

**FACT SHEET:
CHILDREN DETAINED BY THE DEPARTMENT OF HOMELAND SECURITY
IN ADULT DETENTION FACILITIES¹**

May 2013

Data obtained by the National Immigrant Justice Center (NIJC), pursuant to a Freedom of Information Act (FOIA) lawsuit against the Department of Homeland Security (DHS), revealed that from 2008 to 2012, children under the age of 18 spent a combined total of 36,598 days in 30 adult detention facilities around the country. DHS detained more than 1,300 children in adult facilities in violation of the *Flores v. Reno*² settlement agreement. DHS detained these children for periods ranging from three days to more than one year,³ and nearly 1,000 children spent at least one week in adult custody.

Background: Detention of Immigrant Children in the United States

Each year DHS apprehends thousands of children. Among them are asylum seekers, survivors of trafficking, youth who entered the U.S. unlawfully to reunite with family and others who entered legally and overstayed their visas. These children are generally detained and placed in removal (deportation) proceedings. Before 2003, children were detained and prosecuted by the Immigration & Naturalization Service (INS). As of 2003, the law mandates that DHS must first determine if the child is “unaccompanied” to then assign the child’s care and custody to the proper federal agency.⁴

- **Children deemed “unaccompanied”** are transferred to the care and custody of the Office of Refugee Resettlement (ORR). ORR contracts with child welfare agencies around the country to detain children. In ORR-contracted shelters, children receive legal and social services and have access to education, health care, and therapeutic services. ORR shelters also have specified procedures to ensure compliance with the law regarding the care, custody, and prompt release of detained immigrant children.
- **Children deemed not “unaccompanied”** remain in DHS custody. The same rules regarding the care, custody, and prompt release of children apply to those in DHS. DHS is legally obligated to detain these children in child-appropriate facilities.⁵

***Flores v. Reno* Settlement Agreement**

In 1985, a class action lawsuit was filed against the INS challenging the way the agency processed, apprehended, detained, and released children in its custody. In 1997, a California federal court approved the *Flores* settlement agreement that sets national policy regarding the detention, release, and treatment of children in INS custody. Many of the agreement’s terms have been codified at 8 CFR §§236.3, 1236.3. The agreement defines a juvenile as a person under the age of 18 who is not emancipated by a state court or convicted and incarcerated due to a conviction for a criminal offense as an adult. It requires that juveniles be held in the least restrictive setting appropriate to their age and special needs to ensure their protection and wellbeing. It also requires that juveniles be released from custody without unnecessary delay to a

¹ Special thanks to attorneys from Hughes, Socol, Piers, Resnick & Dym, Ltd. who represented the National Immigrant Justice Center in this litigation before the federal court in the Northern District of Illinois.

² *Reno v. Flores*, 507 U.S. 292, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993)

³ DHS’s data suggests that in that time period four children were detained from 1,000 to 3,600 days.

⁴ Homeland Security Act of 2002, 116 Stat. 2135, 107-296 (Nov. 25, 2002)

⁵ 8 CFR §236.3

parent, legal guardian, adult relative, individual specifically designated by the parent, licensed program, or, alternatively, an adult who seeks custody who DHS deems appropriate. The *Flores* agreement and INS policy also mandate that “juveniles will not be detained with an unrelated adult for more than 24 hours.”⁶ The *Flores* agreement applies to all children apprehended by DHS.

Homeland Security Act

The Homeland Security Act took effect in 2003, creating DHS and giving jurisdiction over the care and custody of unaccompanied children to ORR, an agency that generally functions pursuant to child welfare principles. The Homeland Security Act defines a child as “unaccompanied” if the individual is under the age of 18 and neither a parent nor legal guardian is with the juvenile at the time of apprehension, or within a geographic proximity to quickly provide care for the juvenile.⁷ If a child is determined to be unaccompanied, he or she is usually transferred by DHS to ORR custody within 72 hours.⁸ If the child is determined not to be unaccompanied, then the child remains in DHS’s custody. The statutes and regulations do not provide definitions for what constitutes a legally “accompanied” immigrant child.

NIJC’s Freedom of Information Act (FOIA) Request

In 2010, NIJC filed a FOIA request seeking information about children held in DHS custody. Pursuant to litigation filed on behalf of NIJC, DHS eventually released information regarding children detained at 30 specified adult detention facilities, including the age range and length of detention for each child.

The data reveals that from 2008 to 2012, DHS detained at least 1,366 children in adult detention facilities throughout the United States. The data likely underreports how many children were affected because the terms of the legal settlement limited the scope to only 30 of the approximately 250 adult detention facilities with which DHS held contracts at the time.⁹

DHS limited its search to the following adult detention facilities:

- Boone County Jail (KY)
- CCA – San Diego (CA)
- CCA - Florence Correctional Facility (AZ)
- Cobb County Jail (GA)
- Dodge County Jail (WI)
- El Paso County Jail (TX)
- Eloy Federal Contract SPC (AZ)
- Florence Staging Facility (AZ)
- Houston Contract Detention Facility (TX)
- Irwin County Jail (GA)
- Jefferson County Jail (IL)
- Jena/LaSalle Detention Facility (AL)
- Kenosha County Jail (WI)
- Krome North SPC (FL)
- Laredo Contract Detention Facility (TX)
- McHenry County Jail (IL)
- Mecklenburg County Jail (NC)
- Mira Loma Detention Center (CA)
- Montgomery County Jail (MO)
- Northwest Detention Center (WA)
- Oakdale Federal Detention Center (LA)
- Otero Processing Center (NM)
- Polk County Jail (TX)
- Port Isabel SPC (TX)
- South Texas Detention Center (TX)
- Stewart Detention Center (GA)
- Tri-County Jail (IL)
- Union County Detention Center (NM)
- Wackenhut Corrections Facility (TX)
- Willacy County Detention Center (TX)

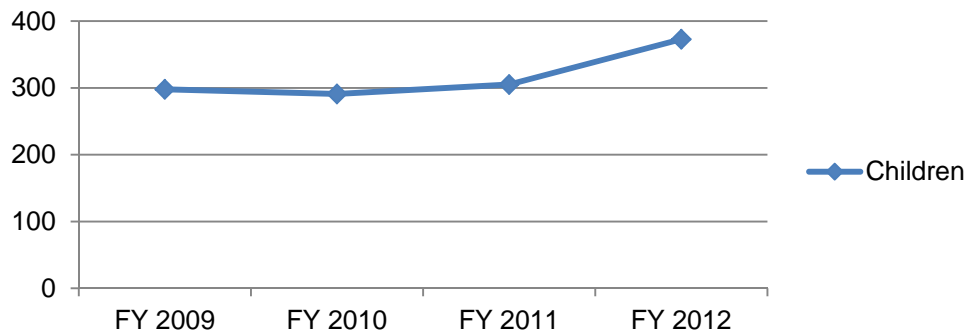
⁶ Juvenile Protocol Manual 2006 section 2.3.2

⁷ 6 USC §279(g)(2)

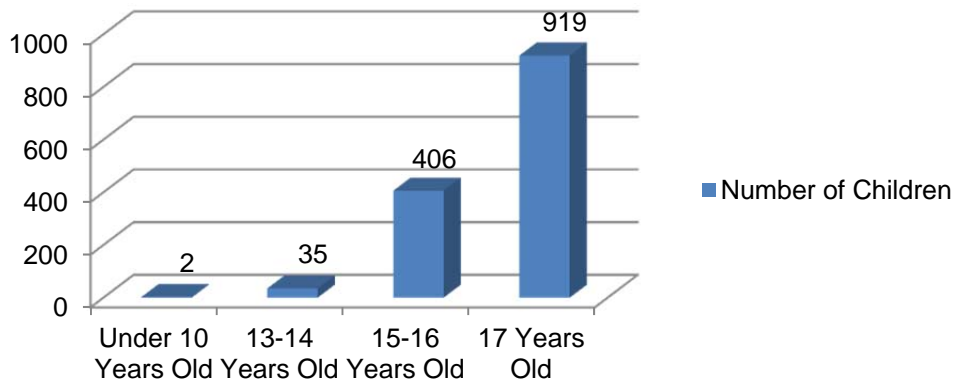
⁸ DHS may detain any unaccompanied alien child that is deemed to be a security threat, and has some discretion in making such determinations.

⁹ In addition, DHS disclosed that during the same time period more than 30,000 18-year-olds were held in the same 30 jails. In 2013, Congress passed the Violence Against Women Reauthorization Act, which recognized that 18-year-olds, though no longer minors, should be treated as a vulnerable population. The law created a presumption for release of children who turn 18 while in ORR custody.

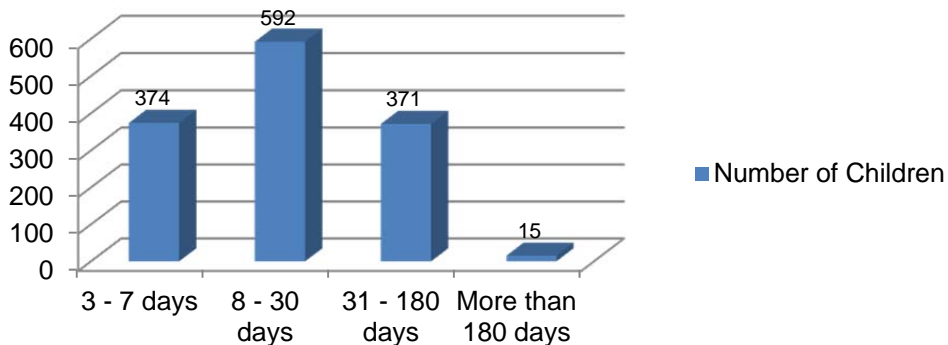
Children Held by DHS in Adult Detention Facilities Federal Fiscal Years 2009 - 2012



Ages of Children Held by DHS in Adult Detention Facilities October 2008 - November 2012



Length of Time Children Spent in DHS Adult Detention Facilities October 2008 - November 2012



Note: DHS's data suggests that four additional children were detained between 1,000 and 3,600 days.

Recommendations

To protect the well-being and human rights of children apprehended by DHS, the following steps must be taken:

1. DHS must comply with the law as set forth by the *Flores* agreement, its regulations, and policies, such that:
 - a. DHS should never detain children in adult detention facilities
 - b. DHS should favor release of all children, both accompanied and unaccompanied
 - c. When release is not an option, DHS should hold children in the least restrictive setting and favor shelters over detention facilities
2. Congress must:
 - a. Amend 6 USC §279(g)(2) to require DHS to immediately transfer all children it apprehends, both accompanied and unaccompanied, into the care and custody of ORR
 - b. Require DHS to submit an annual report to the House and Senate Judiciary Committees reporting children apprehended and the length of time those children were in DHS custody
 - c. Provide appointed counsel to all children in immigration proceedings
3. DHS should provide quarterly public reports to Congress documenting the number of children apprehended and the length of time those children were in DHS custody

Implementation of the above recommendations will ensure the protection of vulnerable children detained in the immigration system.

Heartland Alliance's National Immigrant Justice Center is a Chicago-based nongovernmental organization dedicated to ensuring human rights protections and access to justice for all immigrants, refugees, and asylum seekers through a unique combination of direct services, policy reform, impact litigation, and public education. For more information contact NIJC Legal Director Mory Ruiz-Velasco at mruizvelasco@heartlandalliance.org or (312) 660-1360.