(b)(5)

Couple more miscellaneous questions:

1. On Q 17, to be clear, is KYR video actually playing in the Artesia cafeteria? (b)(5)
(b)(5)

2. On Q 30, the draft states (b)(5)
(b)(5)

Thank you, and apologies for the back and forth on these issues.

(b)(6), (b)(7)c

**From:** Ragsdale, Daniel H (b)(6), (b)(7)c
**Sent:** Tuesday, September 23, 2014 7:15 PM
**To:** (b)(6), (b)(7)c
**Cc:** Rosen, Paul
**Subject:** Artesia update

(b)(6), (b)(7)c

Please see the updated Artesia memo. Let me know your thoughts. Thx.

This is proposed in response to (b)(6), (b)(7)c update request from Monday. Thx.

**From:**
**To:** (b)(6), (b)(7)c
**Cc:**
**Subject:** FW: Custody Procedures in Expedited Removal Cases and ERO Responsibilities when an Alien Expresses a Fear of Return - DQT
**Date:** Friday, September 19, 2014 7:54:04 AM
**Attachments:** image001.jpg
FW Custody Procedures in Expedited Removal Cases and ERO Responsibilities when an Alien Expresses a Fear of Return .msg

---

Good morning, (b)(6), (b)(7)c

I received a request for clarification on the below directive that was pushed down from ERO HQ in April of this year. According to the AFOD (currently acting DFOD) asking for clarification, his chain had told him that the below guidance came from OPLA HQ. As such, I figured your shop may have been involved. I'm just trying to trace the guidance back up the stream so that I can ensure that I appropriately address the inquiry presented.

(b)(6), (b)(7)c

(b)(6), (b)(7)c
Deputy Chief Counsel
Office of the Chief Counsel
San Antonio, TX
210-967 (b)(6), (b)(7)c (desk)
210-573 (cell)



**From:** (b)(6), (b)(7)c
**Sent:** Thursday, September 18, 2014 1:02 PM
**To:**
**Cc:** (b)(6), (b)(7)c
**Subject:** FW: Custody Procedures in Expedited Removal Cases and ERO Responsibilities when an Alien Expresses a Fear of Return - DQT

(b)(6), (b)(7)c

What's your thoughts on the below, the question we are confused about is the wording below "not

(b)(5)

(b)(5)

(b)(6), (b)(7)c
Acting Deputy Field Office Director
Rio Grande Valley, South Operations
San Antonio Field Office
956-547(b)(6), (b)(7)c
956-547-1702 fax



---

**From:** (b)(6), (b)(7)c
**Sent:** Friday, April 25, 2014 1:21 PM
**To:** (b)(6), (b)(7)c
(b)(6), (b)(7)c
**Cc:** (b)(6), (b)(7)c
**Subject:** Custody Procedures in Expedited Removal Cases and ERO Responsibilities when an Alien Expresses a Fear of Return - DQT

*This message is sent on behalf of Chief of Staff* (b)(6), (b)(7)c

Purpose: Directive: Custody Procedures in Expedited Removal Cases and ERO Responsibilities when an Alien Expresses a Fear of Return

Action: Issue to all LEOs

**Aliens issued expedited removal orders by U.S. Customs and Border Protection (CBP) under section 235(b)(1)(A)(i)** of the Immigration and Nationality Act (INA) are routinely transferred to U.S. Immigration and Customs Enforcement (ICE) for detention and execution of the expedited removal order. This message serves as a reminder of the custody procedures applicable to such cases and Enforcement and Removal Operations' (ERO) responsibilities where an alien expresses a fear of return *after* issuance of the expedited removal order and transfer to ERO custody. This message does not address cases in which the alien expressed a claim of fear prior to issuance of the expedited removal order and was transferred to ERO custody pending a credible fear interview before U.S. Citizenship and Immigration Services

(USCIS). It also does not address cases in which the alien has been determined by USCIS to possess a credible fear and has been referred to the immigration court for removal proceedings under INA § 240.

**Detention and Release**

As set forth in regulations, an alien who has been issued an expedited removal order "shall be detained pending . . . removal." 8 C.F.R. § 235.3(b)(2)(iii). Aliens subject to an expedited removal order are not detained pursuant to the post-order custody provisions of INA § 241(a) and are **not eligible for release on an order of supervision.** Such aliens are may only be released from custody on parole on a case-by-case basis in the limited circumstances where "parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective." 8 C.F.R. § 235(b)(2)(iii). (b)(5)

(b)(5)

**Fear Claims**

The expedited removal regulations provide significant opportunities for aliens to raise a claim of fear *prior* to the issuance of an expedited removal order. The examining officer is required to read to the alien the contents of Form I-867A, which advises that U.S. law provides protection to certain persons who face persecution, harm or torture upon return to their home country and advises the alien to tell the officer if he or she has fear or concern about being removed from the United States. In addition, the regulations require that the examining officer complete the Form I-867B, which expressly asks: (i) why the alien left his or her home country or country of last residence; (ii) whether the alien has any fear or concern about being returned; and (iii) whether the alien would be harmed, if returned.

There may, nonetheless, be cases in which an alien first indicates an intention to apply for asylum or expresses a fear of return after the expedited removal order is issued and the alien is transferred to ERO custody. This includes any verbal or non-verbal indications that the alien may be afraid to return to his or her homeland. In these cases, ERO must refer the alien for a credible fear interview before a USCIS asylum officer. Similarly, if an alien who is not in ERO custody (e.g., one who has been transferred to the custody of another law enforcement agency), indicates an intention to apply for asylum or expresses a fear of return to ERO, ERO must refer the alien for a credible fear interview

before a USCIS asylum officer. ERO should not advise the alien to file an application for asylum directly with USCIS.

Assistant Field Officer Directors should consult with their respective Office of the Chief Counsel on any questions regarding the implementation of this guidance.

If you have any concerns regarding this guidance, please forward questions to the SNADQT mailbox.

**Limitation on the Applicability of this Guidance.** This message is intended to provide internal guidance to the operational components of U.S. Immigration and Customs Enforcement. It does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.



**From:** (b)(6), (b)(7)c
**To:**
**Subject:** FW: Custody Procedures in Expedited Removal Cases and ERO Responsibilities when an Alien Expresses a Fear of Return
**Date:** Thursday, September 18, 2014 3:39:38 PM

Justin, here is the source email.

(b)(6), (b)(7)c
*Chief of Staff*
*ERO-San Antonio Field Office*
*210-889-[redacted] ell*
*210-283-[redacted] desk*

**From:** (b)(6), (b)(7)c
**Sent:** Tuesday, April 22, 2014 12:04 PM
**Subject:** Custody Procedures in Expedited Removal Cases and ERO Responsibilities when an Alien Expresses a Fear of Return

***This message is being sent by Philip Miller, Assistant Director for Field Operations***

**To: Assistant Directors, Deputy Assistant Directors, Field Office Directors and Deputy Field Office Directors**

**Subject: Custody Procedures in Expedited Removal Cases and ERO Responsibilities when an Alien Expresses a Fear of Return**

Please immediately distribute this guidance to your employees.

Aliens issued expedited removal orders by U.S. Customs and Border Protection (CBP) under section 235(b)(1)(A)(i) of the Immigration and Nationality Act (INA) are routinely transferred to U.S. Immigration and Customs Enforcement (ICE) for detention and execution of the expedited removal order. This message serves as a reminder of the custody procedures applicable to such cases and Enforcement and Removal Operations' (ERO) responsibilities where an alien expresses a fear of return *after* issuance of the expedited removal order and transfer to ERO custody. This message does not address cases in which the alien expressed a claim of fear prior to issuance of the expedited removal order and was transferred to ERO custody pending a credible fear interview before U.S. Citizenship and Immigration Services (USCIS). It also does not address cases in which the alien has been determined by USCIS to possess a credible fear and has been referred to the immigration court for removal proceedings under INA § 240.

**Detention and Release**

As set forth in regulations, an alien who has been issued an expedited removal order "shall be detained pending . . . removal." 8 C.F.R. § 235.3(b)(2)(iii). Aliens subject to an expedited removal order are not detained pursuant to the post-order custody provisions of INA § 241(a) and are not eligible for release on an order of supervision. Such aliens are may only be released from custody on parole on a case-by-case basis in the limited circumstances where

"parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective." 8 C.F.R. § 235(b)(2)(iii).

**Fear Claims**

The expedited removal regulations provide significant opportunities for aliens to raise a claim of fear *prior* to the issuance of an expedited removal order. The examining officer is required to read to the alien the contents of Form I-867A, which advises that U.S. law provides protection to certain persons who face persecution, harm or torture upon return to their home country and advises the alien to tell the officer if he or she has fear or concern about being removed from the United States. In addition, the regulations require that the examining officer complete the Form I-867B, which expressly asks: (i) why the alien left his or her home country or country of last residence; (ii) whether the alien has any fear or concern about being returned; and (iii) whether the alien would be harmed, if returned.

There may, nonetheless, be cases in which an alien first indicates an intention to apply for asylum or expresses a fear of return after the expedited removal order is issued and the alien is transferred to ERO custody. This includes any verbal or non-verbal indications that the alien may be afraid to return to his or her homeland. In these cases, ERO must refer the alien for a credible fear interview before a USCIS asylum officer. Similarly, if an alien who is not in ERO custody (e.g., one who has been transferred to the custody of another law enforcement agency), indicates an intention to apply for asylum or expresses a fear of return to ERO, ERO must refer the alien for a credible fear interview before a USCIS asylum officer. ERO should not advise the alien to file an application for asylum directly with USCIS.

Field Officer Directors should consult with their respective Office of the Chief Counsel on any questions regarding the implementation of this guidance.

If you have any concerns regarding this guidance, please contact the ERO Field Operations Staff Officer assigned to your AOR.

**Limitation on the Applicability of this Guidance.** This message is intended to provide internal guidance to the operational components of U.S. Immigration and Customs Enforcement. It does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

**From:**
**To:**
**Cc:** (b)(6), (b)(7)c

**Subject:** FW: RGV influx - FRM & UCs
**Importance:** High

---

(b)(6), (b)(7)c

I'm going to listen in on this so feel free to stop by or you can listen in from your office.

-----Original Appointment-----
From: (b)(6), (b)(7)c
Sent: Monday, June 30, 2014 11:29 AM
To: Stephens, Greta C; Moore, Marc J; Flores, Simona L (b)(6), (b)(7)c
(b)(6), (b)(7)c Rapp, Marc A
Cc: Johnson, Tae D; (b)(6), (b)(7)c
(b)(6), (b)(7)c
Subject: RGV influx - FRM & UCs
When: Monday, June 30, 2014 12:30 PM-1:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: PCN Conference Room 5175 (5th floor)
Importance: High

*** Call-in number to be utilized: (877-675-1040)
Participant Code: 4306908

All:

Mr. Moore, who is on detail to HQ ERO to oversee the current operations for the Southwest Border/ RGV, requested a meeting to discuss issues related to the influx, to include Family Residential Management and Unaccompanied Children. The main topic to be discussed is how to respond to the numerous Congressional and other requests for information (RFIs). However, Mr. Moore would also like to know of any other concerns or items he should be aware of.

I am aware that some of you will be traveling on Monday due to pending site visits; therefore, please advise me of who you would like to represent your unit/section if there is not already someone else from your unit/section included on the meeting invite. Or if there is someone you think should be included that I have missed.

I will try to obtain a call in number first thing Monday morning and will distribute to all meeting invitees – in case you are unable to be physically present and would like to call in.

Please contact me if there are any questions or items you would brought up for discussion. Thank you.

(Note: I apologize for the lunch time scheduling; however, it was the best available time considering the multitude of attendees and the conflicting schedules.)

Regards,
(b)(6), (b)(7)c Detention & Deportation Officer (*temporary assistant to Mr. Moore)
Domestic Operations Division - East, Field Operations
Enforcement & Removal Operations, ICE
Washington, D.C.
202-732 office
202-210 (b)(6), (b)(7)c cellular

**From:** (b)(6), (b)(7)c
**To:**
**Subject:** FW: Saturday"s UAC call
**Date:** Sunday, June 08, 2014 10:01:00 AM

---

**From** (b)(6), (b)(7)c
**Sent:** Saturday, June 07, 2014 11:18 AM
**To:** (b)(6), (b)(7)c
**Subject:** June 7 Unified Group 9.00 am call

UAC Numbers:

- 2489 UAC nationwide pending placement (1684 UAC in RGV, 704 in Phoenix )
- Next 24 hours, ICE will transfer 65 UAC nationwide (47 UAC from RGV, 13 UAC from Phoenix)
- HSS was able to designate 410 beds within their regular facilities. These identified kids will go directly from border to regular placements (HHS will also assign 13 extra people to assist in the southwest border area.).

Temporary Sites (Shelter Task Force):

- Slight shift on priorities with a new objective in exploring the catastrophic sheltering outside the hurricane prone areas. (b)(5)
  (b)(5)
- The visit to Baltimore yesterday (June 6) was useful. There is a two prong effort going on: one through GSA; other through IA. Baltimore is expected to open around June 17 or 18. This site has a tremendous potential to build a much larger site. The governor is very supportive, but the mayor's office is less warm to it (due to other plans for the site). The communications are ongoing.
- GSA continues to support requirements, waiting HHS to provide identification, a lot of options are being considered.

Medical Issues:

- Incomplete vaccination process caused delay: Targeted UAC transfer was not accomplished because even though all identified kids received their vaccinations their required three day post-vaccination waiting period were not completed (intended delivery to Ventura for yesterday (June 6) was 100 UAC, but only 17 UAC were delivered; intended delivery to Lackland for yesterday (June 6) was 250 UAC, but only less than 100 UAC were delivered.). Some kids ended up being released.
- Protocols are being worked to obtain and store the chicken pox vaccines.
- Disability integration: HHS, through Unified Coordination, is working on identifying kids with disabilities during medical screening to transition them from border facilities to permanent placements in the least restrictive way.

Transfer:

- All relevant parties are trying their best to find alternative commercial carriers ( e.g. M-tracks are an option currently being looked at.).

Significant Events:

1. Request to speak with Sec. Johnson: A request to speak with Sec. Johnson was made by Governor Brewer. Arrangements are being made.

2. Deputies Committee Meeting Outcome: The meeting took place yesterday (June 6). One of the most important things that came out of it was the agreement by all parties that they will support this Unified Group by all means (resources, funds etc.). Second, DHS and DOJ will work on opening 14 courtrooms at southwest border to alleviate effects of influx. Expedited removal and stipulated removal options are being considered. Next, further options to engage with foreign partners are being considered. Lastly, there has been a decision to regularize these meetings.
3. Foreign Partners: A unified message is necessary. A report is being drafted to be sent out to consulates. Representatives from the Honduran Embassy took a quick trip to RGV yesterday (June 6). If there is any tasking that comes out of this visit, contact IA.
4. Congressional Inquiries: Significant congressional inquiries are being received. If anybody receives congressional inquiry inform DHS OAA.
5. Media: No scheduled press today.

Thanks,

(b)(6), (b)(7)c

(b)(6), (b)(7)c
Associate Legal Advisor
Enforcement and Removal Operations Law Division
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-732-(b)(6), (b)(7)c (direct)
Cell: 202-210-(b)(6), (b)(7)c

**From:** (b)(6), (b)(7)c
**To:**
**Subject:** FW: State licensing - family facility
**Date:** Tuesday, July 15, 2014 12:46:00 PM
**Attachments:** Hutto case.rtf

---

(b)(6), (b)(7)c
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-7
BB: 202-246(b)(6), (b)(7)c



---

**From** (b)(6), (b)(7)c
**Sent:** Monday, July 14, 2014 11:05 AM
**To:** (b)(6), (b)(7)c
**Subject:** FW: State licensing - family facility

(b)(6), (b)(7)c

Ideas for analyzing whether licensure is required in setting up temporary facilities to detain families. I also included the Hutto case, highlighting the discussion at *7-8 concerning state licensing. Feel free to stop by and discuss.

(b)(6), (b)(7)email is below – (b)(5)

(b)(5)

California Guidance on Residential Standards: (b)(5) the California

guidance on residential standards provides, "Facilities located on federal government property, including military bases, are exempt from licensure because state laws do not apply on most federal lands. This exemption also applies to facilities located on Indian reservations."

(b)(5)

FERC Opinion: (b)(5)

(b)(5)

(b)(6), (b)(7)c
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-7
BB: 202-246-(b)(6), (b)(7)c



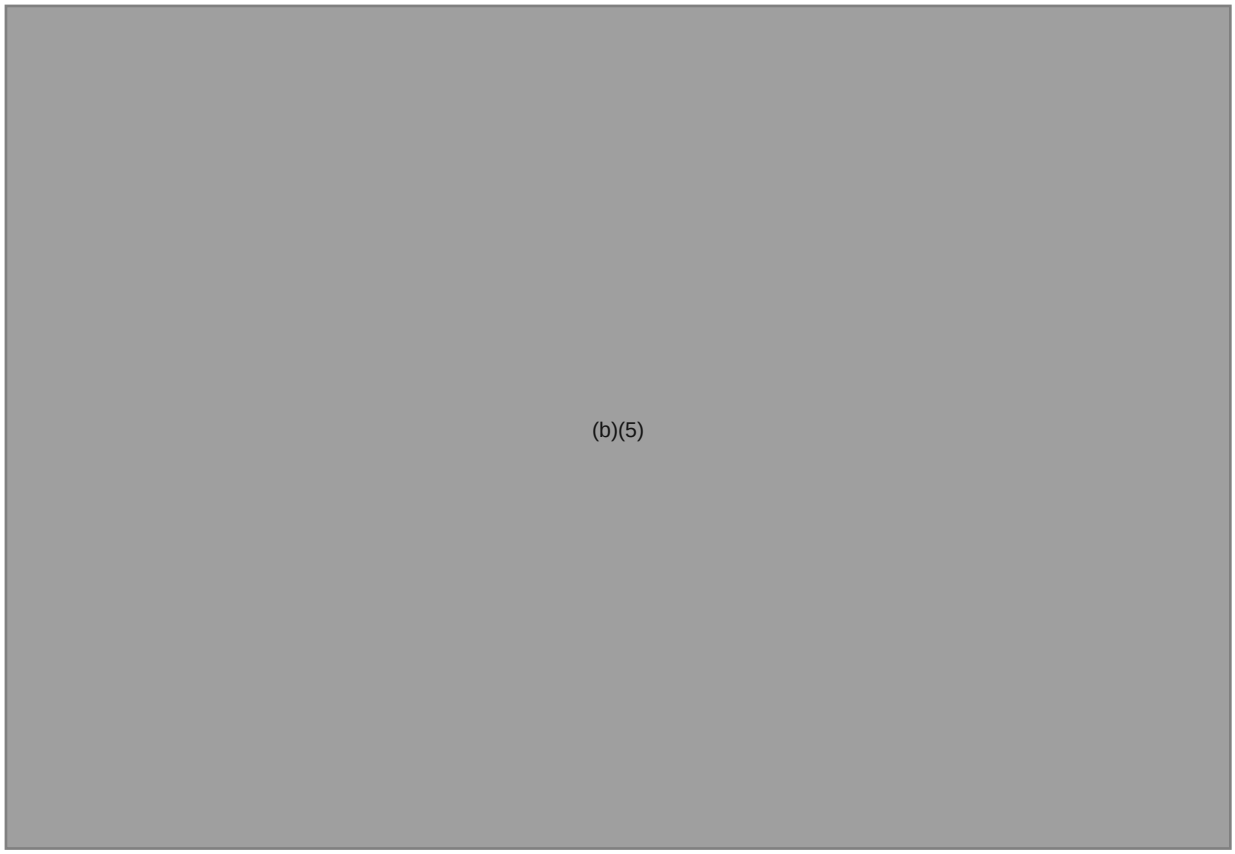
---

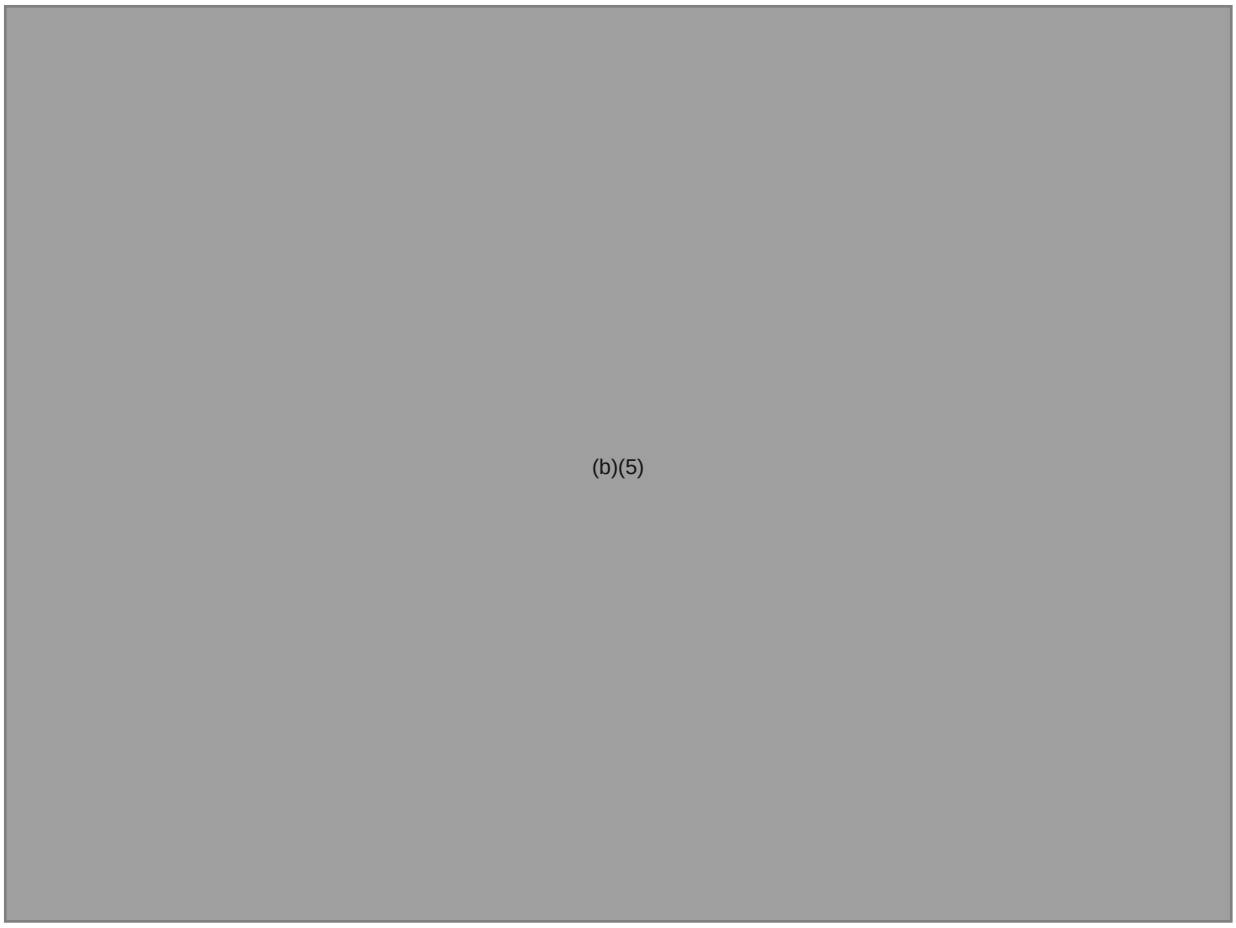
**From:** (b)(6), (b)(7)c
**Sent:** Friday, July 11, 2014 3:51 PM
**To:**
**Cc:** (b)(6), (b)(7)c
**Subject:** State licensing - family facility

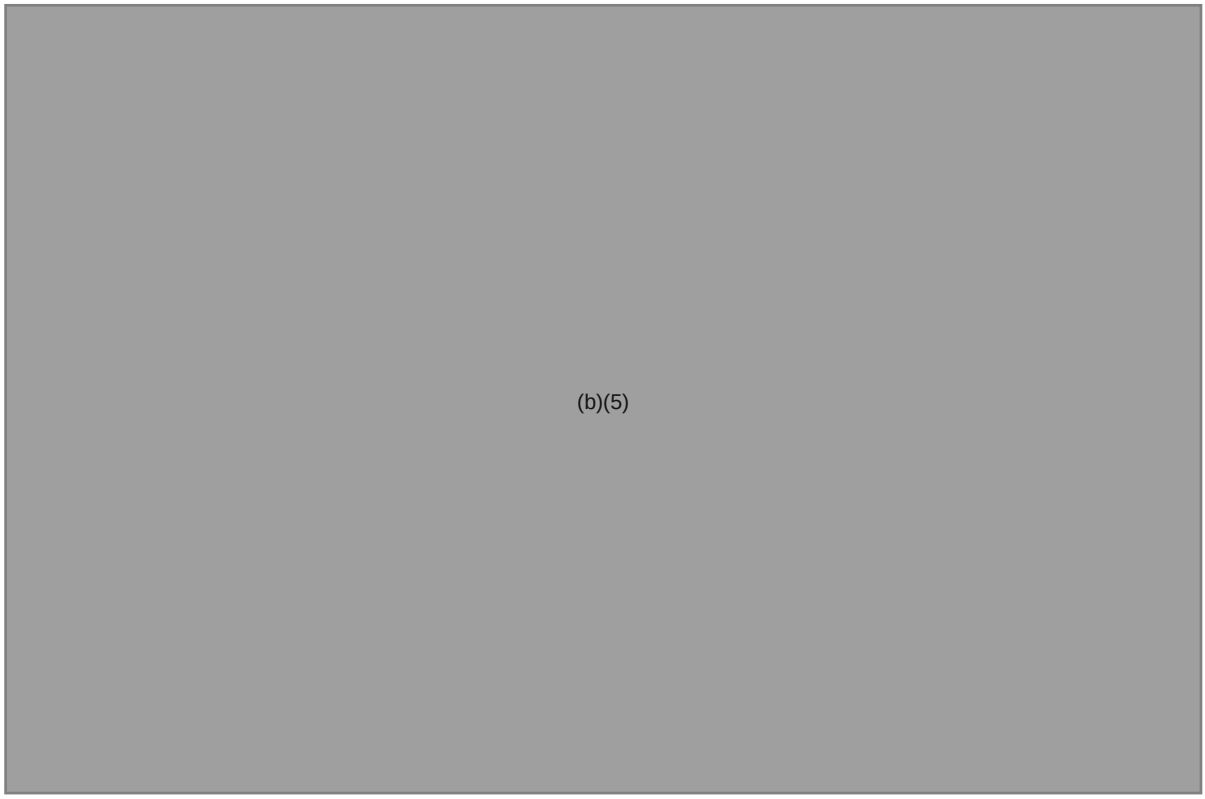
(b)(6), (b)(7)c

Here are the general principles, and my take on the situation (short version is first two paragraphs----#2 below is extra background)

:


(b)(5)


(b)(5)




(b)(6), (b)(7)c
Associate Legal Advisor
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500 12th Street, S.W., 9th Floor
Washington, D.C. 20024
202-732-(b)(6), (b)(7)c
202-732-5346 (fax)

**From:** (b)(6), (b)(7)c
**To:**
**Cc:**
**Subject:** RE: QUICK TURNAROUND: DHS Follow Up Questions
**Date:** Wednesday, October 15, 2014 5:15:00 PM

(b)(6), (b)(7)c

We looked into this and (b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

**From:** (b)(6), (b)(7)c
**Sent:** Wednesday, October 15, 2014 1:42 PM
**To:** (b)(6), (b)(7)c
**Subject:** FW: QUICK TURNAROUND: DHS Follow Up Questions
**Importance:** High

Can you please take a look at question 1b for me. Has there been any update from OPLA on this?

(b)(6), (b)(7)c

(b)(6), (b)(7)c
Chief
Juvenile and Family Residential Management Unit
Custody Management Division
Enforcement and Removal Operations
Immigration and Customs Enforcement
(202) 732
(202) 422 (b)(6), (b)(7)c

**From:** (b)(6), (b)(7)c
**Sent:** Wednesday, October 15, 2014 1:38 PM
**To**
**Cc:** (b)(6), (b)(7)c
**Subject:** FW: QUICK TURNAROUND: DHS Follow Up Questions

(b)(6), (b)(7)c

We have some questions from the front office that we need answered/updates for. Can you please review the below items and provide me with an update. They'd like answers today. If there are any that are not likely to be answered today please let me know so I can give them a heads up. I will inquire with OPLA about #1b.

Thanks!

(b)(6), (b)(7)c

Childcare

CMD: We will send Question 1b. to OPLA, but if you have any new thoughts/updates on the matter, please provide.

1a. Any update [from the last update below] on whether the GEO contract has been modified and an anticipated timeline?

(b)(5)

1b. Any update on OPLA guidance on the second issue mentioned in what I'm pasting below (permitting unrelated adults and children to be present in the daycare with ICE officers)?

(b)(5)

2. Are the "play areas" now in the EOIR courtrooms?

Phones

3. (b)(5)

(b)(5)

4. VTC-related issues: none of the attorneys seem to know anything about this system being available, but they note that even if it is, most attorneys wouldn't have VTC access without trying somehow to work through the VTC access at the immigration courts. The attorneys would, however, be able to use Skype or Facetime. Are there internet access issues at Artesia (see related issue with #8 below), or is this something we could look into?

5. Charging for voicemails – attorneys continue to insist their clients are being charged $1.25 to retrieve voicemails. Is the Artesia system the same one they're using at Karnes?

(b)(5)

6. Attorneys report that indigent detainees are able to use the cell phones, but only for 5-8 minutes at a time. (b)(5)

(b)(5)

7. Also, fyi, this may be an issue of people not understanding how to work the phones, but the AILA attorneys are reporting that the land lines at Artesia often aren't working for extended periods of time.

Other

8. Latest on the new monitors for the courtrooms?

(b)(5)

9. Did Artesia receive law library materials from CRCL and are they in the library?

Also, one new issue:

10. Email: A) has access to yahoo accounts somehow been disabled or blocked at Karnes? If so, could it be restored? B) how hard would it be to set up email access at Artesia?

    Background: The Karnes attorneys report that they haven't had as many communications issues with their clients because Karnes residents have access to email, which is great (and if this were doable for Artesia, it might make all the issues we've been having with the phones less important). However, the Karnes attorneys think the detainees previously had access to yahoo accounts, but now can only access gmail. This is an issue, as I understand it, because the attorneys are having to set up accounts for the detainees (as account creation requires a phone number, which detainees don't have), and setting up a gmail for somebody else is difficult because gmail tries to link up with all of the attorneys' existing accounts and information.

---

**From:** (b)(6), (b)(7)c
**Sent:** Friday, September 26, 2014 4:24 PM
**To:**
**Cc:** (b)(6), (b)(7)c
**Subject:** RE: DHS Follow Up Questions

With updated releases information:

On phones:

1. I had asked if ICE could give permission for off-site attorneys to speak with their clients via the cell phones of on-site AILA attorneys in the attorney access room. Right now, cell phones aren't permitted in the space where the residents are. This document doesn't address this issue. Can we get an answer to that?

(b)(5)

2. The draft refer (b)(5)

(b)(5)

(b)(5)

3. How much does it cost a detainee to retrieve a voicemail message? is it just the 10 cents/minute rate for domestic calls? Or something else? (b)(5)

(b)(5)

(b)(5)

4. The draft states (b)(5)

(b)(5)

(b)(5)

On childcare:

1. (b)(5)

(b)(5)

2. Is there any update on whether a contract might be signed with GEO that would include provision of childcare? (b)(5)

(b)(5)

(b)(5)

3. Re play areas in EOIR courtrooms: The draft states, (b)(5)

(b)(5)

(b)(5)

Couple more miscellaneous questions:

1. On Q 17, to be clear, is KYR video actually playing in the Artesia cafeteria? (The draft just states (b)(5)

(b)(5)

2. On Q 30, the draft states (b)(5)

(b)(5)

(b)(5)

(b)(5)

**From:** (b)(6), (b)(7)c
**To:**
**Subject:** RE: FOR CLEARANCE: Quick Data Call
**Date:** Monday, June 16, 2014 1:05:00 PM

(b)(5)

(b)(6), (b)(7)c
Section Chief, Enforcement Law Section
Office of the Principal Legal Advisor
Immigration and Customs Enforcement
Office: 202-7
BB: 202-246(b)(6), (b)(7)c



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**From:** (b)(6), (b)(7)c
**Sent:** Monday, June 16, 2014 12:40 PM
**To:** (b)(6), (b)(7)c
**Subject:** FW: FOR CLEARANCE: Quick Data Call

FYSA, but best not to forward further.

---

**From:** Ramlogan, Riah
**Sent:** Monday, June 16, 2014 12:38 PM
**To** (b)(6), (b)(7)c
**Subject:** FW: FOR CLEARANCE: Quick Data Call

I concurred.

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**From:** Robbins, Timothy S
**Sent:** Monday, June 16, 2014 12:33 PM
**To:** Ramlogan, Riah; Vincent, Peter S
**Cc:** Miller, Philip T
**Subject:** FW: FOR CLEARANCE: Quick Data Call

Thoughts? I think this was the one get back we had from our Friday meeting at the EEOB

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**From:** (b)(6), (b)(7)c
**Sent:** Monday, June 16, 2014 12:23:48 PM
**To:** (b)(6), (b)(7)c Rapp, Marc A
**Cc:** Homan, Thomas; Miller, Philip T; (b)(6), (b)(7)c

**Subject:** RE: FOR CLEARANCE: Quick Data Call

(b)(6), (b)(7)c

Attached please find the requested paper regarding Asylum Officers. It aligns with OPLA's paper requesting additional EOIR judges. OPLA's paper(SWB White Paper) requests judges be surged to San Antonio, Houston, El Paso, Phoenix, San Diego, and New Orleans AORs.

Our paper (Asylum Officer Request) (based on detained 8G and 8H cases) requests asylum officers be surged to the same AORs plus Miami.

(b)(6), (b)(7)c

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(b)(6), (b)(7)c
DAD Law Enforcement Systems and Analysis Division (LESA)
DHS ICE ERO
(b)(6), (b)(7)c
Mobile: (202) 42
Office: (202) 732 (b)(6), (b)(7)c

---

**From:** Robbins, Timothy S
**Sent:** Friday, June 13, 2014 7:11 PM
**To:** Rapp, Marc A
**Cc:** Homan, Thomas; Miller, Philip T (b)(6), (b)(7)c
**Subject:** FW: FOR CLEARANCE: Quick Data Call

Marc,

Please see the attached white paper that recommends to EOIR where we would like additional EOIR judges. (b)(5)
(b)(5)
(b)(5) One pager will be fine

Could you put some science behind this and get me something? Phil or Tom will need this first thing Monday. Sorry for the late tasking but this came from a late WH meeting

---

**From:** Miller, Philip T
**Sent:** Friday, June 13, 2014 6:30 PM
**To:** Robbins, Timothy S; Homan, Thomas
**Cc:** (b)(6), (b)(7)c
**Subject:** FW: FOR CLEARANCE: Quick Data Call

This could be useful for the EOIR push…

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**From:** Sheriff-Parker, Jennifer L

**Sent:** Friday, June 13, 2014 5:46 PM
**To:** Miller, Philip T
**Subject:** FW: FOR CLEARANCE: Quick Data Call

This will be coming your way. I RUSHED and you have left! Have a good weekend!

# ERO LESA Statistical Tracking Unit

**For Official Use Only (FOUO)/Pre-decisional**

## FY2013 Average Length of Stay in ICE Custody (ALOS) for Credible Fear Cases with Fear Established that had a Subsequent Central American Removal

| FY2013 Average Length of Stay in ICE Custody (ALOS) for Credible Fear Cases with Fear Established that had a Subsequent Central American Removal | | |
|---|---|---|
| EL SALVADOR | (b)(5) | |
| GUATEMALA | | |
| HONDURAS | | |
| NICARAGUA | | |
| **Total** | | |

CIS provided the Credible Fear dataset, which contained 36,029 and 6,069 Alien File Numbers in FY2013 and FY2014, respectively.
Case ID data for the provided Credible Fear Dataset is as of 02/12/2014 (IIDS v1.14 run date of 02/14/2014; EID data as of 02/12/2014)

Jennifer Lincoln Sheriff-Parker
Chief, Statistical Tracking Unit
DHS/ICE/ERO Law Enforcement Systems & Analysis
Desk: 202-732
iPhone: 202-2(b)(6), (b)(7)c or (b)(6), (b)(7)c

**From:** Sheriff-Parker, Jennifer L
**Sent:** Friday, June 13, 2014 5:45 PM
**To:** (b)(6), (b)(7)c A; Rapp, Marc A; (b)(6), (b)(7)c
**Cc:** (b)(6), (b)(7)c
**Subject:** FW: FOR CLEARANCE: Quick Data Call

The other piece of JFRMU will have to come on Monday.

Jennifer Lincoln Sheriff-Parker
Chief, Statistical Tracking Unit
DHS/ICE/ERO Law Enforcement Systems & Analysis
Desk: 202-732 (b)(6), (b)(7)c
iPhone: 202-2 (b)(6), (b)(7)c or (b)(6), (b)(7)c

-----Original Message-----
**From:** Miller, Philip T
**Sent:** Friday, June 13, 2014 05:18 PM Eastern Standard Time
**To:** (b)(6), (b)(7)c
**Cc:** Rapp, Marc A; (b)(6), (b)(7)c Sheriff-Parker, Jennifer L
**Subject:** RE: Quick Data Call

(b)(6), (b)(7)c

Do you have the results broken out by country -- Guatemala, Honduras and El Salvador?

Phil

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**From:** (b)(6), (b)(7)c
**Sent:** Friday, June 13, 2014 5:03:51 PM
**To:** Miller, Philip T
**Cc:** Rapp, Marc A; (b)(6), (b)(7)c Sheriff-Parker, Jennifer L
**Subject:** RE: Quick Data Call

Phil,

For ALOS of CENTAM we have:
FY2013 Average Length of Stay in ICE Custody (ALOS) for Credible Fear Cases with Fear Established that had a Subsequent Central American Removal
(b)(6), (b)(7)c

We worked with Deane's folks on a UAC number and came up with
(b)(5)

(b)(6), (b)(7)c

---

(b)(6), (b)(7)c
DAD Law Enforcement Systems and Analysis Division (LESA)
DHS ICE ERO
(b)(6), (b)(7)c
Mobile: (202) 42
Office: (202) 732 (b)(6), (b)(7)c

---

**From:** Miller, Philip T
**Sent:** Thursday, June 12, 2014 12:15 PM
**To:** Rapp, Marc A
**Subject:** Quick Data Call

Marc,

Can you pull these measures out of your magic hat?

VP's team looking for avg time of removal for CENTAM adults who are being processed through ER/for those claiming credible fear/ and for UACs.

Philip T. Miller
Assistant Director - Field Operations
ICE - Enforcement and Removal Operations
Office: 202.732
Mobile: 504.91 (b)(6), (b)(7)c