



U.S. Immigration  
and Customs  
Enforcement

August 14, 2009

MEMORANDUM FOR: ~~Field Office Directors~~  
**(b)(6),(b)(7)(C)**  
FROM: David J. Venturella  
Acting Director  
SUBJECT: Family Detention and Intake Guidance

Purpose

All Office of Detention and Removal Operations (DRO) Field Office Directors (FODs) shall review this guidance and ensure adherence to revised detention and intake procedures for the detention and placement of family units who qualify for placement in a family residential center. The only facility authorized to accept family units at this time is the Berks Family Residential Center (BFRC) in Leesport, PA.

Family Unit Defined

A family unit is narrowly defined and must include a non-United States citizen child or children under the age of eighteen accompanied by his/her/their parent(s) or legal guardian(s). In determining the existence of this relationship for custody purposes, DRO should seek to obtain reliable evidence of this relationship. All members of the apprehended family unit must be non-criminal and/or non-delinquent and have no history of violence or substance abuse.

Action Required

Effective August 17, 2009, when a family unit is identified and apprehended by U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement, the DRO Field Office for that area of responsibility will assume custody of the family unit after the apprehending organization has completed initial arrest processing, including issuance and service of a Notice to Appear (NTA) or other appropriate charging document. Transfer to the DRO Field Office should be completed within 12 hours of notification by the apprehending organization.

After assuming custody, the responsible DRO Field Office will make an independent custody determination, based upon review of all available information, and also ensure that those detained meet the family unit definition set forth in this guidance. If in the course of the independent review, the DRO Field Office determines that the child under the age of 18 is not

accompanied by a parent or legal guardian, a Field Office Juvenile Coordinator will immediately contact the Office of Refugee Resettlement (ORR), Department of Health and Human Services for placement of the Unaccompanied Alien Child(ren) (UAC). While pending placement and transportation to an ORR facility, established protocols will remain in effect with regard to the care and treatment of UAC.

Currently, the majority of all family units that are apprehended are placed in expedited removal under Section 235 of the Immigration and Nationality Act (INA). However, DHS has broad authority to decide whether to remove aliens through expedited removal; INA § 235(b)(1)(A)(iii)(I); 69 Fed. Reg. 48877. Effective immediately, discretion is to be exercised broadly in charging family unit cases so that they are placed in removal proceedings pursuant to Section 240 of the INA. The exercise of this discretion is not intended to foreclose reinstatement of prior removal orders under Section 241(a)(5) of the INA.

### Custody Determination

FODs shall ensure that the independent case review of each family unit is conducted and a custody determination made within 48 hours of arrest as required by 8 C.F.R. § 287.4(d). When making a custody determination with respect to a family unit and keeping in mind the operational needs of ICE, FODs will exercise their discretionary authority to detain or release with an emphasis on utilization of alternatives to detention programs such as releases on an Order of Supervision, Order of Recognizance, the Intensive Supervision and Appearance Program, electronic monitoring, or the use of parole and/or bond. This custody determination should be made prior to initiating a transfer of the family unit to the BFRC. Following transfer to BFRC, absent any statutory or regulatory requirements for mandatory detention, DRO should continue an ongoing evaluation of the family unit's eligibility for alternatives to detention and/or discretionary release.

### Mandatory Detention

When a determination is made that a family unit is subject to mandatory detention, the DRO Field Office with custody of the family unit shall request space at the BFRC. The attached flow chart describes the processes to be followed when requesting placement into the BFRC.

In the event that the BFRC is at capacity and unable to make an immediate placement, family units may be held in local hotels under DRO supervision for a maximum period of 72 hours, excluding weekends and holidays. In the event that bed space is still unavailable after 48 hours of detention at a local hotel, the DRO Field Office with custody of the family unit will contact (b)(6),(b)(7)(C) Chief, Juvenile and Family Residential Management Unit at (202) 732-(b)(6),(b)(7)(C) (desk) or (202) (b)(6),(b)(7)(C) (blackberry) to report the possibility of a Flores Settlement Agreement violation and discuss other detention options.

Any questions concerning this guidance may be directed to (b)(6),(b)(7)(C) Chief, Juvenile and Family Residential Management Unit at (202) 732-(b)(6),(b)(7)(C) (desk) or (202) 345-(b)(6),(b)(7)(C) (blackberry).