



Short-Term Detention Standards and Oversight

December 8, 2015

Fiscal Year 2015 Report to Congress



**Homeland
Security**

U.S. Customs and Border Protection

Message from the Deputy Commissioner of CBP

December 8, 2015

I am pleased to present the following report, "Short-Term Detention Standards and Oversight," which was prepared by U.S. Customs and Border Protection (CBP).

The report was prepared pursuant to legislative language in House Report 113-481, which accompanies the *Fiscal Year 2015 Department of Homeland Security Appropriations Act* (Pub. L. No. 114-4). The report describes CBP's short-term holding facilities, the standards that govern these facilities, and CBP's oversight mechanisms.



Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable John Hoeven
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jeanne Shaheen
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

The Honorable John R. Carter
Chairman, House Appropriations Subcommittee on Homeland Security

The Honorable Lucille Roybal-Allard
Ranking Member, House Appropriations Subcommittee on Homeland Security

I would be pleased to respond to any questions you may have. Please do not hesitate to contact my office at (202) 344-2001 or the Department's Deputy Under Secretary for Management and Chief Financial Officer, Chip Fulghum, at (202) 447-5751.

Sincerely,

A handwritten signature in dark ink, appearing to read 'K. McAleenan', with a long horizontal flourish extending to the right.

Kevin K. McAleenan
Deputy Commissioner
U.S. Customs and Border Protection

Executive Summary

To support mission-critical operations, CBP has facilities throughout the United States, many of which include short-term hold rooms. Short-term hold rooms may be areas designated as processing areas, detention cells, open areas within a secure facility, or secondary processing areas used for temporary detention pending processing or transfer. CBP hold room facilities are not designed or intended to be used as long-term immigration detention facilities.

Each year, CBP undertakes enforcement actions on hundreds of thousands of aliens arriving at ports of entry (POEs) or entering between POEs along the borders of the United States. At POEs, a CBP officer at primary inspection may determine that additional inspection is needed, and the traveler is referred for a secondary inspection, which is a more detailed examination. CBP evaluates the totality of circumstances for each case to determine if an alien is inadmissible. On the basis of that evaluation, CBP may process complete the case in a variety of ways, such as by allowing the individual to withdraw his/her application for admission, processing the individual for expedited removal, or referring the case to an immigration judge for removal proceedings.

Between POEs, the U.S. Border Patrol (USBP) apprehends aliens within the United States, found to be in violation of immigration law. USBP may process these individuals in a variety of ways, depending on the individual circumstances of each case. Certain aliens may be offered and granted a voluntary return to their country of citizenship if from a contiguous country; others may be transferred to U.S. Immigration and Customs Enforcement (ICE), or another agency's custody, for possible detention or housing and commencement of removal proceedings.

CBP generally processes apprehended aliens either administratively or criminally and maintains the short-term detention of individuals, pending transfer of custody to another agency or final case disposition. CBP evaluates the circumstances of each case and decides if continued detention or removal, to resolve the case, is appropriate. CBP detains individuals for the length of time necessary for CBP to complete the required casework, which may entail an interview, the collection of biographic and biometric data, records checks, determination of disposition, and release of the individual or transfer of him/her to another agency's custody. In certain circumstances, at the conclusion of case processing, it is determined the person may be permitted to enter the United States; in these instances, an individual may either be admitted or paroled. In other circumstances, it may be necessary to transfer the individual to ICE, which has decision-making responsibilities for the long-term detention of aliens.

This report describes how and why CBP facilities are used, the standards that govern the conditions of custody, and the oversight mechanisms used to monitor short-term detention conditions and lengths of time of detention.



Short-Term Detention Standards and Oversight FY 2015

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I. Legislative Language

This document responds to the reporting requirement set forth in House Report 113-481 accompanying the *Fiscal Year (FY) 2015 Department of Homeland Security (DHS) Appropriations Act* (Pub. L. No. 114-4).

House Report 113-481 states:

Additionally, the Committee directs CBP to update the Committee not later than 60 days after the date of enactment of this Act on the standards governing the conditions of custody and the oversight mechanisms CBP employs to monitor short-term detention conditions and lengths of detention.

II. Background

With approximately 60,000 employees, U.S. Customs and Border Protection (CBP) protects the United States from terrorism, human and drug smuggling, and other illegal and dangerous activity. CBP must balance border security and enforcement while simultaneously facilitating legitimate trade and travel in the United States.

Within CBP, the Office of Field Operations (OFO) inspects all travelers seeking admission to the United States at ports of entry (POEs). This includes determining the admissibility of aliens who are applying for admission to the United States at POEs. If the CBP officer at primary inspection determines that additional inspection is needed, the traveler will be referred to secondary inspection, which involves a more detailed examination of the traveler. Aliens found to be inadmissible may be processed for expedited removal or referred to an immigration judge for removal proceedings, depending on the circumstances. OFO temporarily detains certain individuals until they are transferred to U.S. Immigration and Customs Enforcement (ICE) or another agency's custody, or until the alien is removed from the United States.

Generally, those aliens encountered within the United States in violation of immigration law, and who are apprehended by the U.S. Border Patrol (USBP), may be offered and granted a Voluntary Return to their country (only for contiguous countries); processed for expedited removal; processed for Reinstatement of a Formal Order of Removal order; or issued a Notice to Appear before an immigration judge and transferred to the custody of ICE for detention pending the immigration hearing, final removal from the United States, or transfer to another agency.

III. Short-Term Detention

CBP has many facilities throughout the United States to support mission-critical operations, most of which include short-term hold rooms. The terms “short-term custody facilities,” “hold rooms,” “processing centers,” and “detention rooms” are synonymous and used interchangeably among CBP personnel. For the purpose of detention, a person in CBP custody is detained for the length of time that is necessary for CBP to complete an interview, collect biographic and biometric data, run record checks, complete required case paperwork, determine disposition, and admit and/or release the individual or transfer him/her to another agency’s custody.

A. Standards of Custody

CBP attempts to process all persons in CBP custody promptly and to facilitate their transfer to another agency or entity or their release, as appropriate. Every effort is made to transfer a detainee out of CBP custody as soon as operationally feasible. CBP holds all detainees in rooms that are safe, secure, and clean. Detainees identified as requiring medical attention are provided medical care. CBP ensures basic necessities, such as food, snacks, drinking water, properly equipped restrooms, and hygiene supplies, are also available. Aliens are notified of communication privileges with consular or diplomatic officers of their country of nationality, and they are provided access to telephones for such purposes,¹ if requested.

For the safety and security of all persons in custody, CBP separates male detainees from female detainees, and unaccompanied alien children (UAC)² are separated from unrelated adults. UAC under the supervision of CBP are placed in the least restrictive area possible. CBP may place UAC in a hold room designated for UAC only. In circumstances where a hold room is unavailable to keep UAC separate from unrelated adults, CBP may detain UAC in an open area, such as a processing area under the direct supervision of a desk officer or another officer or agent. In the case of a family unit, CBP makes every effort to process and maintain family units together.

In addition to families and UAC, CBP prioritizes the processing of other vulnerable populations, such as persons of advanced age and persons with known medical conditions. Operational circumstances may dictate that an individual be detained longer than is customary; however, verbal and electronic reporting requirements exist for any detention that exceeds 24 hours.

¹ 8 CFR § 236.1(e)

² 6 U.S.C. § 279(g)(2) defines an “unaccompanied alien child” 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: (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.”

B. Circumstances of Custody

1. At the Ports of Entry

Depending on individual circumstances, aliens who are found to be inadmissible at POEs may be processed in a variety of ways, including being permitted to voluntarily withdraw their application for admission and return to their home country, processed for expedited removal, or referred to an immigration judge for removal proceedings. OFO temporarily detains certain individuals until they are transferred to ICE or another agency's custody, or until they are removed from the United States.

CBP OFO can transfer custody to another law enforcement agency, for example, on the basis of warrants of arrest. Law enforcement agencies that could accept a transfer include the U.S. Marshals Service and state and local law enforcement agencies. Additionally, all UAC who are placed in removal proceedings are to be transferred to the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR), except in the case of exceptional circumstances, within 72 hours of determining the children are in fact UAC.³

Table 1 shows the number of aliens held by OFO in short-term custody during FYs 2013 and 2014, listed by the circumstances of custody. Definitions of the circumstances of custody are listed in Appendix B.

Table 1		
OFO Circumstances of Custody		
	FY 2013	FY 2014
Aliens Smuggled	424	232
False Claim	21,446	16,783
Fraudulent Documents Intercepted	17,360	13,850
Bag and Baggage	182	222
Crewmember Detained on Board	44,707	45,666
Crewmember – I-99	204	235
Deferred Inspection	1,891	2,388
Expedited Removal (I-860)	26,273	25,122
Expedited Removal Limited Review	66	41
Expedited Removal with Credible Fear	8,489	12,742
Notice to Appear Released (I-862)	18,095	6,839
Notice to Appear Detained (I-862)	5,385	12,589
Paroled	36,461	53,106
Stowaway	17	23
Stowaway with Credible Fear	5	7
Voluntary Return	3,311	2,761
Visa Waiver Program Refusal	6,927	6,525
Visa Waiver Program with Notice to Refer (I-863)	648	70

³ 8 U.S.C. § 1232(b)(3) Transfers of UAC

Table 1		
OFO Circumstances of Custody		
	FY 2013	FY 2014
Warrant of Arrest/Notice to Appear	165	155
Withdrawal (I-275)	45,943	54,249
Withdrawal in Lieu of Expedited Removal	6,136	1,126
Total Inadmissible Aliens Encountered	204,905	223,712

2. Between the Ports of Entry

Between POEs, aliens encountered in violation of immigration law may be offered and granted a Voluntary Return to their country (only for contiguous territories), processed for expedited removal, processed for a Reinstatement of a Formal Order of Removal, or issued a Notice to Appear before an immigration judge. In limited circumstances, aliens may be released on their own recognizance, pending the immigration hearing. If immediate return to the alien's country of residence is not an option, USBP transfers custody to ICE, which assumes responsibility for any further custody determinations pending an immigration hearing or final removal from the United States. USBP can transfer custody of individuals as appropriate, for example with warrants of arrest, or pending prosecution to the appropriate federal, state, local, or tribal law enforcement agency, pending further action or prosecution.

With limited exception, all UAC encountered by CBP are transferred to the care and custody of HHS ORR in accordance with the *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008* (Pub. L. No. 110-457) (codified in relevant part at 8 U.S.C. § 1232).⁴ Additionally, CBP makes every effort to limit the time UAC spend in CBP custody, and it works to expeditiously transfer UAC to HHS ORR and at a minimum within 72 hours in accordance with the law.

⁴ CBP may permit an unaccompanied alien child encountered at a land border or POE to withdraw his or her application for admission to the United States and return to the unaccompanied alien child's country of nationality or last habitual residence if CBP determines that the unaccompanied alien child (1) is a national or habitual resident of Mexico or Canada, (2) is not a victim of a severe form of trafficking or at risk of trafficking upon return, (3) does not have a credible fear of persecution, and (4) is able to make an independent decision to withdraw his or her application for admission. See 8 U.S.C. § 1232(a)(2)-(4).

Table 2 shows the number of aliens apprehended by USBP during FYs 2013 and 2014, listed by the circumstances of custody.

Table 2		
USBP Circumstances of Custody		
	FY 2013	FY 2014
Expedited Removal	202,998	199,161
Released	3,436	8,582
Removal	529	539
Voluntarily Returned	48,579	41,144
Transferred to other agency	42,235	113,812
Reinstatement	122,785	123,231
Other* ⁵	227	182
Total	420,789	486,651

C. Oversight Mechanisms

Oversight mechanisms are in place to ensure hold room conditions and lengths of time of detention are monitored for all persons in CBP custody. CBP policies outline designation of detention areas, duration of detention, processing and detention procedures, conditions of detention, proper treatment of detainees, required documentation, and monitoring and supervision. To ensure compliance, CBP also utilizes detention logs, the Self-Inspection Program,⁶ management assurance reviews, and direct and indirect supervision and monitoring. Supervisors are assigned to all CBP hold rooms or processing facilities, and they provide direct oversight of all processing and detention matters.

The Department of Homeland Security Prison Rape Elimination Act (PREA) final rule, “Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities,” 79 Fed. Reg. 13100 (March 7, 2014) was published in the Federal Register on March 7, 2014, and became effective on May 6, 2014. The standards establish robust safeguards against sexual abuse and assault of individuals in CBP custody, including with respect to screening, training, detainee education, reporting, response, medical care, investigative protocols, discipline, and monitoring and oversight.

In addition, on March 11, 2015, CBP issued a revised version of its *Policy on Zero Tolerance of Sexual Abuse and Assault* (Policy), incorporating additional requirements from the DHS PREA rule that are directly applicable to the agency. The CBP Policy, promulgated in May 2014, established a zero-tolerance policy with respect to sexual abuse and assault of individuals in CBP custody. It delineated duties of agency employees for timely reporting, coordinating response and investigation, and effective monitoring of all incidents of sexual abuse or assault of

⁵ “Other” circumstances of custody may include individuals who were ultimately admitted or paroled into the United States.

⁶ The CBP Self-Inspection Program is a CBP Office of Internal Affairs program that promotes management accountability and strengthens the oversight of CBP programs and operations. Under the Self-Inspection Program, CBP managers and supervisors conduct annual self-assessment activities, requiring them to verify that agency programs and operations are being properly and effectively implemented.

individuals in CBP custody, during transport, processing, and detention holding facilities. Together, these policies have already met many of the PREA standards' agency requirements.

Along with its internal oversight mechanisms listed in this report, CBP receives assistance in ensuring its compliance with all aspects related to short-term custody in its facilities through other DHS Components, including the Office for Civil Rights and Civil Liberties and the Office of Inspector General. CBP also receives input from external stakeholders, including the U.S. Government Accountability Office, the U.S. Department of Justice, and the Office of the United Nations High Commissioner for Refugees.

IV. Conclusion

CBP has established collaborative partnerships with ICE, HHS, the U.S. Marshals Service, and many other federal, state, and local law enforcement agencies. These partnerships enable CBP to leverage personnel and resources to minimize the time a person spends in CBP custody, while ensuring that all persons are treated humanely and with dignity and respect while in CBP custody.

Additionally, CBP continues to update and develop policies and procedures regarding short-term detention to ensure that all persons in its custody are cared for and treated with dignity, respect, and special concern for their particular vulnerability, such as UAC. During the surge of UAC in the summer of 2014, an interagency Unified Coordination Group was established to respond to the humanitarian crisis in the Rio Grande Valley. The Unified Coordination Group has since developed a response plan and is still active in monitoring the activity levels and prepared to respond to prevent overcrowding in CBP facilities. DHS continues to facilitate cross-Component and interdepartmental collaboration, resulting in the training of DHS personnel interacting with UAC and interagency coordination to identify and establish best practices concerning UAC.

V. Appendices

Appendix A. Acronyms

Acronym	Definition
CBP	U.S. Customs and Border Protection
DHS	Department of Homeland Security
FY	Fiscal Year
HHS	U.S. Department of Health and Human Services
ICE	U.S. Immigration and Customs Enforcement
INA	Immigration and Nationality Act
OFO	Office of Field Operations
ORR	Office of Refugee Resettlement (within HHS)
POE	Port of Entry
PREA	Prison Rape Elimination Act
UAC	Unaccompanied Alien Children
USBP	U.S. Border Patrol

Appendix B. Glossary

The following terms were developed for the purposes of this report only and are intended to highlight the basic distinctions among the various processes that someone in CBP custody may experience; however, the following should not be considered legal definitions of these terms.

Alien: Person who is not a citizen or national of the United States (INA § 101(a)(3); 8 USC § 1101(a)(3)).

Bag and Baggage: A process where an alien that has been previously ordered removed by an immigration judge is apprehended and the removal order is immediately executed.

Credible Fear of Persecution: There is a significant possibility, taking into account the credibility of the statements made by the alien in support of his claim and such other facts known to the officer, that the alien could establish eligibility for asylum under section 208. The procedures under Immigration and Nationality Act (INA) § 235(b)(1) for referring an inadmissible alien for a hearing before an asylum officer who has a fear of return or a desire to apply for asylum in the United States.

Detainee: A person regardless of citizenship or nationality who is detained in a CBP facility.

Detain(ed): Maintaining an individual in custody for purposes of case processing and disposition pending transfer to another agency, release, or additional or other actions.

Detention: The custody of an individual pending case disposition or while awaiting judicial or legal proceedings.

Expedited Removal: A administrative process for the removal of an alien from the United States under certain circumstances where the alien is inadmissible pursuant to INA §§ 212(a)(6)(C) or (a)(7) (8 USC §§ 1182(a)(6)(C),(a)(7)).

INA: Immigration and Nationality Act, as amended, 8 U.S.C. §§ 1101, et seq.

Inadmissible Alien: An alien seeking admission into the United States who is ineligible to be admitted under INA § 212 (8 USC § 1182).

Parole: The process to allow an alien to temporarily enter the United States pursuant to the authority of INA § 212(d)(5) (8 USC § 1182(d)(5)).

Reinstatement: The removal of an alien based on the reinstatement of a prior removal order, where the alien departed from the United States under an order of removal and illegally attempted to reenter or is at any time found in the United States (INA § 241(a)(5); 8 USC § 1231(a)(5)). The alien may be removed without a hearing before an immigration court.

Release: A disposition in which an individual is released in lieu of detention or incarceration (8 USC § 1226(a)).

Removal or Removed: The compulsory and confirmed movement of an inadmissible or deportable alien out of the United States based on an order of removal. An alien who is removed may be subject to criminal consequences on a subsequent reentry to the United States under 8 USC §1325. Additionally, the previous removal order is reinstated as outlined in INA § 241.

Return: The confirmed movement of an inadmissible or deportable alien out of the United States not based on an order of removal.

Short-Term Custody: The detention of a person for purposes of case processing and disposition pending transfer to another agency, release, or additional or other actions.

Visa Waiver Program: Under INA § 217, a program established permitting certain visitors to the United States to travel without a nonimmigrant visa, which meets qualifying standards. Implementing regulations are found in 8 CFR 217.

Unaccompanied Alien Children (UAC): The term “UAC” is defined by section 462(g) of the *Homeland Security Act of 2002* (6 USC § 279(g)) 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—
 - (i) there is no parent or legal guardian in the United States; or
 - (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

Voluntary Return: A form of discretion exercised by CBP to allow an alien to depart voluntarily from the United States in lieu of removal proceedings. Aliens granted a voluntary return avoid the potential penalties associated with formal removal proceedings but may incur other immigration consequences.

Withdrawal: A form of discretion permitted under 8 CFR § 235.4 to allow applicants for admission to return to a foreign country in lieu of formal removal proceedings.