

DEPARTMENT OF HOMELAND SECURITY

Office of Inspector General

Open Inspector General Recommendations Concerning the
Former Immigration and Naturalization Service from
Unaccompanied Juveniles in INS Custody, a Report
by the Department of Justice Inspector General



Office of Inspections, Evaluations, & Special Reviews

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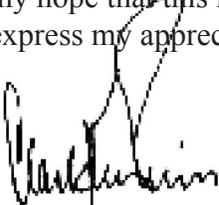
March 2004

Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the Homeland Security Act of 2002 (Public Law 107-296) by amendment to the Inspector General Act of 1978. This is one of a series of audit, inspection, investigative, and special reports prepared by the OIG periodically as part of its oversight responsibility with respect to DHS to identify and prevent fraud, waste, abuse, and mismanagement.

This report is the result of this office's assessment of the responsibilities for addressing open recommendations made by the Department of Justice Office of Inspector General concerning unaccompanied alien juveniles in federal custody. The assessment was necessary because the establishment of the Department of Homeland Security realigned former immigration functions. It is based on interviews with employees and officials of relevant agencies and institutions and a review of applicable documents.

Our assessment was developed on the basis of the best knowledge available to the OIG. It is my hope that this report will result in more effective, efficient, and/or economical operations. I express my appreciation to all of those who contributed to the preparation of this report.



Clark Kent Ervin
Inspector General

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OIG

Department of Homeland Security Office of Inspector General

SYNOPSIS

The Immigration and Naturalization Service (INS) encounters over 100,000 accompanied and unaccompanied illegal juveniles under the age of 18 every year, according to the Department of Justice Office of the Inspector General (DOJ OIG). The management of apprehended and detained juveniles presents special concerns, logistical pressures, and legal responsibilities for the INS. In 2001, the DOJ OIG issued a report describing its study of how INS dealt with juveniles. The report, *Unaccompanied Juveniles in INS Custody*, Rep. No. I-2001-009 (Sept. 2001), contained 28 recommendations to improve the INS' juvenile detention policies and procedures. In the months that followed, the INS and the DOJ OIG closed 8 recommendations as completed.

The Homeland Security Act of 2001 transferred the functions of the INS to the Department of Homeland Security (DHS). By this transfer, the responsibility for ensuring that INS completed appropriate corrective action regarding its juvenile detention policies vested in the DHS OIG. However, the Homeland Security Act changed the detention and treatment of juveniles who were apprehended for immigration violations. Section 462 of the Homeland Security Act transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services (HHS) functions under the immigration laws with respect to the care of unaccompanied alien children.

The division of functions left responsibility for continuing to take needed corrective action uncertain as between HHS and DHS, as the successor of the INS. The DHS OIG assessed the responsibilities for addressing the open recommendations made by the DOJ OIG report based upon its review of the original DOJ OIG report, the changes wrought by the Homeland Security Act provisions, and discussions with program participants from the INS who now are employees of DHS. The resulting memoranda set forth the DHS OIG's best judgment regarding how each of the remaining unresolved recommendations are to be resolved and by which agency. The first memorandum is addressed to the Under Secretary for Border and Transportation Security, under whom are the legacy elements of INS' juvenile detention program. The second memorandum is addressed to the Acting Inspector General for HHS, the OIG office that is now responsible for the oversight of corrective actions regarding HHS' newly acquired juvenile alien detention program.

The DHS OIG intends to continue to track corrective action regarding the recommendations that remain DHS' responsibility and is available to provide assistance to the HHS OIG should it be required.



DEPARTMENT OF HOMELAND SECURITY
Office of Inspector General
Washington, DC 20528

February 25, 2004

MEMORANDUM

TO: The Honorable Asa Hutchinson
Under Secretary
Border and Transportation Security

FROM: Clark Kent Ervin
Inspector General

SUBJECT: Open Inspector General Recommendations Concerning the Former Immigration and Naturalization Service

In September 2001, the Department of Justice (DOJ) Office of Inspector General (OIG) issued a report, "Unaccompanied Juveniles in INS Custody," Report Number I-2001-009. The DOJ OIG report described the treatment of unaccompanied illegal juveniles held in Immigration and Naturalization Service (INS) custody and subsequently placed into formal immigration proceedings. The DOJ OIG examined the policies and procedures developed by INS in response to its 1997 settlement agreement of a class action lawsuit related to the detention, processing, and release of unaccompanied illegal juveniles.¹ The DOJ OIG found that, since it signed the settlement agreement, INS made significant improvements in its juvenile program, such as training its employees on new procedures and increasing juvenile bed spaces.

However, the DOJ OIG also found deficiencies in INS policies and procedures that could have potentially serious consequences for the well being of juveniles. Major findings included:

- Non-delinquent juveniles are not always segregated from delinquent juveniles.

¹ United States District Court, Central District of California, Jenny Lisette Flores, et al. -vs- Janet Reno, Attorney General of the United States, et al. Case No. CV 85-4544-RJK (Px).

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- INS juvenile coordinators were not visiting all juveniles in their custody on a weekly basis.
 - INS was unable always to place juveniles in an appropriate secure detention facility or a non-secure shelter within three to five days of taking custody.
 - INS does not analyze the data on juveniles it collects to identify systemic problems or trends that might indicate problems.
 - After their release from custody, 68% of the juveniles in the DOJ OIG sample failed to appear for their immigration hearings.

The DOJ OIG made 28 recommendations to improve the INS' juvenile detention policies and procedures. The recommendations and their current status are described in the attachment. Since the issuance of the report and prior to the formation of the Department of Homeland Security (DHS), the DOJ OIG and INS closed eight recommendations. On March 1, 2003, with the establishment of DHS, immigration functions transferred to DHS. The DHS OIG subsequently assumed responsibility for tracking and closing open INS recommendations from the DOJ OIG report.

Some INS functions associated with the care and housing of juveniles in federal custody as a result of their immigration status were transferred by the Homeland Security Act of 2002 to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services (HHS). Accordingly, it is our understanding that HHS is now responsible for resolving some of the recommendations from the DOJ OIG report. We believe the responsibility to close nine of the remaining open recommendations addressing juvenile housing issues rests with HHS.

We understand that the Border and Transportation Security Directorate (BTS) is in the process of developing its "vision" for its reorganized juvenile program which will include the policies and procedures to integrate the juvenile program roles and responsibilities of the Bureau of Immigration and Customs Enforcement and the Bureau of Customs and Border Protection. We also understand that DHS is developing a memorandum of understanding with HHS concerning interdepartmental roles and responsibilities for juvenile custody. The welfare of juveniles in federal custody should be a high department priority, and we hope to see a program in place soon.

Given the early stages of BTS' juvenile program reorganization effort, we will not track eight of the remaining open recommendations pertaining to policies and procedures. We will administratively close recommendations 9–14, 21, and 24. As BTS revises and updates its juvenile program, it should consider the issues identified by the DOJ OIG report and incorporate the recommendations as appropriate into its revised juvenile program. We believe this is such an important issue that we plan to review BTS' reorganized juvenile program when it is implemented. We will use the DOJ OIG report as a benchmark for our review.

We will continue to track recommendations 4 and 25. We believe that recommendation 5, which addresses juvenile custody issues arising from the time of apprehension until placement in a housing facility, will require a joint effort by DHS and HHS to resolve.

To coordinate our efforts to address the issues identified by the DOJ OIG, please contact Robert L. Ashbaugh, Assistant Inspector General for Inspections, Evaluations, and Special Reviews, at (202) 254-4100.

Status of Recommendations from the DOJ OIG’s Report, “Unaccompanied Juveniles in INS Custody”

1. The INS should include and enforce standards in all contracts with secure detention facilities that require the segregation of non-delinquent INS juveniles from delinquent juveniles. These standards should provide for strict segregation in living quarters and no more than minimal contact in all other common areas. The facilities should be required to immediately notify the INS if they cannot meet this requirement so the INS can take immediate corrective action.

Status: Open – HHS

2. The INS should implement procedures that ensure weekly visits with all juveniles in custody and to all juvenile housing facilities. The procedures should establish clear descriptions of the content of the visits and documentation requirements. The INS should delegate authority to appropriately trained staff to assist district juvenile coordinators in complying with the weekly visitation requirements.

Status: Open – HHS

3. The INS should implement procedures that require same-sex escort of juveniles. If same-sex escorts are not possible, procedures for appropriate alternative safeguards for juveniles should be followed.

Status: Open – HHS

4. The INS should implement procedures that require juvenile transportation and detention custodial records that provide sufficient accountability for all juveniles detained in the custody of the Border Patrol sectors and the districts.

Status: Open – BTS

5. The INS should implement procedures that require INS officers, or designated non-INS personnel under contract with the INS, to escort and maintain physical custody of all juveniles until the juvenile is released to a sponsor.

Status: Open – BTS and HHS

6. The INS should implement specific rules that govern the use of restraints on juveniles in the custody of INS officers, in shelter facilities, and in secure facilities. The INS should implement procedures to monitor compliance.

Status: Open – HHS

7. The INS should revise its policy regarding telephone use by juveniles to ensure juveniles without funds are able to make appropriate telephone calls and juveniles are permitted access to telephones that at least meet the minimum requirements.

Status: Open – HHS

8. The INS should implement procedures that require the monitoring and regular reporting of instances of non-compliance with the 3-to-5-day placement requirement. These procedures should include the reporting of justifications for the overdue placements.

Status: Closed

9. The INS should require districts to designate and train back-up juvenile coordinators.

Status: BTS-Administratively Closed

10. The INS should re-emphasize to all INS officers the requirement to immediately notify the district juvenile coordinators of all placements and movement of juveniles and to complete and forward all required documentation to the district juvenile coordinators.

Status: BTS-Administratively Closed

11. The INS should provide a list of all approved juvenile housing facilities to the districts and Border Patrol sectors with the stipulation that no juveniles are to be placed in a facility without the prior notification of the juvenile coordinator.

Status: BTS-Administratively Closed

12. The INS should identify all juvenile housing facilities now being used by the districts and Border Patrol sectors to house juveniles.

Status: BTS-Administratively Closed

13. Each Border Patrol sector should designate a coordinator for juvenile issues to ensure timely liaison with the district juvenile coordinators.

Status: BTS-Administratively Closed

14. Districts with a large volume of juvenile activity should provide administrative support to the district juvenile coordinator.

Status: BTS-Administratively Closed

15. The INS should implement contract compliance procedures to ensure contracted facilities comply with their contractual responsibilities.

Status: Closed

16. The INS should establish regular communications at the district level with volunteer agencies, shelter staff, and legal service providers to identify and resolve juvenile detention issues.

Status: Closed

17. The INS should develop a national plan for assessing its needs for secure, medium-secure, and non-secure bed space and acquiring the needed additional beds.

Status: Open – HHS

18. The INS should implement procedures that require at least quarterly reporting of instances of non-delinquent juveniles placed in secure detention. The procedures should include the duration of stay in secure detention for each instance.

Status: Closed

19. The INS should implement procedures that require regional juvenile coordinators to at least quarterly monitor, document, and report juvenile housing facility inspections to headquarters.

Status: Open – HHS

20. The INS should implement procedures to collect, track, analyze, and report significant incident reports involving juveniles.

Status: Open – HHS

21. The INS should regularly review the Juvenile Alien Management System and Deportable Alien Control System to ensure the basic identifying data in both systems match and is accurate.

Status: BTS-Administratively Closed

22. The INS should revise the *Juvenile Protocol Manual* to incorporate changes in juvenile policy or procedures and disseminate the revised manual to all field offices.

Status: Closed

23. The INS should revise the definition of what constitutes an influx condition, provide guidance for when the use of the INFLUX code (term used when the INS unexpectedly received custody of large numbers of juvenile aliens) is justified for placing non-delinquent juveniles in secure detention, and monitor to ensure that INFLUX is not inappropriately used as a reason for placing non-delinquent juveniles in secure detention.

Status: Closed

24. The INS should include the Juvenile Program in its INSPECT reviews (an internal review program of the former INS) to monitor compliance.

Status: BTS-Administratively Closed

25. The INS should establish a continuing post-academy INS-wide training program to ensure all employees whose duties bring them into contact with juveniles understand and comply with the terms of the *Flores* agreement and document the training.

Status: Open – BTS

26. The INS should allow district directors discretion in releasing juveniles to a responsible sponsor if a parent is unwilling to come forward and the INS should provide appropriate guidance to control discretionary release.

Status: Closed

27. The INS should evaluate the home assessment process and implement changes to streamline the process.

Status: Open – HHS

28. The INS should confer with Executive Office of Immigration Review to implement procedures to facilitate timely immigration hearings for juveniles and to improve juvenile attendance at immigration hearings.

Status: Closed



DEPARTMENT OF HOMELAND SECURITY
Office of Inspector General
Washington, DC 20528

February 25, 2004

MEMORANDUM

TO: Dara Corrigan
Acting Principal Deputy Inspector General
Department of Health and Human Services

FROM: Clark Kent Ervin
Inspector General

SUBJECT: Open Inspector General Recommendations Concerning the Former Immigration and Naturalization Service

In September 2001, the Department of Justice (DOJ) Office of Inspector General (OIG) issued a report, "Unaccompanied Juveniles in INS Custody," Report Number I-2001-009. The DOJ OIG report described the treatment of unaccompanied illegal juveniles held in Immigration and Naturalization Service (INS) custody and subsequently placed into formal immigration proceedings. The DOJ OIG examined the policies and procedures developed by INS in response to its 1997 settlement agreement of a class action lawsuit related to the detention, processing, and release of unaccompanied illegal juveniles.² The DOJ OIG found that, since it signed the settlement agreement, INS made significant improvements in its juvenile program, such as training its employees on new procedures and increasing juvenile bed spaces.

However, the DOJ OIG also found deficiencies in INS policies and procedures that could have potentially serious consequences for the well being of juveniles. Major findings included:

- Non-delinquent juveniles are not always segregated from delinquent juveniles.

² United States District Court, Central District of California, Jenny Lisette Flores, et al. -vs- Janet Reno, Attorney General of the United States, et al. Case No. CV 85-4544-RJK (Px).

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- INS juvenile coordinators were not visiting all juveniles in their custody on a weekly basis.
 - INS was unable to always place juveniles in an appropriate secure detention facility or a non-secure shelter within three to five days of taking custody.
 - INS does not analyze the data on juveniles it collects to identify systemic problems or trends that might indicate problems.
 - After their release from custody, 68 % of the juveniles in the DOJ OIG sample failed to appear for their immigration hearings.

The DOJ OIG made 28 recommendations to improve the INS' juvenile detention policies and procedures. Since the issuance of the report and prior to the formation of the Department of Homeland Security (DHS), the DOJ OIG and INS closed eight recommendations. On March 1, 2003, with the establishment of DHS, immigration functions transferred to DHS. The DHS OIG subsequently assumed responsibility for tracking and closing open INS recommendations from the DOJ OIG report.

However, certain INS functions associated with the care and housing of juveniles in federal custody as a result of their immigration status were transferred by the Homeland Security Act of 2002 (HSA) to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services (HHS). Included in the requirements of Section 462 of the HSA, the Director of the Office of Refugee Resettlement is responsible for:

- Coordinating and implementing the care and placement of unaccompanied alien children who are in federal custody by reason of their immigration status.
- Ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child.
- Identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien children.
- Overseeing the infrastructure and personnel of facilities in which unaccompanied alien children reside.
- Maintaining statistical information and other data on unaccompanied alien children for whose care and placement the director is responsible.
- Conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

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- Consulting with appropriate juvenile justice professionals, the Director of the Bureau of Citizenship and Immigration Services, and the Assistant Secretary of the Bureau of Immigration and Customs Enforcement to ensure that unaccompanied alien children are likely to appear for all hearings or proceedings in which they are involved; are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity; and are placed in a setting in which they are not likely to pose a danger to themselves or others.

Based on the transfer of these responsibilities, it is our understanding that the responsibility for resolving some of the outstanding recommendations from the DOJ report now resides with HHS. Specifically, we believe that effort to close recommendations 1, 2, 3, 6, 7, 17, 19, 20, and 27, which address issues associated with juvenile housing, needs to be conducted by HHS.² We also believe that recommendation 5, which addresses juvenile custody issues arising from the time of apprehension until placement in a housing facility, will require a joint effort by DHS and HHS to resolve. We recognize, that some of the DOJ OIG recommendations may be moot because HHS may already have policies and procedures to address the DOJ OIG's concerns.

Since our departments share responsibility for the custody of the juveniles, I would like our offices to work closely with the appropriate agencies within our respective departments to close the DOJ OIG's recommendations. I believe that to ensure that juveniles in federal custody receive appropriate care and safety, we must work together to ensure that a seamless juvenile care and custody program is developed. Also, we welcome the opportunity to assist you with the development of the memorandum of understanding between DHS and HHS concerning juvenile detention issues.

To coordinate our efforts to address the issues identified by the DOJ OIG, please contact Robert L. Ashbaugh, Assistant Inspector General for Inspections, Evaluations, and Special Reviews, at (202) 254-4100.

Recommendations from the DOJ OIG's Report, "Unaccompanied Juveniles in INS Custody," that Apply to HHS

1. The INS should include and enforce standards in all contracts with secure detention facilities that require the segregation of non-delinquent INS juveniles from delinquent juveniles. These standards should provide for strict segregation in living quarters and no more than minimal contact in all other common areas. The facilities should be required to immediately notify the INS if they cannot meet this requirement so the INS can take immediate corrective action.

³ The exact text of the applicable recommendations from the DOJ OIG report is listed in the Attachment.

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2. The INS should implement procedures that ensure weekly visits with all juveniles in custody and to all juvenile housing facilities. The procedures should establish clear descriptions of the content of the visits and documentation requirements. The INS should delegate authority to appropriately trained staff to assist district juvenile coordinators in complying with the weekly visitation requirements.
 3. The INS should implement procedures that require same-sex escort of juveniles. If same-sex escorts are not possible, procedures for appropriate alternative safeguards for juveniles should be followed.
 5. The INS should implement procedures that require INS officers, or designated non-INS personnel under contract with the INS, to escort and maintain physical custody of all juveniles until the juvenile is released to a sponsor.
 6. The INS should implement specific rules that govern the use of restraints on juveniles in the custody of INS officers, in shelter facilities, and in secure facilities. The INS should implement procedures to monitor compliance.
 7. The INS should revise its policy regarding telephone use by juveniles to ensure juveniles without funds are able to make appropriate telephone calls and juveniles are permitted access to telephones that at least meet the minimum requirements.
 17. The INS should develop a national plan for assessing its needs for secure, medium-secure, and non-secure bed space and acquiring the needed additional beds.
 19. The INS should implement procedures that require regional juvenile coordinators to at least quarterly monitor, document, and report juvenile housing facility inspections to headquarters.
 20. The INS should implement procedures to collect, track, analyze, and report significant incident reports involving juveniles.
 27. The INS should evaluate the home assessment process and implement changes to streamline the process.

Department of Homeland Security

Under Secretary, Border and Transportation Security Directorate

Department of Justice

The Honorable Glenn A. Fine, Inspector General

Department of Health and Human Services

Dara Corrigan, Acting Principal Deputy Inspector General

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