

§ 1236.3 Detention and release of juveniles.

(a) *Juveniles.* A juvenile is defined as an [alien](#) under the age of 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) An adult relative (brother, sister, aunt, uncle, grandparent) who is not presently in [Service](#) detention, unless a determination is made that the detention of such juvenile is required to secure his or her 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 a [Service](#) office located near the parent, legal guardian, or adult relative.

(2) If an individual specified in paragraphs (b)(1)(i) through (iii) 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 [Service](#) 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 [Service](#) detention or outside the [United States](#), the juvenile may be released to such person as is 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 [Director](#) of the Office of Juvenile Affairs, a juvenile may be released to an adult, other than those identified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, who executes an agreement to care for the juvenile's well-being and to ensure the juvenile's presence at all future proceedings before the [Service](#) 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 [Service](#), 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 [Service](#) authorities or placed in any [Service](#) detention facility having separate accommodations for juveniles.

(e) *Refusal of release.* If a parent of a juvenile detained by the [Service](#) can be located, and is otherwise suitable to receive custody of the juvenile, and the juvenile indicates a

refusal to be released to his or her parent, the parent(s) shall be notified of the juvenile's refusal to be released to the parent(s), and they shall be afforded the opportunity to present their views to the [district director](#), chief patrol agent, [Director](#) of the Office of Juvenile Affairs 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 removal, 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](#), [Director](#) of the Office of Juvenile Affairs 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 or being allowed to withdraw his or her application for admission, 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. A juvenile who does not reside in Mexico or Canada who is apprehended shall be provided access to a telephone and must in fact communicate either with 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 such 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 Form I-770, Notice of Rights and Disposition. If the juvenile is less than 14 years of age or unable to understand the notice, the notice shall be read and explained to the juvenile in a language he or she understands. In the event a juvenile who has requested a hearing pursuant to the notice subsequently decides to accept voluntary departure or is allowed to withdraw his or her application for admission, a new Form I-770 shall be given to, and signed by the juvenile.

[[62 FR 10360](#), Mar. 6, 1997, as amended at [67 FR 39258](#), June 7, 2002]