

**§ 242.24 Detention and release of juveniles.**

(a) *Juveniles.* A juvenile is defined as an alien under the age of eighteen (18) years.

(b) *Release.* Juveniles for whom bond has been posted, for whom parole has been authorized, or who have been ordered released on recognizance, shall be released pursuant to the following guidelines:

(1) Juveniles shall be released, in order of preference, to: (i) A parent; (ii) legal guardian; or (iii) adult relative (brother, sister, aunt, uncle, grandparent) who are not presently in INS detention, unless a determination is made that the detention of such juvenile is required to secure his timely appearance before the Service or the immigration court or to ensure the juvenile's safety or that of others.

In cases where the parent, legal guardian or adult relative resides at a location distant from where the juvenile is detained, he or she may secure release at an INS office located near the parent, legal guardian, or adult relative.

(2) If an individual specified in paragraph (b)(1) of this section cannot be located to accept custody of a juvenile, and the juvenile has identified a parent, legal guardian, or adult relative in INS detention, simultaneous release of the juvenile and the parent, legal guardian, or adult relative shall be evaluated on a discretionary case-by-case basis.

(3) In cases where the parent or legal guardian is in INS detention or outside the United States, the juvenile may be released to such person as designated by the parent or legal guardian in a sworn affidavit, executed before an immigration officer or consular officer, as capable and willing to care for the juvenile's well-being. Such person must execute an agreement to care for the juvenile and to ensure the juvenile's presence at all future proceedings before the Service or an immigration judge.

(4) In unusual and compelling circumstances and in the discretion of the district director or chief patrol agent, a juvenile may be released to an adult, other than those identified in paragraph (b)(1) of this section, who executes an agreement to care for the ju-

venile's well-being and to ensure the juvenile's presence at all future proceedings before the INS or an immigration judge.

(c) *Juvenile Coordinator.* The case of a juvenile for whom detention is determined to be necessary should be referred to the *Juvenile Coordinator*, whose responsibilities should include, but not be limited to, finding suitable placement of the juvenile in a facility designated for the occupancy of juveniles. These may include juvenile facilities contracted by the INS, state or local juvenile facilities, or other appropriate agencies authorized to accommodate juveniles by the laws of the state or locality.

(d) *Detention.* In the case of a juvenile for whom detention is determined to be necessary, for such interim period of time as is required to locate suitable placement for the juvenile, whether such placement is under paragraph (b) or (c) of this section, the juvenile may be temporarily held by INS authorities or placed in any INS detention facility having separate accommodations for juveniles.

(e) *Refusal of release.* If a parent of a juvenile detained by the INS can be located, and is otherwise suitable to receive custody of the juvenile, and the juvenile indicates a refusal to be released to his/her parent, the parent(s) shall be notified of the juvenile's refusal to be released to the parent(s), and shall be afforded an opportunity to present their views to the district director, chief patrol agent or immigration judge before a custody determination is made.

(f) *Notice to parent of application for relief.* If a juvenile seeks release from detention, voluntary departure, parole, or any form of relief from deportation, where it appears that the grant of such relief may effectively terminate some interest inherent in the parent-child relationship and/or the juvenile's rights and interests are adverse with those of the parent, and the parent is presently residing in the United States, the parent shall be given notice of the juvenile's application for relief, and shall be afforded an opportunity to present his or her views and assert his or her interest to the district director

or immigration judge before a determination is made as to the merits of the request for relief.

(g) *Voluntary departure.* Each juvenile apprehended in the immediate vicinity of the border who resides permanently in Mexico or Canada, shall be informed, prior to presentation of the voluntary departure form, that he or she may make a telephone call to a parent, close relative, a friend, or to an organization found on the free legal services list. Each other juvenile apprehended shall be provided access to a telephone and must in fact communicate with either a parent, adult relative, friend, or with an organization found on the free legal services list prior to presentation of the voluntary departure form. If the juvenile, of his or her own volition, asks to contact a consular officer, and does in fact make such contact the requirements of this section are satisfied.

(h) *Notice and Request for Disposition.* When a juvenile alien is apprehended, he or she must be given a Notice and Request for Disposition. If the juvenile is under fourteen years of age or unable to understand the notice, the notice shall be read and explained to the juvenile in a language the juvenile understands. In the event a juvenile who has requested a hearing pursuant to the Notice subsequently decides to accept voluntary departure, a new Notice and Request for Disposition shall be given to, and signed by the juvenile.

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**§ 242.25 Proceedings under section 242A(b) of the Act.**

(a) *Definitions.* As used in this section—*Deciding Service officer* means a district director, chief patrol agent, or another immigration officer designated by a district director or chief patrol agent, who is not the same person as the issuing Service officer. *Issuing Service officer* means any Service officer listed in § 242.1(a) as authorized to issue orders to show cause. *Prima facie claim* means a claim that, on its face and consistent with the evidence in the record of proceeding, demonstrates an alien's present statutory eligibility for a specific form of relief from deportation under the Immigration and Nationality Act ("the Act").

(b) *Preliminary consideration and Notice of Intent to issue a Final Administrative Deportation Order; commencement of proceedings—(1) Basis of Service charge.* An issuing Service officer shall cause to be served upon an alien a Notice of Intent to issue a Final Administrative Deportation Order (Notice of Intent, Form I-851), if the officer is satisfied that there is sufficient evidence, based upon questioning of the alien by an immigration officer and upon any other evidence obtained, to support a finding that the individual:

- (i) Is an alien;
- (ii) Has not been lawfully admitted for permanent residence;
- (iii) Has been convicted (as demonstrated by one or more of the sources listed in § 3.41 of this chapter) of an aggravated felony and such conviction has become final;
- (iv) Is deportable under section 241(a)(2)(A)(iii) of the Act; and
- (v) Does not appear statutorily eligible for any relief from deportation under the Act.

(2) *Notice.* (i) Deportation proceedings under section 242A(b) of the Act shall commence upon personal service of the Notice of Intent upon the alien, as prescribed by §§ 103.5a(a)(2) and 103.5a(c)(2) of this chapter. The Notice of Intent shall set for the preliminary determinations and inform the alien of the Service's intention to issue a Final Administrative Deportation Order (Final Administrative Deportation Order, Form I-851A) without a hearing before an Immigration Judge. This Notice shall constitute the charging document. The Notice of Intent shall include allegations of fact and conclusions of law. It shall advise that the alien: has the privilege of being represented by counsel of the alien's choosing, at no expense to the Government, as long as counsel is authorized to practice in deportation proceedings; may inspect the evidence supporting the Notice of Intent; and may rebut the charges within ten (10) calendar days after service of such Notice (or thirteen (13) calendar days if service of the Notice was by mail).

(ii) The Notice of Intent also shall advise the alien that he or she may designate in writing, within ten (10) calendar days of service of the Notice