

Detention Standards for Arriving Aliens, Children and Victims of Crime

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Mandatory Detention for Arriving Aliens

- US Immigration and Customs Enforcement Directive No. 7-1.0, dated November 6, 2007
- Applies to arriving aliens found to have a "credible fear" of persecution or torture.
- Normally, aliens will be processed under expedited removal.
- Unless they demonstrate to USCIS or IJ a "credible fear" of persecution or torture.
- If so, they are detained for further consideration of the application for asylum.

- Can be eligible for parole on case-by-case basis for
 - "urgent humanitarian reasons"
 - "significant public benefit" as long as
 - there is no security risk or
 - a risk of absconding.
- Expedited removal is geared towards detention, regulations make it clear that aliens are only to be paroled in LIMITED circumstances.

- Credible fear:
 - Finding by USCIS or IJ that
 - Indicates a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the interviewing officer, that the alien may be able to establish eligibility for asylum under INA § 208 or entitlement to withholding or removal under INA § 241(b)(3) or protection under the Convention Against Torture.

- Parole:
 - Administrative measure used by ICE to temporarily authorize (without lawfully admitting) the release of an alien from custody.

- Requirements for Step 1:
 - Alien and supporting documents must establish alien's identity;
 - He or she must not pose a risk of flight;
 - He or she must not be a danger to the community.

- Identity

- Must be established with government issued identification.
- Those who arrive with no identification raise significant security concerns.
- If it is not reasonable for alien to provide such documentation, third party affidavits can be provided with that party's identification established.

- Flight Risk:

- Alien must provide sufficient evidence demonstrating his or her likelihood of appearing when required.
 - Community and family ties
 - Employment history
 - Manner of entry and length of residence in the US
 - Stability of residence in the US
 - Record of appearance for previous hearings,
 - Prior immigration history
 - Ability to post bond
 - Property ownership
 - Possible relief available to alien.

- Danger to the community:

- Evidence to the contrary would be:
 - Past criminal history in US and abroad
 - National security interests
 - Concerns of public safety or danger to the community
 - Prior immoral acts or participation in subversive activities
 - Past detention history showing alien harmed self or others.

- Requirements for Step 2:

- Alien must fit into one of the following categories:
 - Have a serious medical condition
 - Women medically certified as Pregnant
 - Juveniles
 - Witnesses
 - Release is in the public interest.

- Serious medical condition:

- Case by case basis where a medical or psychological evaluation, diagnosis, treatment plan or other documentation provided by a qualified medical or psychological professional indicates the existence of a serious medical condition or an impairment that makes detention problematic or inappropriate.

- Pregnant women

- Not all are released – case by case basis

- Juveniles

- Completely different system of detention

- Witnesses

- Substantial showing from alien as to why serving as witness for some limited purpose justifies release from custody.

- Public interest:
 - Consistent with ICE's mission to protect the United States, uphold public safety, and enforce the immigration laws,
 - Specific alien's case can be appropriate because of some public interest
 - Officer must document well reasoned justification for release.

Juvenile Detention

- Juveniles are detained in private facilities contracted out by Office of Refugee Resettlement.
- Prior to this they were housed in Juvenile Hall with DHS caring for their custody.
- Because of the conflict of interest over their care, a settlement through *Flores* allowed ORR to take over care and custody.

- ORR has medium security facilities with school, health care (both psychosocial and medical attention), outings, chores.
- ORR "reunifies" children with family in the U.S. Most children have some relative or family friend that they can live with.
 - General policy favors release – a child "shall" be released unless he/she is a danger to himself or community or if there is a threat of absconding.

- Order of preference of release:
 - Parent
 - Legal guardian
 - Adult relative
 - Adult who is not related to the child (this only where reunification with family is not reasonable possibility.)

- Family may not want to come forward because they are afraid of immigration consequences (ORR does not report undocumented parents/relatives to Immigration.)
- Family not in the United States or doesn't want to help.
- Reunification can be to any part of the US

- Purpose:
 - It is more humanitarian to let child proceed with family and loved ones than it is to have them proceed detained and apart from family.
- Procedure:
 - ORR representative (usually contracted case worker) sends reunification packet to family members
 - They complete packet and are approved by ORR
 - The child is retrieved at the detention center or other meeting spot. There is no BOND.

Victims of Crime, VAWA

- CCLC has had particular success with those prima facie eligible for VAWA or the U Visa.
 - Those who are victims of domestic violence or were victims of serious crimes.
 - When making determinations for eligibility, collect as much evidence as possible and write a complete but basic brief on alien's eligibility.

VAWA

- Victims of Domestic Violence
- Married to US Citizens or LPRs or
 - Sons and daughters of US Citizens or LPRs
 - Parents of adult US Citizens or LPRs
- Demonstrate Good Faith Marriage
- Mutual Residence
- Good Moral Character

U VISA

- Victim of Serious Crime
- Helpfulness in a criminal investigation or prosecution
- Substantial physical or mental abuse
- Law enforcement certification of helpfulness
- Any credible evidence standard

Humanitarian Reasons

- CCLC has been successful arguing
 - US Citizen minor children with no legal guardian
 - Prolonged detention
 - Negative credibility determination overruled by court
 - Appeal at 9th circuit.
 - Special Immigrant Juvenile Status eligibility
 - Potential US Citizen

- CCLC has not been successful arguing:
 - HIV positive status
 - Gang-based asylum claim (\$20,000 bond)
 - Access to free attorneys (like CCLC).