



# Department of Homeland Security Office of Inspector General

## Age Determination Practices for Unaccompanied Alien Children - Update



## **Background**

Within the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) is responsible for apprehending, detaining, and deporting individuals who are not authorized to remain in the United States. Children who enter ICE custody require different treatment than adult detainees. ICE must ensure that they are not detained with unrelated adults and that they receive specified treatment and provisions while in custody. Unaccompanied alien children—individuals determined to be less than 18 years of age who are unlawfully in the United States without a parent or other legal guardian—must be transferred to the Department of Health and Human Services (HHS), Office of Refugee Resettlement's (ORR) custody within 72 hours of determining such children are unaccompanied, to await deportation or transfer to a *legal* guardian in the United States.<sup>1</sup>

To separate unaccompanied children from adult's in ICE custody, ICE attempts to establish the date of birth for any apprehended person not readily identifiable as an adult or child. In those instances, ICE relies on various forms of information for age determination purposes, including interview statements and documentation such as birth certificates. When ICE officials have difficulty determining whether an individual is a child or an adult, they may also obtain a professional medical opinion based on dental or skeletal radiographs, commonly referred to as x-rays, to help make an age determination. ICE's use of radiographs, however, has been criticized as unreliable by some in the medical and advocacy communities.

## **Results of Review**

### **Use of Radiographs for Age Determinations Needs To Be Better Tracked**

To obtain a radiograph-based age estimation for a potential juvenile in custody, ICE uses medical or dental services outside of its network of detention facilities. ICE field personnel submit a Treatment Authorization Request (TAR) to ICE's Division of Immigration Health Services (DIHS) in Washington, DC. DIHS managed care coordinators generally review and approve the request within 24 hours. A TAR can also be submitted and approved retroactively when needed to allow ICE to make an immediate decision on an individual's age and, subsequently, the appropriate detention setting.

From January to April 2010, ICE reported 43 requests for age determination radiographs, of which 2 were canceled. While DIHS can account for the number of TARs submitted for radiographs, ICE does not record the number of times that a radiograph was actually used in its age determination, and the resulting custody decision. ICE also does not track

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<sup>1</sup> *Homeland Security Act of 2002* (Public Law 107-296), November 25, 2002. See also, *The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008* (Public Law 110-457) December 23, 2008.

when the age determination and placement of an alien is reversed. Tracking such information could improve ICE's ability to evaluate age determination practices, including reversed age determinations and custody decisions involving radiographs, calculate the error rate of such decisions, and adjust policies accordingly. Such information could also help generate cost data on exams conducted each fiscal year and guide future decisions concerning the medical service providers ICE uses for age determinations.

In our initial report, we recommended that the Assistant Secretary for ICE—

Continue to enhance the Juvenile and Family Residential Management Unit's (JFRMU) ability to collect and analyze data on the use of radiographs for age determinations. At a minimum, enhancements should provide JFRMU with the ability to track (1) the number of radiographs taken for age determinations, (2) date the results of the exam, and (3) age determinations and placement decisions that were later reversed.

ICE concurred with our recommendation. In its August 2010 Mission Action Plan (MAP) update, ICE indicated that multiple updates to the Enforcement Case Tracking System will be made by November 2010.

### **Guidance for Age Determinations Needs To Be Updated**

ICE guidance on making age determination and custody decisions was issued in 2004. The guidance lists a range of factors that may be considered, addresses the limits of radiographs in a comprehensive manner, and cautions officers not to make decisions based solely on radiographs.

The *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008* (TVPRA) includes language that charges the Secretary of HHS, in consultation with the Secretary of DHS, with developing age determination procedures. According to the law, DHS is required to follow those procedures. While the TVPRA does not set forth particular guidelines for making age determinations, it does allow the "nonexclusive use of radiographs."<sup>2</sup> HHS ORR, which oversees the placement of unaccompanied alien children, released program instruction on age determinations in March 2009; the acting director of HHS ORR signed this guidance on September 15, 2009.

In our initial report, we recommended that the Assistant Secretary for ICE—

Update and release guidance that clarifies how the Office of Detention and Removal Operations, recently renamed Enforcement and Removal Operations, field officers are to conduct age determinations following the TVPRA based on HHS' guidance. ICE field guidance should be consistent with HHS' procedures,

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<sup>2</sup> *The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008* (Public Law 110-457) December 23, 2008.

address challenges, identify best practices for establishing age, and include requirements for documenting the age determination process.

ICE concurred with our recommendation to update field guidance on age determinations and related custody decisions, but has not issued an updated version in response to HHS' signed program instruction. Before our initial report's publication, ICE indicated that it is waiting for HHS to release a final policy on age determinations, and did not acknowledge HHS' program instruction as final. Also, ICE has drafted guidance that generally mirrors the HHS/ORR guidance. ICE's guidance is under review.

### **ICE Field Staff Would Benefit by Distributing a "Best-Qualified" Providers List**

While we did not question the actual age estimations of medical or dental professionals in our original report, we noted inconsistencies in how exam results were reported to ICE. Supporting data and studies cited by those providers varied in their depth and applicability to the different ethnicities of the individuals receiving the exam. Moreover, during our initial review, ICE officers were not always certain of the type of medical or dental professional who should be consulted when an individual's age is in question.

Certifications and other credentials beyond standard medical or dental degrees can help ICE identify medical or dental providers who are most knowledgeable about making age estimations, as well as the limitations of this practice.

In our initial report, we recommended that the Assistant Secretary for ICE—

Release guidance on the selection of "best-qualified" practitioners to conduct radiographic exams and report results when practical.

ICE concurred with the recommendation, and indicated that it would work with DIHS to develop such guidance. The August 2010 MAP indicates that ICE has developed draft guidance, which is under review by DIHS. ICE expects to release a final version by December 31, 2010.

### **Management Comments and OIG Analysis**

We obtained written comments on a draft of the report from the ICE Acting Deputy Chief Financial Officer. We have included a copy of the comments in Appendix B. The Acting Deputy Chief Financial Officer reiterated ICE's commitment to close our initial report's recommendations by the dates identified in its MAP.

**Appendix A**  
**Purpose, Scope, and Methodology**

We conducted this review at the request of the House Appropriations Committee and House Report 111-157 to review ICE practices for determining the age of those in its custody and report any cases where ICE used bone or dental forensic examinations. We interviewed and held discussions with ICE and HHS officials, reviewed relevant documents, and analyzed ICE's MAP. We conducted our fieldwork from April to June 2010.

This review was conducted under the authority of the *Inspector General Act of 1978*, as amended, and according to the Quality Standards for Inspections issued by the Council of the Inspectors General on Integrity and Efficiency.

**Appendix B**  
**Management Comments to the Draft Letter Report**

*Office of the Chief Financial Officer*

U.S. Department of Homeland Security  
500 12<sup>th</sup> Street, SW  
Washington, DC 20536



**U.S. Immigration  
and Customs  
Enforcement**

August 17, 2010

MEMORANDUM FOR: Carlton I. Mann  
Assistant Inspector General - Inspections  
Office of Inspector General  
FROM:   
Martin N. Finkelstein  
Deputy Chief Financial Officer (Acting)  
U.S. Immigration and Customs Enforcement

SUBJECT: Comments to OIG Draft Letter Report "Age Determination Practices for Unaccompanied Alien Children in ICE Custody - Update" dated August 2, 2010 [OIG-10-12, Project # 10-111-ISP-ICE]

U.S. Immigration and Customs Enforcement (ICE) appreciates the opportunity to comment on the draft letter report. ICE ERO continues to monitor the progress of the recommendations listed in the OIG Report: *Age Determination Practices for Unaccompanied Alien Children* (OIG-10-12), and has prepared the attached Mission Action Plan update. In response to OIG's recommendations for action by ICE:

**Recommendation # 1:** Continue to enhance the Juvenile and Family Residential Management Unit's (JFRMU) ability to collect and analyze data on the use of radiographs for age determinations. At a minimum, enhancements should provide JFRMU with the ability to track (1) the number of radiographs taken for age determinations, (2) date and results of the exam, and (3) age determinations and placement decisions that were later reversed.

**Response # 1:** ICE concurs with this recommendation. ERO/JFRMU is currently working on an update to ENFORCE that will include an automated section that will track the items listed in the recommendation. It is scheduled to be implemented by November 30, 2010.

**Recommendation # 2:** ICE/ERO should update and release guidance that clarifies how ERO field offices are to conduct age determinations following the TVPRA\* and release of Health and Human Services' (HHS) guidance. The guidance they provide should be consistent with HHS' procedures, identify best practices for establishing age, and include requirements for documenting the age determination process.

[\* *William Wilberforce Trafficking Victims Protection and Reauthorization Act of 2008* (Public Law 110-457), a.k.a. the TVPRA.]

## Appendix B Management Comments to the Draft Letter Report

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**Response # 2:** ICE concurs with this recommendation. However, the drafting and disseminating of this policy to the field is dependant upon HHS' issuance of age determination procedures. ICE ERO will release guidance within 45 days of HHS issuance.

**Recommendation # 3:** Release guidance on the selection of "best qualified" practitioners to conduct radiographic exams and report results when practical.

**Response # 3:** ICE concurs with this recommendation. On August 9, 2010, DIHS provided a DRAFT of the new policy. In discussions with DIHS, they expect to release the final version by December 31, 2010. *[Note – This draft document is pre-decisional and not for distribution.]*

Should you have questions or concerns, please contact Michael Moy, OIG Portfolio Manager, at (202) 732-6263, or by e-mail at [Michael.Moy@dhs.gov](mailto:Michael.Moy@dhs.gov).

Attachments

**Appendix C**  
**Major Contributors to this Report**

Deborah Outten-Mills, Chief Inspector  
Andrew Schmidt, Senior Inspector



**Appendix D**  
**Report Distribution**

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