

§ 236.2

8 CFR Ch. I (1-1-08 Edition)

Hungary
Jamaica
Kazakhstan
Kiribati
Kuwait
Kyrgyzstan
Malaysia
Malta
Mauritius
Moldova
Mongolia
Nigeria
Philippines
Poland⁴
Romania
Russian Federation
St. Kitts and Nevis
St. Lucia
St. Vincent/Grenadines
Seychelles
Sierra Leone
Singapore
Slovak Republic
Tajikistan
Tanzania
Tonga
Trinidad and Tobago
Tunisia
Turkmenistan
Tuvalu
Ukraine
United Kingdom⁵
U.S.S.R.⁶
Uzbekistan
Zambia
Zimbabwe

(f) *Notification to Executive Office for Immigration Review of change in custody status.* The Service shall notify the Immigration Court having administrative control over the Record of Proceeding of any change in custody location or of release from, or subsequent taking into, Service custody of a respondent/applicant pursuant to §3.19(g) of this chapter.

(g) *Notice of custody determination—(1) In general.* At the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed, an immigration official may issue a Form I-286, Notice of Custody Determination. A notice of custody determination may be issued by those immigration officials listed in 8 CFR 287.5(e)(2) and may be served by those immigration officials listed in 8 CFR 287.5(e)(3), or other officers or employees of the Department or the United States who are delegated the authority to do so pursuant to 8 CFR 2.1.

(2) *Cancellation.* If after the issuance of a notice of custody determination, a determination is made not to serve it, any official authorized to issue such notice may authorize its cancellation.

[62 FR 10360, Mar. 6, 1997; 62 FR 15363, Apr. 1, 1997, as amended at 63 FR 27449, May 19, 1998; 65 FR 80294, Dec. 21, 2000; 70 FR 67088, Nov. 4, 2005; 72 FR 1924, Jan. 17, 2007]

for bearers of Chinese passports—i.e., immediately, and in any event, within four days of the arrest or detention.

⁴Consular communication is not mandatory for any Polish national who has been admitted for permanent residence in the United States. Such notification should only be provided upon request by a Polish national with permanent residency in the United States.

⁵United Kingdom includes England, Scotland, Wales, Northern Ireland and Islands and the British dependencies of Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

⁶All U.S.S.R. successor states are covered by this agreement. They are: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Although the U.S.S.R. no longer exists, the U.S.S.R. is listed here, because some nationals of its successor states may still be traveling on a U.S.S.R. passport. Mandatory consular notification applies to any national of such a state, including one traveling on a U.S.S.R. passport.

§ 236.2 Confined aliens, incompetents, and minors.

(a) *Service.* If the respondent is confined, or if he or she is an incompetent, or a minor under the age of 14, the notice to appear, and the warrant of arrest, if issued, shall be served in the manner prescribed in §239.1 of this chapter upon the person or persons specified by §103.5a(c) of this chapter.

(b) *Service custody and cost of maintenance.* An alien confined because of physical or mental disability in an institution or hospital shall not be accepted into physical custody by the Service until an order of removal has been entered and the Service is ready to remove the alien. When such an alien is an inmate of a public or private institution at the time of the commencement of the removal proceedings, expenses for the maintenance of the alien shall not be incurred by

the Government until he or she is taken into physical custody by the Service.

§ 236.3 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,