U.S. Department of Homeland Security
Washington, DC 20229

(b)(2)

U.S. Customs and Border Protection

JUN 0 2 2008

MEMORANDUM FOR: All Chief Patrol Ag (b)(6) & (b)(7)(C)

FROM: David V. Aguilar
Chief
U.S. Border Patrol

SUBJECT: Hold Rooms and Short Term Custody

Attached is the new Hold Rooms and Short Term Custody policy. Effective immediately, this policy will supersede all existing detention and hold room policies utilized by the U.S. Border Patrol, including the "Interim Guidance Regarding Unaccompanied Juveniles in Custody" memorandum, dated September 2, 2005.

This directive establishes national policy for the short term custody of persons arrested or detained by Border Patrol Agents and detained in hold rooms at Border Patrol stations, checkpoints and processing facilities. It also contains requirements regarding the handling of juveniles. Chief Patrol Agents will ensure that this policy is made available to all managers, supervisors, and agents in their sectors and that they are familiar with it. A training roster should be completed at each station, which documents receipt of the policy. Forward all training rosters to your respective sector training department. Additionally, you will ensure that a copy of this policy is posted and visible in all station processing areas.

This policy has been reviewed by representatives from both the Office for Civil Rights and Civil Liberties of the Department of Homeland Security (DHS) and the DHS Inspector General and remedies a number of issues raised during previous inspections.

Staff may direct questions to the Detention and Removal Operations liaison officer within the Planning Branch, Operations Planning and Analyses Division at (b)(2).

U.S. BORDER PATROL POLICY

SUBJECT: DETENTION STANDARDS
Reference Number: (b)(2)
DATE: January 31, 2008

HOLD ROOMS AND SHORT TERM CUSTODY

1. PURPOSE. This directive establishes national policy for the short-term custody of persons arrested or detained by Border Patrol Agents and detained in hold rooms at Border Patrol stations, checkpoints, processing facilities, and other facilities that are under the control of U.S. Customs and Border Protection (CBP).

2. AUTHORITIES/REFERENCES.

2.1. Title 8, United States Code, Section 236

2.2. Title 8, Code of Federal Regulations, Section 236

2.3. *Border Patrol Handbook*

2.4. *Officers Handbook* (M-68)

2.5. *The Law of Arrest, Search and Seizure for Immigration Officers* (M-69)

2.6. *Flores v. Reno*, Stipulated Settlement Agreement, No. CV 85-4544-RJK (Px) (C.D. Cal. Jan. 17, 1997). Also, *"Flores."*

2.7. Homeland Security Act of 2002, Section 462

2.8. "Interim Guidance Regarding Unaccompanied Juveniles in Custody" Memorandum to All Chief Patrol Agents from David V. Aguilar, Chief, U.S. Border Patrol (September 2, 2005).

2.9. Immigration and Customs Enforcement guidelines on age determination.

3. DEFINITIONS.

3.1. Bedding. Any combination of pillow, sheets, blanket, sleeping bag, or mattress.

3.2. Custody. The period of time in which a detainee is under arrest or is detained in a Border Patrol hold room.

3.3. Hold Room. An area such as a detention cell, a search room, or an interview room in which detained persons are temporarily held pending processing or transfer.

3.4. Open Area. An area within a secure facility where the detainee is not in a locked room but where there are locked doors to prevent escape (e.g., a processing room).

3.5. Direct Supervision. Detaining a person in a location where the employee assigned detention duties can constantly observe or hear the detainee.

3.6. Family Group. [redacted] (b)(2) & (b)(7)(E)

3.7. Intermittent Supervision. Detaining a person in a hold room where a detainee may be occasionally out of view and/or hearing of the employee assigned detention duties.

3.8. Juvenile. A person under 18 years of age.

3.8.1. Persons under the age of 18 who have been emancipated by a state court or convicted and incarcerated for a criminal offense as an adult are NOT considered juveniles. Such individuals must be treated as adults for all purposes, including confinement and release on bond.

3.8.2. If a reasonable person would conclude that an individual claiming to be a juvenile is really an adult, that person will be treated as an adult for all purposes, including transportation, confinement, and release on bond or own recognizance. Age determination will be conducted, if necessary, in accordance with Immigration and Customs Enforcement guidelines on age determination.

3.8.3. An unaccompanied alien child (UAC) is defined in Section 462 (g) (2) of the Homeland Security Act of 2002 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—

1. There is no parent or legal guardian in the United States; or

2. No parent or legal guardian in the United States is available to provide care and physical custody.

4. RESPONSIBILITIES.

4.1. The Chief, Office of Border Patrol, is responsible for policy oversight, which includes formulating and implementing guidelines and procedures.

4.2. Chief Patrol Agents (CPAs) are responsible for managing the implementation of this program at the sector level and monitoring compliance with the procedures to ensure uniformity of application, as well as for ensuring that all employees under their direction receive proper training concerning this policy and these procedures.

4.3. Patrol Agents in Charge (PAIC) are responsible for monitoring compliance at the station level.

4.4. Supervisory Border Patrol Agents are responsible for fulfilling all of their duties specified herein, and for ensuring that Border Patrol Agents under their direction are familiar with this policy and these procedures, and comply with them.

5. POLICY.

5.1. All persons arrested or detained by the Border Patrol will be held in facilities that are safe, secure, and clean. Detainees will be provided food, water, properly equipped restrooms and hygiene supplies as set forth in this directive.

5.2. Detainees will be promptly processed and turned over to U.S. Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations (DRO); the Office of Refugee Resettlement (ORR); the U.S. Marshals Service; or an other agency (OA), as appropriate.

6. PROCEDURES.

6.1. Detention Cells, Search Rooms, and Hold Rooms.

6.1.1. Supervisors are responsible for designating areas as detention cells, search rooms, and/or hold rooms and ensuring that employees under their direction are familiar with such designations and intended uses. Dual designation of a particular room is authorized, i.e, a detention cell may also be used as a search room.

6.2. Duration of Detention.

6.2.1. Whenever possible, a detainee should not be held for more than (b)(2) & (b)(7)(E) Every effort will be made to promptly process, transfer, transport, remove, or release those in custody as appropriate and as operationally feasible.

6.2.2. The PAIC or the senior shift supervisor will be notified of all detentions at the station level that reach or exceed (b)(2) & (b)(7)(E), and they shall make every effort to promptly move the detainee(s).

6.2.3. The Sector Staff Duty Officer must be notified when the detention period reaches or exceeds (b)(2) & (b)(7)(E), and the Staff Duty Officer or their designee shall make every effort to promptly move the detainee(s).

6.2.4. When the detainee is an unaccompanied alien child (UAC), every effort must be made to move them out of the Border Patrol facility and into ORR placement within [redacted] however, there are times when placement by ORR may take longer than [redacted]. The PAIC must be notified immediately when a UAC's detention exceeds [redacted] however, it is strongly encouraged that the PAIC be notified when the detention exceeds (b)(2) & (b)(7)(E). The PAIC or their designee will ensure that the ICE/DRO Field Office Juvenile Coordinator (FOJC) has been notified and ensure that the UAC is being held in accordance with this policy. The reason for the extended detention and the time and date that the PAIC and FOJC were notified will be documented in the Unaccompanied Alien Children Detention Log and retained for a period of two years.

6.2.4.1. In accordance with the *Flores v. Reno* Stipulated Settlement Agreement, UAC must be placed in an ORR-approved facility within (b)(2) & (b)(7)(E). In cases where the PAIC has reason to believe that the UAC's detention will exceed (b)(2) & (b)(7)(E) or exceeds [redacted] hours, the PAIC or their designee will notify a sector staff officer immediately. This notification may occur well before the (b)(2) & (b)(7)(E) time period is reached if information is provided at an earlier time that indicated the UAC placement won't be met under current conditions. The sector staff officer will contact the local ICE DRO Field Office Director for assistance and intervention.

6.2.4.2. Under extenuating circumstances, the maximum time allowed for placing UAC in an ORR-approved facility is five days. In cases where UAC are detained longer than five days, sector staff will immediately contact the DRO liaison officer at the Office of Border Patrol via telephone and e-mail for further guidance and assistance, ensuring that all pertinent information and actions taken thus far are provided. Sector staff may contact the DRO liaison officer earlier when they deem appropriate or necessary.

6.3. Exceptions to Short-Term Detention in Border Patrol Hold Rooms.

6.3.1. (b)(2) & (b)(7)(E) [redacted].

6.3.2. (b)(2) & (b)(7)(E) [redacted]

(b)(2) & (b)(7)(E)

6.3.3. (b)(2) & (b)(7)(E)

6.3.4. (b)(2) & (b)(7)(E)

6.3.5. Direct supervision and control of detainees must be maintained at all facilities that do not have hold rooms.

6.4. Master Detention Log.

6.4.1. The ENFORCE apprehension log will serve as the master detention log. It will contain at a minimum the detainee's:

a. Name

b. Sex

c. Age and date of birth

d. Alien registration number

e. Nationality

f. Reason detained

g. Final disposition

6.4.2. Any alien detained in custody for removal proceedings or voluntarily returned must be transferred via an I-216 created in ENFORCE.

6.5. Hold Room Monitoring.

6.5.1. Although video surveillance is an outstanding tool, it is not a replacement for physical checks. Holding cells must be physically checked regularly. Physical checks give processing agents better control of the aliens in their hold rooms, provide a deterrent for misconduct, and provide detainees with an opportunity to communicate issues such as health or safety concerns to the processing agent.

6.5.2. Juveniles. Unaccompanied alien children require direct supervision. Physical checks are a critical aspect of monitoring UACs. Holding cells must be physically checked regularly and recorded in a log. Each station will be responsible for creating a hold room check sheet to verify the physical checks of juveniles.

6.5.3. (b)(2) & (b)(7)(E

6.6. Alien Booking Record (I-385). An Alien Booking Record (I-385) will be generated for each detainee that requires **special handling** (i.e., a detainee held for prosecution or removal or a detainee awaiting a voluntary return with a medical condition, or an unaccompanied juvenile). The Alien Booking Record will be posted near the entrance to the hold room or in a secure area. (b)(2) & (b)(7)(E) The sheet will be maintained until the detainee is released from CBP custody. (b)(2) & (b)(7)(E) . The Alien Booking Record will be created in ENFORCE and contain the following detainee information:

a. Name

b. Alias

c. Sex

d. Date of birth

e. Place of birth

f. Country of citizenship

g. Alien registration number

h. Date apprehended

i. Responsible station or office

j. Medical alert—an annotation indicating that the person has a medical condition that requires medical care or prescribed medication, has a communicable disease, is suffering from depression, or appears to be suicidal.

k. Remarks—for example, the person is an escape or flight risk, is a high risk detainee, is an asylum claimant, or is an accompanied or unaccompanied alien child.

6.7. Medical Issues.

6.7.1. (b)(2) & (b)(7)(E) [redacted]

6.7.2. Such detainees will be evaluated by qualified personnel:

a. an emergency medical technician (EMT) or a paramedic (Border Patrol or local); or

b. a physician, physician's assistant, or nurse practitioner.

6.7.3. (b)(2) & (b)(7)(E) [redacted]

6.7.4. A supervisor will be notified as soon as possible of detainees needing medical attention.

6.7.5. Medications. Border Patrol Agents will **not** administer or inject any medication unless they are certified EMTs or paramedics practicing under the direction of a medical director and the administration of such medicine is within their scope of practice and is authorized under the protocols of their medical practice. Medication prescribed in the United States, in a properly identified container, with the specific dosage indicated, may be self-administered under the supervision of a Border Patrol Agent. Administration of prescribed medication, medical assistance, or refusal of the same will be noted on the Alien Booking Record. Medications will not be left in the possession of the detainee. They will be secured separately, preferably with the detainee's property. (b)(2) & (b)(7)(E).

6.8. Meals. Detainees will be provided snacks and juice every four hours. Detainees whether in a hold room or not, will be provided a meal if detained more than 8 hours or if their detention is anticipated to exceed 8 hours. Regardless of the time in custody, juveniles will be provided with meal service, and at least every six hours thereafter; two of three meals must be hot. Juveniles, small children, toddlers, babies, and pregnant women will have regular access to snacks, milk, or juice at all times. When an adult detainee requests a snack or meal before the next meal service, the processing agent may grant the request on the basis of the circumstances. Agents should be sensitive to the culinary, cultural, and religious dietary restrictions and/or differences of all detainees and should provide a meal that conforms to the dietary restrictions, if feasible.

6.9. Drinking Water. Potable drinking water will be available to detainees. The supervisor is responsible for ensuring that drinking water is available.

6.10. Restrooms. Restrooms will be available to detainees. Detainees using the restrooms will have access to toilet items, such as soap, toilet paper, and sanitary napkins. Families with small children will also have access to diapers and wipes.

6.11. Bedding. Detainees requiring bedding will be given clean bedding. Only one detainee will use this bedding between cleanings. This bedding will be changed every three days and cleaned before it is issued to another detainee. Vinyl or rubber-coated mattresses will be disinfected before being reissued.

6.12. Inspection of Personal Property. Purses, handbags, backpacks, and luggage will be inspected for weapons and contraband. They will be secured separately from the detainee until release or removal.

6.13. Control and Safeguarding of Detainees' Personal Property. The control and safeguarding of detainees' personal property will include the secure storage of funds, valuables, baggage, and other personal property. All property will be receipted on the appropriate Form I-77. All items belonging to the detainee will be properly receipted and placed in a secure area.

6.13.1. All property and legal papers that are in the juvenile's possession, or are served upon the juvenile during processing, shall accompany the juvenile upon transfer to any other agency or facility. Property of the juvenile that is in the custody of the Border Patrol that exceeds the limit of the transporting agency shall be shipped to that facility in a timely manner.

6.14. Showers. Agents will make reasonable efforts to provide a shower for any detainee held for more than 72 hours. Detainees that are showering will be provided a clean towel and basic toiletries. Agents will make every reasonable effort to provide unaccompanied alien children who are held more than 48 hours with access to a shower and clean towel, clean clothing, and basic hygiene articles as soon as practicable. These items may be provided to UACs sooner, depending on availability and the condition of the juvenile.

6.15. Inspection. Detention cells will be routinely inspected for evidence of tampering.

6.16. Cleaning and Sanitization. Supervisors will ensure that detention cells are regularly cleaned and sanitized. Employees will not be expected nor required to perform such tasks.

6.17. Smoking. Smoking is prohibited in hold rooms.

6.18. Evacuation. Every station will have an evacuation plan and will post it in the processing area. The PAIC is responsible for ensuring that agents are familiar with procedures in the evacuation plan.

6.19. Search Procedures. All detainees that are under arrest will be thoroughly searched before being placed into a Border Patrol hold room. (b)(2) & (b)(7)(E)

6.20. Restraint Procedures. (b)(2) & (b)(7)(E) This should be annotated on an Alien Booking Record. Any detainee restrained in a holding room requires direct supervision. (b)(2) & (b)(7)(E)

6.21. Telephones. Persons detained more than 24 hours will be given access to a telephone for the purposes of contacting an attorney or other party as stated on the I-826 *Notice of Rights and Request for Disposition* and will be given access at a minimum of once per day until they are no longer in Border Patrol custody. Detainees who wish to make other than a local call must use a calling card or collect call. Processing agents may, at their discretion, grant telephone access to any alien. Unaccompanied alien children will be given access to telephones as soon as practicable to aid in locating family members.

6.22. Segregation. (b)(2) & (b)(7)(E)

6.23. Privacy. Border Patrol hold rooms should have privacy screens in toilet areas whenever possible. (b)(2) & (b)(7)(E)

6.24. Juveniles. The following is a summary of guidelines from the *Flores v. Reno* Settlement Agreement, and the Homeland Security Act of 2002. The terms of the Settlement are binding and must be adhered to.

6.24.1. Access to Legal Counsel and Consular Officials. All UACs shall be advised of their rights as per Form I-770 *Notice of Rights and Request for Disposition*, which includes their right to make a telephone call to any persons mentioned in the notice. If the juvenile is under 14 or is unable to understand the form, the I-770 must be read and explained in a language that the juvenile understands. The UAC's consular official must be notified as soon as possible, and notification of the UAC's family must be in accordance with Form I-770. All UAC processed for removal must be given a list of free legal service providers. Each CPA, or designee, will ensure that the lists of free legal services providers are current, accurate, and provided to juvenile detainees. Free legal service providers must represent juveniles in removal proceedings. Updated lists will be distributed regularly to all Border Patrol stations.

6.24.2. Authority of the Office of Refugee Resettlement. ORR has assumed authority for decisions related to the care and placement of UACs detained in federal custody. The current procedure requires stations to immediately contact an ICE/DRO Field Office Juvenile Coordinator (FOJC) to coordinate UAC placement in an ORR facility.

6.24.3. Procedures for Processing Juveniles. (b)(2) & (b)(7)(E) (b)(2) & (b)(7)(E)(b)(2) & (b)(7)(E)(b)(2) & (b)(7)(E) (b)(2) & (b)(7)(E) (b)(2) & (b)(7)(E) (b)(2) & (b)(7)(E) As soon as practicable after determining that a detainee is a UAC and will require detention, the processing agent should contact an ICE/DRO FOJC to obtain pre-authorization to place the unaccompanied alien child with ORR. The agent must obtain pre-authorization from the FOJC regardless of a UAC's anticipated time in detention and must provide the following information: the juvenile's name, any aliases, alien registration number, country of citizenship, sex, date of birth, age, date of entry, place of entry, manner of entry, date of custody, custody location, and indication regarding whether or not the juvenile is a criminal or non-criminal. The FOJC must have this information to secure placement for the UAC with ORR. The FOJC will contact the local ORR representative who will locate an appropriate

placement and notify the FOJC when that is completed. The FOJC will coordinate the placement transfer.

6.24.4. (b)(2) & (b)(7)(E) [redacted]

6.24.5. (b)(2) & (b)(7)(E) [redacted]

6.24.6. Requirements for Juvenile Hold Rooms. Juveniles detained longer than 24 hours will be given access to basic hygiene articles, a blanket, and a mattress (a pillow is optional), etc. If showers are available, the juveniles will be permitted to take one shower every 48 hours and be provided with a clean towel. Agents and supervisors may give these items and privileges to any juvenile at any time based on the availability and the condition of the juvenile.

6.24.7. All hold rooms used for unaccompanied alien children must provide access to the following:

a. Toilets and sinks

b. Drinking water

c. Adequate temperature control and ventilation

d. Clean blankets and mattresses

e. Meals, which must be offered every six hours (two of three meals must be hot)

f. Emergency medical assistance

g. Direct supervision

6.24.8. Unaccompanied Alien Children Detention Log. Each Border Patrol station must maintain a separate detention log (example attached) for all juveniles placed in custody. The log will be kept on file at the station for two years. The log will contain, at minimum, the following information about each juvenile:

a. Name

b. Sex

c. Age

d. Alien registration number

e. Nationality

f. Reason for placement

g. Date and time in

h. Date and time FOJC was notified

i. Date and time out (transferred or released)

j. Final disposition

k. Comments

l. Times that meals were provided

6.24.9. Meals. Juveniles must receive the next meal served, regardless of the time in custody and must have regular access to snacks, milk, juice, etc. Meals must be offered every six hours (two of three meals must be hot).

6.24.10. Transfers. Each station must complete an I-216 in ENFORCE for all UACs transferred to ORR or DRO custody. A hard copy of the I-216 will be kept on file at the station for two years for the purposes of auditing and oversight.

6.24.11. Training Requirements. The Border Patrol Academy will include training on the conditions of the *Flores* v. *Reno* Settlement Agreement as a part of Border Patrol basic training. All CPA's, PAIC's and Border Patrol Agents will take at least one hour per year of refresher training on *Flores* and associated Border Patrol policy. Pertinent training updates will be well-posted in Border Patrol station processing areas to ensure awareness and adherence.

6.24.12. Family Groups (with Juveniles). The following are examples of family groups as defined in section 4.6 of this directive. The following groups will be detained as a unit.

a. (b)(2) & (b)(7)(E)

b. (b)(2) & (b)(7)(E)

c. (b)(2) & (b)(7)(E)

d. (b)(2) & (b)(7)(E)

e. (b)(2) & (b)(7)(E)

6.24.13 Documentation. Times of meals, showers, telephone use, and visual checks of juveniles who are held in custody will all be recorded.

7. PERFORMANCE MEASUREMENTS. All detainees will be held under safe and humane conditions. Unaccompanied alien children in Border Patrol custody will be treated with dignity, respect and special concern for their particular vulnerability as minors.

7.1. Performance Measurement 1: All detainees will be held in appropriate conditions of confinement that ensure their safety and security. Juveniles will be held in the least restrictive setting appropriate for their age and special needs as minors.

7.1.1. Detainees are segregated according to sex, age, risk, family group.

7.1.2. Detention space capacity will not be exceeded.

7.1.3. Hold rooms will be kept clean and free of contraband and other potentially hazardous or dangerous materials.

7.2. Performance Measurement 2: All detainees will be held under humane conditions of confinement that provide for their well being and general good health.

7.2.1. Detainees have access to sanitary facilities and restrooms.

7.2.2. Detainees are provided food and water.

7.2.3. Detainees have access to appropriate medical services, prescriptions, medications, and emergency medical treatment.

7.2.4. Detention spaces are appropriately maintained and provide detainees with appropriate comfort items – housekeeping and clean bedding.

7.3. Performance Measurement 3: The time of detention for detainees is minimized.

7.3.1. The period of detention does not exceed (b)(2) & (b)(7)(E) and commonly does not exceed (b)(2) & (b)(7)(E) for UACs.

7.4. Performance Monitoring Tools:

a. Sector and/or Station Detention Logs

b. Form I-216 Record of Persons and Property Transferred

c. Supervisor oversight

d. Local inspection programs

e. Reporting of deficiencies

f. Periodic compliance summary reports

8. **CANCELLATION.** This policy remains in effect until cancellation by an updated version.

9. **NO PRIVATE RIGHTS CREATED.** This document is an internal policy statement of U.S. Customs and Border Protection and does not create or confer any rights, privileges, or benefits on any person or party.

10. **ATTACHMENTS.**

Appendix 1: Unaccompanied Alien Children Detention Log

(b)(6) & (b)(7)(C)

David V. Aguilar
Chief
U.S. Border Patrol

UNACCOMPANIED ALIEN JUVENILE LOG (SAMPLE)

[redacted]															
Doe	John	M	1/1/1992	16	097 123 123	Australia	U	UAJ	01/01/2008 1501	01/01/2008 2101				01/01/2008 1605	Detained	TOT ORR

* FOJC (Field Office Juvenile Coordinator)