

# THE UNACCOMPANIED ALIEN CHILD PROTECTION ACT

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## HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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FEBRUARY 28, 2002

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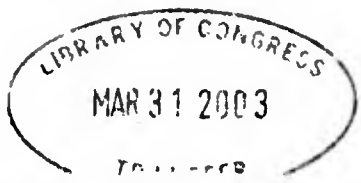


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# THE UNACCOMPANIED ALIEN CHILD PROTECTION ACT

THURSDAY, FEBRUARY 28, 2002

U.S. SENATE,  
SUBCOMMITTEE ON IMMIGRATION,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The Subcommittee met, pursuant to notice, at 2:30 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Edward M. Kennedy, chairman of the Subcommittee, presiding.

Present: Senators Kennedy, Feinstein, and Brownback

## OPENING STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Chairman KENNEDY. We will come to order.

Before we get into the matter at hand, I will just take a moment while our colleagues arrive here to welcome some special guests who are with us today. They are students from Mt. Rainier Elementary School, in Prince George's County, who have demonstrated a strong commitment for improving the treatment of unaccompanied minors in the country. They have brought with them a paper doll chain that they have created with children from over 20 States, containing 500 links to represent the 500 children who are detained by the INS each day.

So maybe they and their teacher would stand up.

[Applause.]

Chairman KENNEDY. We can do a little better than that. Why don't we open up a little line here and maybe they would all come up to the front of the hearing room. Come right up in front, if they can come right up in front. Come right up in front here so everybody can see you. Line up right along here, line up facing out. The second row can get down on your knees just down in front.

I am used to large families.

[Laughter.]

Chairman KENNEDY. And if we have a third row, they can come back here. Let's have Ms. Suess, their teacher, up here too.

We are joined by Senator Feinstein. We are intruding on our Subcommittee's time for a very worthwhile purpose. These children have created a paper doll chain with children from over 20 States.

Ms. Suess, we would like to have you just tell us quickly what this project is all about. Just sit down and speak through that mike right there.

Ms. SUESS. We are from a very special school in Prince George's County. We are one of ten schools nationwide that is a National

School of Character. We have also been chosen by the alternative dispute resolution group in Baltimore as a Model Peace School.

When we heard about this issue of unaccompanied children not being put into loving home care situations, we thought that this was a real concrete way to continue our dedication to the cause of peace for children worldwide.

Chairman KENNEDY. Well, I think you are to be commended, and all of the children.

Now, children, I want you to stretch that chain out so everybody can see it. And I would like to ask our audience to give them a round of applause.

[Applause.]

Chairman KENNEDY. We want to thank them for being here. If they want to sit down here, they can hear more, and I think it is OK with us. I think it is a better seat for them.

I don't know from their teacher what their timeframe is, but you give me the signal. They will be here for panel one.

Thank you very much. This is inspiring, and we want to thank all of the students. We just thank you for taking an interest in this, and we hope that you will continue to keep an interest in this and that you will keep an interest in the challenges of children both here at home, in Prince George's County, in Maryland, and also children in this country and children around the world. We want to thank you very much for doing this. It is a very, very important undertaking and we are very grateful to all of you for doing it.

It shows a lot of work, doing all of those cards. Someone took a lot of time to do it, and that is what you have done. And I think because of that and because of our hearing today, those children will be helped. So you ought to take some satisfaction from that, too, for really helping some people.

I want to first of all thank Senator Feinstein, who has been our driving force on this issue. She has had a longstanding commitment to this important issue. She has introduced the Unaccompanied Alien Child Protection Act. I am a proud and privileged co-sponsor with her, but she has been the important leader in the U.S. Senate and nationally on this issue and on this question.

I will just make a few comments here and put this issue in some framework.

For the past few years, increasing numbers of foreign-born children have come to the United States unaccompanied by their parents or legal guardians. Last year, more than 4,600 arrived, and their number continues to rise this year. Some flee human rights abuses. Others have been abused or abandoned by their parents or flee armed conflict or dangerous conditions in their home countries.

These children generally enter this country after traumatic experiences, often speak little or no English, and are rarely aware of their rights under U.S. law. Although they might be good candidates for asylum, they are not appointed counsel and are left to represent themselves in immigration court against experienced INS lawyers.

Their situation is exacerbated by the fact that when they arrive they are frequently detained. Many of these children languish for long periods of time in shelters that are designed for short-term

use without adequate access to translators, telephones, medical care, or other vital services.

But these are the fortunate ones. While INS has made an effort to increase the number of beds in foster homes and juvenile centers, more than 30 percent of unaccompanied children detained last year were held in juvenile jails, often with dangerous criminals, subject to shackling and strip searches.

The Unaccompanied Alien Child Protection Act will address many of the problems facing unaccompanied minors and will help bring U.S. treatment of unaccompanied alien children into line with international standards. Senator Feinstein will outline the details of the proposal.

Most of these children who come here are not criminals and should not be treated as such. We must limit the use of detention in these cases, and children who aren't a danger or a flight risk should be released to their families or appropriate caregivers.

I am pleased that Commissioner Ziglar is committed to addressing many of the problems facing unaccompanied minors, and I look forward to working with him on these issues. I also look forward to the testimony of our witnesses today and to working closely with my colleagues on this very important and needed legislation.

[The prepared statement of Senator Kennedy follows:]

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

I'm pleased to Chair this important hearing on the treatment of unaccompanied children arriving in the United States. I commend Senator Feinstein's long-standing long-standing commitment to this important issue, and her introduction of the Unaccompanied Alien Child Protection Act, of which I am a cosponsor.

I'm also pleased to welcome and recognize some special guests who are here with us today. They are students from Mt. Rainier Elementary School in Prince George's County and their teacher Mrs. Suess, who have demonstrated a strong commitment to improving the treatment of unaccompanied minors in this country. They've brought with them a paper doll chain that they created with children from over 20 states, containing 500 links to represent the 500 children who are detained by INS each day. Each paper doll carries a message of hope and justice, affirming values fundamental to who we are as Americans. I thank the students for their efforts and encourage them to continue to advocate for these important reforms.

For the past few years, increasing numbers of foreign-born children have come to the United States unaccompanied by their parents or legal guardians. Last year, more than 4,600 arrived, and the number continue to rise this year. Some flee human rights abuses, including forced recruitment as soldiers, servitude, child labor, prostitution or forced marriage. Other children escape to the U.S. because they have been abused or abandoned by their parents or care givers. Others flee armed conflict or other dangerous conditions in their home countries. They may be brought into the U.S. by a family friend or relative, by paid smugglers, or by traffickers involved in organized crime.

Regardless of how they arrive, these children generally enter this country after traumatic experiences, often speak little to no English, and are rarely aware of their rights under U.S. law. Although they might be good candidates for asylum, they aren't appointed counsel, and are left to represent themselves in immigration court against experienced INS trial lawyers.

Their situation is exacerbated by the fact that when they arrive, they're frequently detained. Many of these children languish for long periods of time in shelters that are designed for short term use, without adequate access to translators, telephones, or medical care and other vital services. But these are the fortunate ones. While INS has made an effort to increase the number of beds in foster-homes and special juvenile centers, more than 30% of unaccompanied children detained last year were held in juvenile jails, often with dangerous criminals, subject to handcuffing and shackling, and forced to wear prison uniforms.

The Unaccompanied Alien Child Protection Act will address many of the problems facing unaccompanied minors and will help bring U.S. treatment of unaccompanied alien children into line with international standards.

Essential to these efforts is providing appointed counsel and guardian ad litem to every unaccompanied undocumented child. Statistics demonstrate the asylum seekers are four times more likely to be granted asylum when represented by counsel. However, less than half of the important non-immigration cases, and they should be afforded the same rights in immigration proceedings. In addition, trained guardian ad litem can be critical in identifying the needs of children when language and cultural barriers prevent attorneys from communicating effectively with their child clients. This bill will require that these vulnerable children receive the representation they need to ensure that their rights are protected and the care they deserve to ensure their welfare is properly considered as they navigate through complicated immigration proceedings.

Part of the problem facing unaccompanied minors arises from INS' dual mission of enforcing immigration laws and providing services. Many convincingly argue that the competing responsibilities of prosecuting and caring for these children make impartial consideration of the children's best interests almost impossible. The Unaccompanied Children's bill addresses this issue by establishing the Office of Children's Services outside the INS. Working independently of the INS, this office will assume responsibility for custody and release decisions, and the oversight of juvenile foster care and shelter care facilities for undocumented children, thereby reducing the inherent conflict of interest that currently exists within INS.

I'm pleased that Commissioner Ziglar is committed to addressing the problems facing unaccompanied minors. While I'm concerned that this decision to establish an Office of Juvenile Affairs under INS jurisdiction may not go far enough, I look forward to working with him to ensure that these vulnerable children receive the support and protection they need.

Most of these children are not criminals and should not be treated as such. We must limit the use of detention in these cases and release children who aren't a danger or a flight risk to their families or appropriate care givers. This bill requires the release of the children whenever possible and supports the expanded use of shelters and foster care for placement of children who lack such care givers. Other needed protections in the bill include the establishment of detention standards and training for immigration personnel.

I look forward to the testimony of our witnesses today, and to working closely with my colleagues to pass this much needed legislation.

As I mentioned, our leader, Senator Feinstein, is here. Welcome, I thank her for all of her good work on this issue.

#### **STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Well, thanks very much, Senator Kennedy, and it was a sheer delight to me that you were the first person to be a cosponsor. Senator Durbin is on the bill, and a number of others. I would also like to mention that Senators Cantwell and Kohl are now cosponsors of this bill.

I can never remember numbers of bills, ladies and gentlemen, but if you want to help us with it, it is S. 121. And if you don't want to help us with it, forget the number.

[Laughter.]

Senator FEINSTEIN. But I would you to help us with it because I think we are going to have a little bit of trouble with this bill with INS. We will see. I suspect they don't want to do it, and I suspect they don't want a bill that tells them to do it. So they are probably going to say a number of different things and we will have a chance to answer that, but my view is INS has not done what it should have done up to this point. Therefore, my view is that the only way to handle this is to put it in legislation.

I had no idea of the depth of this problem until I happened to turn on my television set in California one night and I saw a young



Chinese girl—I think it was in Seattle, Washington—before a judge, crying. Her hands were shackled to her waist. She couldn't speak the language and she didn't know why she was there.

It really struck me, and then I began to look into this issue and what I learned was that our Government has a lot of power when it wants to have that power, and that there are at a given time maybe 500 children, but total throughout the year maybe 5,000 children. The Department does try to find a situation where they can live that is appropriate for their circumstances, but very often they end up in jails, when they have done nothing wrong, and in detention facilities when they have done nothing wrong.

I want to give you one other example which sort of stirred me on. I read in the newspaper that there was a young baby from Thailand who arrived at Los Angeles Airport, and that baby had been sold by his mother to human traffickers and the traffickers used the baby to go back and forth across the ocean pretending that that baby was theirs, when, in fact, the baby wasn't theirs.

Well, the INS got custody of the young boy. They discovered he was being used as a decoy. The youngster suffered from dehydration, from malnutrition. He was vomiting, he had an ear infection, he was running a temperature.

In its notice of intent to deny this baby's asylum claim, which was filed by others—that was March 14, 2001—the INS conceded that the events surrounding his situation, and I quote, "indicate neglect that reached a life-threatening level." Nonetheless, the INS sought the child's immediate deportation without further investigating the matter.

It was only after a number of congressional offices and my office really got involved that the INS agreed to allow the child to remain in the United States so that he could obtain proper medical attention. Then INS sought to send him back to Thailand to his grandmother, who had a serious criminal drug-trafficking conviction that carried a sentence of 25 years.

Now, according to INS, it is the standard policy for an unaccompanied child to be placed with the nearest possible relative, who will then make the necessary decisions regarding the child's welfare. But in this situation, these relatives were the same ones who either trafficked him or engaged in criminal behavior that is clearly detrimental to the baby's interests.

Fortunately, the circumstances of this case were sufficient to warrant his protection under something called the Trafficking Victims Protection Act, which permits a minor to remain in the United States if there is risk to that child.

Now, INS denied the youngster's application for such protection, so I wrote a letter to the Attorney General and asked for his assistance. Through him and his intervention, he was actually granted humanitarian parole, and there was a family here that was a good family that really wanted to take care of this baby.

The Attorney General also instructed the INS to accept and adjudicate this child's application for something called a T visa, which would grant him the ability to remain in the United States for 3 years, given his history as a trafficking victim. Then earlier this year, the Attorney General announced that this baby was the first recipient ever of a so-called T visa.

So I am very pleased with the end result, but I was really concerned because it was such an unnecessary ordeal. On the face of it, it sounded so clear that things shouldn't have worked out the way they worked out.

We have put together a bill which essentially says that there should be an Office of Children's Services within the INS, and that that office should be responsible to do a couple of things: one, to appoint somebody who is called a guardian ad litem. Now, that is not an attorney, but that is someone who comes in—and the INS would set this program up and would determine the credentials for the individual, and there are a number of pro bono efforts that are willing to fill in here—who can talk to the child in their language, can get the facts, and can be with the child during that child's period of detention, which can be a long time.

Second, that child, when they go before a judge, would have some legal representation. Again, there are non-profit organizations that are willing to provide legal representation for the child.

Any placement of the child, when it is necessary to keep them in some form of—well, I don't like to use the word "custody," but in some holding facility—that where that child is placed is appropriate for the circumstances of the case. Obviously, if the child has committed a crime or the minor has committed a crime, that is one thing. If the child hasn't, but is like an Elian Gonzalez, let's say, because everybody knows of that case, that child shouldn't be in a detention facility.

I know INS is going to say they don't want the bill, and I am going to say back to them, if you don't want the bill, why haven't you done something about it before this point? I know you have tried, but the point is that the trials haven't really produced the results that they should have.

Thank you, Senator, very much.

Chairman KENNEDY. Thank you very much.

Our first panel of witnesses has worked on these issues on a daily basis and we look forward to hearing their comments.

Michael Creppy is currently the Chief Immigration Judge of the INS. He has served in this position since 1994. Prior to that, the judge worked for 13 years in numerous positions with the INS. As Chief Immigration Judge, Judge Creppy established operating policies for the immigration courts and overseas policy implementation in each of these courts. I know he is deeply committed to ensuring that children receive fair immigration hearings, and we look forward to his testimony.

Stuart Anderson is no stranger to the Committee, having worked for more than 4 years as immigration policy director first for Senator Abraham and later for Senator Brownback. He has extensive experience in immigration law and policy, and a distinguished record as a fair and effective advocate.

As a result, Commissioner Ziglar lured him away from the Subcommittee to become his Executive Associate Commissioner for Policy and Planning. During his tenure with our Committee, he worked well with members and staff on both sides of the aisle, and I am pleased that he brings these talents to his new position at INS.

I would like to thank both of you for being here today and look forward to your counsel and testimony.

Judge Creppy, we will hear from you first, please.

**STATEMENT OF MICHAEL J. CREPPY, CHIEF IMMIGRATION JUDGE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, FALLS CHURCH, VIRGINIA**

Judge CREPPY. Mr. Chairman and members of the Subcommittee, I thank you for inviting me to testify on the Unaccompanied Alien Child Protection Act. I am sensitive to the way our Nation responds to this vulnerable population and I am pleased to have the opportunity to share my thoughts on S. 121.

The 223 immigration judges across the country play a critical but narrow role in handling unaccompanied juveniles. Because of this, my comments are focused on the part of the process where immigration judges are authorized to act.

The Executive Office for Immigration Review has several initiatives on juvenile aliens and proceedings. When I refer to an unaccompanied juvenile, I will mean those juveniles under the age of 18 who appear before an immigration judge without a parent or legal guardian. Let me first tell you about current initiatives to make the courts more sensitive to special issues unique to juveniles.

In the summer of 2000, the immigration court established a pilot program in Phoenix consisting of special juvenile dockets. The purpose was to provide access to juveniles for pro bono attorneys and to consolidate all juvenile cases before one judge for consistency.

I was so pleased with its success that I have expanded the program to Harlingen, Texas; York, Pennsylvania; Los Angeles, California; and San Diego and San Francisco, California. Moreover, we are working with the Executive Office for Immigration Review's pro bono coordinator to explore other programs relating to juveniles.

Let me assure the Committee that all aliens appearing before an immigration court, including juveniles, are given due process of law. Immigration judges are committed to providing fair hearings for all aliens, not just juveniles, and I encourage the immigration judges to do all that is required to ensure that this occurs. For juveniles, this means that an immigration judge may interview the juvenile in his or her chambers, or grant continuances to ensure that the juvenile is given adequate opportunity to obtain representation.

Now, I would like to address five aspects of Senate 121 that involve the immigration judges. First, I will address the definition of "child"; second, the legal counsel; third, the guardian ad litem; fourth, interpreters; and, fifth, the best interests of the child.

My first topic addresses a technical but critical issue. The term "child," as defined in the Immigration and Nationality Act, is at odds with Senate 121's definition. The difference will cause confusion. Instead, I suggest using the term "unaccompanied juvenile alien," since the regulatory definition of "juvenile" is consistent with Senate 121.

My second topic is on the legal counsel. Immigration judges know how to be fair even when only one side is represented. However, when you combine the complexity of immigration laws with the

varying maturity levels of the juveniles, it provides a greater challenge to judges to ensure that juveniles understand the nature of such proceedings. If counsel was assured, the efficiency of the hearing would be greatly improved. Yet, before such a program can be established, there are serious issues that must be addressed which Senate 121 does not answer.

For example, first is the question of the program structure. Factors such as oversight, administration, eligibility, and selection of attorneys need to be fully explored. Senate 121 also leaves a question of who will be responsible for giving the counsel direction. For example, to whom will the counsel be answerable? Who will have authority to discharge the attorney?

This leads me to my third topic, the guardian ad litem. In cases where a juvenile does not have the capacity to make informed decisions, the immigration court process would be aided by the presence of an independent adult who can make such informed recommendations. A guardian ad litem could be an active participant in deciding legal issues relating to the juvenile.

However, a guardian may not be necessarily desirable in all cases. Yet, it is mandated by Senate 121. I support the concept of a guardian ad litem in limited circumstances and I have begun to explore the viability of this option for immigration courts, including whether we have the organizational expertise to fully integrate such a program into our court system.

My fourth topic relates to interpreters. Senate 121 does not contain a provision for the appointment of interpreters. If counsel and guardians are provided, it is necessary to make provisions for ensuring that the juveniles are able to obtain access to these services in a meaningful fashion.

Finally, Senate 121 requires that the best interests of the child shall be paramount, and that this interest should not trump any provision of the Immigration and Nationality Act or its regulations. As it currently is drafted, it may do so.

In conclusion, the Unaccompanied Alien Child Protection Act represents an attempt to comprehensively address a number of critical issues. However, it raises many unanswered questions. I look forward to working with the members of the Committee as this legislation progresses and I am happy at this time to respond to any questions that you might have.

[The prepared statement of Judge Creppy follows:]

STATEMENT OF MICHAEL J. CREPPY, CHIEF IMMIGRATION JUDGE, EXECUTIVE OFFICE OF IMMIGRATION REVIEW, FALLS CHURCH, VIRGINIA

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to testify on the Unaccompanied Alien Child Protection Act of 2001. Like other witnesses here today, I am sensitive to the way our nation responds to this vulnerable population. I applaud you and the members of your staffs for the interest you have shown in this issue, and for the encouragement you have given to those who confront it on a daily basis.

I am very pleased to have the opportunity to share my thoughts on S. 121. The 223 Immigration Judges across the country play a critical—but essentially narrow—role in the handling of unaccompanied juvenile aliens. We do not apprehend the juveniles at the border or the airport, nor do we provide juveniles with shelter when they are taken into custody. Similarly, the Immigration Judges do not manage the details of their return to their native country, when their stay in the United States is concluded. Rather, these are responsibilities of the Immigration and Naturalization Service (INS).

For those topics, I defer to the other witnesses appearing today. Instead, my comments before your Committee are focused on the part of the process where Congress and the Attorney General have authorized Immigration Judges to act—that of providing aliens with immigration hearings in Immigration Court.

Let me first tell you about current initiatives which EOIR has established to make the Courts more sensitive to the special issues that are unique to juvenile aliens in proceedings. When I refer to “unaccompanied juvenile” for the purposes of my testimony, I mean those juvenile aliens under the age of 18 who appear before an Immigration Judge without a parent or legal guardian.

#### IMMIGRATION COURT INITIATIVES

Three years ago, in 1999, I began meeting with representatives of INS and non-governmental organizations (NGOs) in Phoenix, Arizona, in an effort to develop a program that would deal exclusively with unaccompanied, detained juveniles in immigration proceedings. After much work, we established a Pilot Program in Phoenix in the summer of 2000. Each of the participants in the Phoenix Pilot Program has a key role—from the INS identifying juveniles, to the NGOs assisting the juveniles and giving them “legal rights presentations.” I established special “juvenile” dockets and assigned one Immigration Judge to preside over all juvenile cases. The purpose of such dockets was to provide access to juveniles for pro-bono attorneys and to consolidate all juvenile cases before one Immigration Judge for consistency purposes. We also have developed, and I have now mandated, the use of the “J” code to better track any case involving juveniles. Currently our data system does not track aliens by date of birth. However, once we update our system, we will have the ability to do so.

Although the Pilot Program is still in its infancy, I was so pleased with its success that I have expanded the “juvenile docket” program, with the cooperation of INS, to Harlingen, Texas; York, Pennsylvania; Los Angeles, San Diego and San Francisco, California. Moreover, we are working with the EOIR pro-bono coordinator to explore other programs relating to juveniles.

All Immigration Judges have received training and materials to assist them in dealing with juveniles in their court rooms. I provide, on a weekly, and at times on a daily, basis, information on case law, regulations and other legal matters that affect immigration law, including issues dealing with juveniles. Further, Immigration Judges have been provided books, guidelines and cultural sensitivity training pertaining to juvenile issues. Finally, at the 1998 and 1999 Immigration Judges’ conferences, Judges received live lectures from experts in the juvenile area and they will again receive such instruction this June.

Let me assure the Subcommittee that all aliens, including juveniles, that pass through our Immigration Court system are given all the due process that the law accords them. Immigration Judges are committed to provide fair hearings for all, not just juveniles, and I encourage the Immigration Judges to do all that is required to ensure that this occurs. For juveniles, this means that an Immigration Judge may interview the juvenile in his or her chambers, or grant continuances to ensure that the juvenile is given adequate opportunity to obtain representation.

Now I would like to address those aspects of S. 121 that involve Immigration Judges. Specifically, permit me to briefly address five topics that are of immediate relevance to the immigration hearings we provide:

(1) the definition of eligible aliens; (2) second, access to legal counsel; (3) guardians ad litem; (4) interpreters; and (5) the “best interest of the child” standard.

#### S. 121

##### 1. DEFINITION OF ELIGIBLE ALIENS

My first topic addresses a technical, but critical, issue: the definition of “unaccompanied alien child”. The term “child” is currently defined in Section 101(b)(1) of the Immigration and Nationality Act, in part, as “an unmarried person under twenty-one years of age. . . .” However, S. 121 defines “unaccompanied alien child”, in part, as one who “has not yet attained the age of 18. . . .” This difference with respect to the age limitation is inconsistent with current law and will cause confusion.

Instead, I suggest using the term “unaccompanied alien juvenile” in place of the phrase “unaccompanied alien child”, since the regulatory definition of “juvenile” is an alien under 18 years of age. Again, I reiterate that for purposes of my testimony, when I refer to

“unaccompanied alien juvenile”, I mean those juvenile aliens under the age of 18 who appear before an Immigration Judge without a parent or legal guardian.

## 2. APPOINTMENT OF LEGAL COUNSEL AT GOVERNMENT EXPENSE

Most Immigration Judges favor increased representation by legal counsel. Every day our Judges conduct cases involving respondents who appear pro se. The Judges know how to be fair, even when only one side to the proceeding is represented by counsel. However, when you combine the complexity of the immigration laws with the varying degrees of maturity of juveniles, it provides a greater challenge to Judges to ensure that the proceedings are fair, and that the juvenile understands the serious nature of such proceedings. If the Judge knew that competent counsel were assured for every juvenile respondent, the efficiency of the hearing would be greatly improved. No longer would there be a preoccupation with procedural issues such as whether pro bono counsel can be located, or whether someone can assist the juvenile in completing the relief application.

Yet before a program providing legal counsel for juveniles can be established, there are some serious issues that must be addressed, questions which S. 121, in its current form, does not answer.

First is the question of how such program would be structured. Factors such as oversight, administration, eligibility and selection of attorneys to serve as juvenile counsel, need to be fully evaluated and developed. These are the types of questions that S. 121 does not answer.

S. 121 also leaves unanswered the question of who will be responsible for giving the counsel direction. For example, to whom will the appointed counsel be answerable—the juvenile's parent, the Immigration Judge, or some other entity? Who will have authority to discharge the attorney if he or she is not competent? The counsel must truly represent the interests of the juvenile—and not those of some third party. I am sure the Subcommittee is familiar with accounts of lawyers who appear to be in league with the smugglers who traffic in human cargo. Several of our Judges have voiced concerns about attorneys whose interests do not seem to be truly on behalf of the juvenile, or with whom the juvenile appears to have little, if any, contact.

This leads me to my third topic, the guardian *ad litem*.

## 3. GUARDIANS AD LITEM

In some cases, a juvenile may be more than just an alien in the United States—the juvenile may also be unaccompanied, with no adult to stand in the place of the absent parent. While an attorney can provide advice to the juvenile about his or her legal case—such as whether or not the juvenile is eligible for relief from removal—that advice is different from advice as to whether or not the juvenile should choose to try to stay in the U.S. or return to his or her family, a decision that a parent would be better suited to make. It is inappropriate for a counsel—even a talented and dedicated one—to make these decisions.

In cases where a juvenile does not have the capacity to make informed decisions on his or her own behalf, I believe that the Immigration Court process would be aided by the presence of an independent adult who can make informed recommendations for the juvenile respondent. A guardian *ad litem* or other adult acting in a similar capacity could be an active participant in deciding whether the juvenile should return to his or her native country or apply for relief from removal. Keep in mind, however, that a guardian may not be necessarily desirable in all cases—yet it is mandated in S. 121.

I support the concept of a guardian *ad litem* for a juvenile alien in limited circumstances. I have begun to explore the viability of this option, including whether Immigration Judges have the authorization or the organizational expertise to fully implement such a program. There are a series of issues that have not been fully explored, such as criteria that would render an individual eligible to be a guardian and the purview of such a guardian over an unaccompanied juvenile.

## 4. INTERPRETERS

Current EOIR regulations allow for the hiring of interpreters to translate proceedings conducted before Immigration Judges. Appointed guardians *ad litem* and counsel will also need interpreters to speak to client juveniles outside of the proceeding before the Immigration Judge. Yet, S. 121 as drafted does not contain provisions for the appointment of interpreters. If such professional services are to be made available to unaccompanied juvenile aliens, it is necessary to make some provision for ensuring that such juveniles are able to obtain access to these services in a meaningful fashion.

## 5. "BEST INTERESTS OF THE CHILD"

Finally, Section 2 of S. 121 declares that the "best interest of the child" shall be held "paramount" when making decisions regarding an unaccompanied juvenile. While no one would argue with such a standard as an important factor in the context of family law, the legislation should not permit any inference that the "best interest of the child" standard trumps any specific provision of the Immigration and Nationality Act or its implementing regulations. This provision, as currently drafted, would undermine the Immigration Court process by prompting endless arguments about whether specific provisions of the INA do or do not promote the "best interest" of the juvenile respondent in proceedings.

## CONCLUSION

In conclusion, for the past several years the Immigration Judges have worked with children's rights advocates and the INS to identify concrete ways to improve our efforts on behalf of unaccompanied juveniles. The Unaccompanied Alien Child Protection Act of 2001 represents an attempt to deal comprehensively with a number of critical issues. However, it raises as many questions as it provides answers. In particular, the appointment of guardians ad litem and legal counsel for unaccompanied juvenile aliens would constitute significant changes to the current immigration system. We would, however, be pleased to work with you to define in greater detail the roles of the guardian ad litem and legal counsel, should you elect to pursue these concepts. It would be important, for example, to think through all potential issues that might arise in connection with their appointment and service. Moreover, because of the potential magnitude of the changes under consideration, the Department suggests that any program that may ultimately be adopted be tested and evaluated on a limited, "pilot program" basis prior to implementation on a broader scale.

Mr. Chairman, I look forward to working with the members of the Subcommittee as this legislation progresses. In the meantime, I am happy to respond to any question you might have for me.

Chairman KENNEDY. Thank you very much.

Senator BROWNBACK IS HERE. I would welcome any opening comments that he would like to make before we hear from the next witness.

**STATEMENT OF HON. SAM BROWNBACK, A U.S. SENATOR  
FROM THE STATE OF KANSAS**

Senator BROWNBACK. Thank you very much, Mr. Chairman. I appreciate that, and I also appreciate all you have contributed to this legislative body.

There was a tribute to Senator Kennedy—you may or may not have seen that—that took place this week upon his reaching of a certain milestone of age, which I won't repeat in the room.

Chairman KENNEDY. That is right.

Senator BROWNBACK. But the tribute was well deserved.

Chairman KENNEDY. Thank you.

Senator BROWNBACK. He has been quite a contributor to the legislative body in all the years of his service here.

I have a statement I would like to put into the record, and I will just state briefly about Stuart Anderson before he speaks, Stuart served on the staff of this Committee for both Spence Abraham and myself before he went to the executive branch. So I am looking forward to his comments, as well as the other witnesses. He is very skilled and highly regarded in this field, and I look forward to that.

I also thank the children for being here and recognizing the other children that are in some very difficult circumstances. Senator Feinstein, while I was still chairing the Subcommittee, had brought this issue up and we had agreed to schedule a hearing to recognize what is taking place with the children who are in these difficult

circumstances in incarceration. I am glad the other children have recognized that as well.

Mr. Chairman, I look forward to the hearing.

Chairman KENNEDY. Thank you for your kind comments. We will hear from Mr. Anderson.

**STATEMENT OF STUART ANDERSON, EXECUTIVE ASSOCIATE COMMISSIONER, UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, WASHINGTON, D.C.**

Mr. ANDERSON. Thank you, Mr. Chairman. Thank you very much for your kind introduction. Senator Brownback, Senator Feinstein, thank you. It is a special privilege to get a chance to testify here today.

Commissioner Ziglar very much wanted to be here. Unfortunately, he is in Canada working on border security issues at the moment.

I would like to introduce some of the people at INS who work with juveniles—Tony Tangemin, Dave Enterella, Mark Matisse, and John Pogash. None of them brought any art work with them, which I reprimanded them for. These are good people, Mr. Chairman, many with children of their own, and they care deeply that the juveniles that come into INS custody are treated humanely and justly.

Mr. Chairman, I am not here to defend every INS action or policy, past or present, in connection with juveniles. I went to INS with Commissioner Ziglar about 7 months ago, and I can assure you that the commissioner has no vested interest in the status quo. That is why he announced a reform agenda on juvenile affairs. The hope is that we can work together with the Committee to combine the best ideas to develop the best policies in this area.

As part of that reform agenda, within days of his confirmation, the commissioner asked me to bring together key components of INS and to establish an initiative to improve the treatment of juveniles in INS custody. We reviewed policies, and as part of that we met extensively with advocates on the outside. We adopted many of their ideas, not all; others are still under discussion. In addition, just this week we met with majority and minority Subcommittee staff to further continue the dialog on this issue.

In his speech at the National Immigration Forum on February 1, the commissioner announced key parts of the juvenile policy initiative. First, he talked about the creation of an Office of Juvenile Affairs that will report directly to the commissioner. Having an office reporting directly to the commissioner will ensure that it will receive the visibility, attention, resources, and support that that office needs. The director of juvenile affairs will have the authority necessary to guide the placement decisions of juveniles within the agency.

Second, whereas today we have a number of individuals at INS who work with juveniles as part of multiple responsibilities, INS will instead provide for dedicated case management officers who will work exclusively on juvenile issues and help ensure that the child has an advocate within the system.

Third, while S. 121 would codify the Flores settlement, the INS is doing so through regulations. Fourth, the INS will review, in co-



operation with the Public Health Service, current procedures for determining age and examining any improvements that may be able to be made in that area. My written testimony includes many other parts of the initiative.

Mr. Chairman, I think it is important to keep in mind the complexity of this issue and the need to maintain a degree of flexibility. We have to have policies that take into account the 17-year-old who is caught coming across the border, the 16-year-old who may have committed a crime and the police turn that individual over to INS custody, or the 15-year-old young girl who is a victim of trafficking, or the 5- or 10-year-old boy or girl who is abandoned at an airport by someone who had claimed to be a relative. Those are all very real situations and they all require very different responses from the Federal Government.

While media attention often focuses on very young children who come into INS custody, of the 5,000-plus juveniles in custody in a year, the majority are 16- or 17-year-olds and they are overwhelmingly male, and the median stay in INS custody is approximately 15 days. The vast majority, over 80 percent, live in residential care facilities or foster homes, not in secure detention.

But it is a daily dilemma. Releasing a juvenile out of custody may mean that they never show for their immigration hearing or, more worrisome, they may suffer harm at the hands of smugglers or others who may seek to do them harm.

INS supports the principles underlying S. 121, and I would like to acknowledge Senator Feinstein's leadership and the hard work of herself and her staff that they have committed to this important issue. A number of the issues raised in the bill can likely be addressed more swiftly and with more flexibility through administrative and regulatory action. However, we want to work very closely with the Subcommittee on legislative changes, and combine the two to see if we can get the best combination of policies.

For example, the Immigration and Nationality Act prohibits the Government from paying for attorneys to counsel unaccompanied juveniles who are in removal proceedings. While the Department of Justice supports the principle of providing counsel for these juveniles, appropriations would be necessary and we will need to have sufficient safeguards on the fees that can be charged in this area.

The adoption of a guardian ad litem program which the bill calls for may have value as well. There is great uncertainty about how a guardian ad litem would work in Federal immigration proceedings. Questions arise such as the ability to do home assessments for juveniles thousands of miles from home and the relationship between the guardian ad litem and an attorney representing the juvenile in legal proceedings. Therefore, it may be most prudent to look at well-crafted pilot projects in this area, with real deadlines, and well-structured pilot projects so we can all determine what the best policy is in this area.

We support the principles of S. 121. While we have some areas of concern, its intentions are indeed noble, and we look forward to the opportunity to work closely with the Subcommittee to address the issues.

Thank you.

[The prepared statement of Mr. Anderson follows:]

STATEMENT OF ANDERSON, STUART, EXECUTIVE ASSOCIATE COMMISSIONER, UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, WASHINGTON, D.C.

Mr. Chairman and Members of the Subcommittee:

On behalf of Commissioner Ziglar, thank you for the opportunity to appear before you to discuss an issue that is one of the top priorities within the INS today: the treatment of unaccompanied juveniles who have been entrusted into our care and custody. The INS would like to acknowledge Senator Feinstein's leadership on this issue and the hard work that she and her staff have committed to this issue. We look forward to working with her and all the Members of the Subcommittee.

Juvenile immigration policy is complex and requires assessing our treatment of juveniles within the context of broader national and international obligations. It requires recognizing the special obligations imposed on any government when it takes juveniles into its custody, regardless of their nationality or legal status. The INS is supportive of the principles underlying S. 121. We believe that a number of the issues relating to care and custody raised in the bill can likely be addressed more swiftly and with greater flexibility through administrative and regulatory changes, some of which we have begun to put into place. We want to work with the Subcommittee on legislative changes that would address other policy issues.

#### INS INITIATIVES

Since the 1997 settlement of litigation in *Flores v. Rcnno*, 507 U.S. 292 (1993), the INS has made great strides in improving custody conditions for juveniles. But we can do more. We can make changes that acknowledge that juveniles are a particularly vulnerable population whose needs are not limited solely to questions of custody. To that end, the Commissioner recently announced a new initiative on juvenile policy. In his speech to the National Immigration Forum on February 1st, the Commissioner committed the INS to a program that will comprehensively address juvenile issues. He articulated principles that should guide our discussions as we work together to shape appropriate responses to children's issues.

First, the initiative adheres to the fundamental principle that it is generally in the best interests of a juvenile to be reunited with his or her parents, either in the United States or abroad, absent evidence that the juvenile will suffer harm. This will not be true in all cases, as some unaccompanied juveniles may be in need of U.S. protection from serious harm upon return. Absent evidence of such a threat, however, we should be working toward a system that quickly reunites children with their parents in the United States or abroad, or that quickly determines that reunification is not possible.

Second, juveniles are a vulnerable population with different needs than adults. While this simple statement should be self-evident, many of our immigration laws, practices and procedures do not significantly distinguish between juveniles and adults. The *Flores* settlement agreement established a baseline to distinguish between adults and juveniles for custody determinations and we plan to standardize that distinction through regulation.

Third, because the INS encounters juveniles under every circumstance imaginable—from the child who is a victim of trafficking to the teenager with a violent criminal history—the policies relating to juveniles must be flexible enough to permit the INS to take the appropriate steps in an individual case. While this is particularly true in custody matters, flexibility should also guide our thinking with respect to issues ranging from a child's ability to consent or speak on his own behalf to determining whether a particular case requires the initiation of removal proceedings.

Fourth, juvenile issues cannot be addressed in isolation. We must examine our treatment of children within the total immigration process—from the moment we first encounter that child through completion of immigration proceedings—to understand how best to address children's issues within the immigration system.

Building on these principles the INS is committed to:

- Minimizing the need for detention of any kind for unaccompanied minors.
- Seeking alternatives to detention whenever possible.
- Ensuring that juveniles have access to apply for all benefits and protections for which they may be eligible.
- Exploring additional avenues for the expedient and humane return of juveniles to parents or guardians in all appropriate cases.

The INS is taking the following steps to fulfill these commitments.

- We plan to establish an Office of Juvenile Affairs that reports directly to the Commissioner. The director of Juvenile Affairs will have the authority necessary to guide placement decisions and will continue to seek alternatives to custody.

- S. 121 would codify the *Flores* settlement. The INS is already doing so through administrative action. The INS has been operating under procedures implementing the agreement and a proposed rule was published in 1998. On January 14th, 2002, the INS issued a notice extending the public comment period in order to give the public an opportunity to discuss custody and care issues with the benefit of three more years of experience. After receiving these comments, we intend to make the publication of the final rule a priority. Should the final rule not be in place by the time of the expiration of the settlement, we have agreed that the *Flores* settlement shall remain in force until 45 days after the final rule is published.
- The Commissioner directed his staff to implement as quickly as possible the recommendations of the Department of Justice Office of the Inspector General regarding improvements to general policy and procedures. While this review indicated that the INS has made significant progress since signing the *Flores* agreement, the report noted several areas where improvement is needed. These include the need to articulate juvenile standards similar to those issued for adult detention, a variety of operational and custody management policies, and increased support for the field staff working with unaccompanied juveniles. The Commissioner has directed his staff to use the review and recommendations in all of our future planning and policy updates.
- The INS will review and develop field guidance that identifies ways in which parole and withdrawals, in appropriate cases, may be used as alternatives to placing unaccompanied juveniles in proceedings.
- The INS will work with Congress, other agencies, and the public to develop comprehensive and creative strategies for addressing the wide range of juvenile issues in immigration policy. The Office of Juvenile Affairs will hold regular meetings with the public on the new initiatives the INS is undertaking.

I have already noted that the INS is committed both to minimizing the need for the secure detention of unaccompanied juveniles and continuing its successful practices of seeking out alternatives to detention. These commitments involve the long-term goal of strengthening the Office of Juvenile Affairs in its new location within the Commissioner's office. The INS has dedicated staff working on issues and activities related to juveniles in service custody. These men and women have many years of experience in child welfare, juvenile justice, victim's issues, residential services, alternatives to detention, and the management of grants designed to provide appropriate services to juveniles. The establishment of an office reporting directly to the Commissioner will guarantee consistency, accountability, and integrity in the agency's treatment of juveniles.

As part of our initiative on juvenile policy, the INS will also continue work towards:

- Development of alternatives to secure detention. While the INS has made substantial progress in developing shelter care, it is critical that the full array of alternatives, from intake assessment and placement tools to non-secure alternatives to detention, is considered. If the INS is to be successful in this area, we must develop the infrastructure to support these services, create opportunities to adopt the best services available and allocate the necessary resources to carry out our mission.
- Reviewing, in cooperation with the Public Health Service, current procedures for determining age. Currently INS uses dental exams and wrist x-rays to determine the age of an individual in our custody or whose age is in question due to false reporting, language, or other circumstances. A review of the effectiveness of this approach, as well as a search for other methodologies, will be conducted in consultation with the Public Health Service. Refinement of age determination procedures can better ensure that those under the age of 18 are treated appropriately, and ensure that we are able to protect juveniles in our custody from adults falsely representing their age.
- Studying the efficacy of expanding the home placement assessment model currently in place for certain groups of children at risk from smugglers or traffickers as a placement tool.
- Making further revisions to existing Juvenile Detention Standards. As indicated earlier, we will review and update existing policies including the use of restraints, solitary confinement, and strip/pat searches and issue additional training and guidance as necessary. The INS will continue and enhance its efforts to solicit input from advocacy groups and experts to de-

velop standard operating procedures for juvenile facilities, similar to the approach adopted in the development of standards for adult facilities.

- Continuing to improve accountability and quality of service within the INS including: the integration of the juvenile management information system that was developed for the *Flores* agreement into the agency data platform; updating 'Juvenile Aliens: A Special Population, Juvenile Protocol Manual, Juvenile Detention & Shelter Care Programs' on all related practices, policies, and procedures to serve as standard operating procedures for all of INS; the development of a training plan for all INS staff that work with or are responsible for juveniles; and the development of a strategic planning process that includes input from the broad immigration community and the public.

These commitments represent an immediate response to many of the problems and concerns that have come to light regarding the detention of juveniles and their access to benefits and protections. But the INS vision for children's issues does not end with short-term solutions. We are committed to providing the Office of Juvenile Affairs the resources and support it needs, within the INS, to ensure that all juveniles are treated with care, dignity, and compassion. Both the INS and the Executive Office for Immigration Review have worked together to discuss and develop alternative approaches to adjudicating children's claims. We invite members of Congress and the advocacy community to participate with the Commissioner in discussions of how best to serve the interests of juveniles in our care.

#### S. 121

Allow me to address more of the specific provisions of S. 121. The Immigration and Nationality Act prohibits the government from paying for attorneys to counsel unaccompanied juveniles in removal proceedings. The Department of Justice supports the principle of providing counsel for these juveniles.<sup>1</sup>

The bill also calls for the adoption of a guardian ad litem program, which may have value. However, great uncertainty remains about how a guardian ad litem would operate in practice. Questions arise, such as the ability to do home assessments for juveniles thousands of miles from home, and the relationship between a guardian ad litem and an attorney representing the juvenile in legal proceedings. Therefore, it may be the most prudent course to look at well-crafted pilot projects, with real deadlines, so we can all examine what policy makes the most sense in this area.

INS asylum regulations acknowledge that unaccompanied minors may be exempt from the one-year filing deadline for asylum claims. In addition, the INS has already recognized the value of adult support in the context of asylum office interviews. Our 'Guidelines on Children's Asylum Claims' encourage the presence of a trusted adult—other than the child's attorney—during an asylum interview to assist the child in understanding the process and to feel comfortable during the interview. While S.121 goes far beyond the role envisioned in the Children's Guidelines, the Department believes that this is an issue where we can find common ground and can work with the committee to further refine the concept. In the interim, the INS will update and revise the Children's Guidelines to reflect new developments in law and policy and to provide supplemental training following publication of the Guidelines.

S. 121 also provides for placement of an Office of Children's Services within the Department of Justice. Given the fact the duties of this office will be those for which the INS has long had primary responsibility, it is not apparent that creating a separate office that attempt to replicate INS functions with respect to unaccompanied minors offers any advantage that would outweigh the additional costs and complexities inherent in taking such action.

#### INS PROGRAMS

The INS is responsible for the custody and placement of unaccompanied juveniles in its care—although we "detain" these juveniles, the vast majority of them are placed in residential care facilities or foster homes. Nonetheless, the INS retains ultimate responsibility for their custody and treatment.

There are a wide range of placement programs which the INS utilizes. Of the 5,385 juveniles in INS custody during FY 2001, almost 50%, or 2,417 juveniles were

<sup>1</sup> It should be noted that the State Department has advised that it has concerns with this legislation as drafted, notably, its effect on U.S. policies in the area of international child abductions and on the rights of parents outside the United States.

eventually placed with a parent or relative. For all juveniles, the average length of stay was 43.5 days, while the median length of stay was 15 days. The majority of these juveniles were male, and their average age was between 15 and 17 years. Although these juveniles came from around the world, their countries of origin were most frequently, in rank order, El Salvador, Honduras, Guatemala, Mexico, and Colombia.

The task of managing a program to provide special care and treatment for juveniles ranging in age from infancy to near-adulthood is difficult, particularly when one takes into account the cultural and language barriers that must be overcome. The task is made even more complex by the need to protect many of these children from smugglers and traffickers, or others who would prey upon and take advantage of vulnerable children.

INS staff have worked hard to meet the needs of these juveniles and to develop significant programs that limit the number of juveniles who are ever placed in a secure detention facility. In just four years from FY 1997 to FY 2001 the number of available beds in non-secure facilities has increased from 130 to almost 500. The INS has opened a family shelter care facility at the Berks County Youth Center, near Philadelphia, and has plans to establish similar family shelter care facilities in the Central and Western regions.

The INS has made significant strides in its shelter care programs. We currently administer just over \$18 million through 11 grant-funded programs that provide shelter care for unaccompanied juveniles. These programs are located in Florida, Texas, California, Illinois, and Georgia. They have a combined capacity of 369 beds and range in size from 4 to 70 placements. These facilities are run by profit and nonprofit agencies, including several faith-based organizations, all of which have special expertise in migrant and refugee issues. We will continue to review and expand these alternatives.

The INS supports the principles of S. 121. While we have some specific areas of concern with S. 121, we look forward to the opportunity to work with the Subcommittee to address these issues.

I look forward to answering any questions.

Chairman KENNEDY. Well, thank you both very much.

I was interested, Judge Creppy, if you could just describe the situation. You have given us a good assessment about the concerns that you have with the legislation, but what is really happening out there? What do you find is really happening? How much of a problem is this? How much of a concern is this to you and to your colleagues?

Judge CREPPY. Well, I think it is a serious concern in that our job primarily is to ensure that everyone gets a fair hearing. In doing so, if it means continuing the case two, three, four, five times until we get somebody that will represent a juvenile, that is what an immigration judge is going to do.

As an example, in Phoenix we had the private bar there agree to take juvenile cases pro bono, but they did it for a number of months and the burn-out, taking one case after the other—you start to whittle down those who have the willingness to do it.

So I think juveniles having representation is a very key component, and I think that this bill is right on point in terms of recognizing, under certain circumstances, that representation at Government expense may be needed to ensure that an individual gets a fair hearing. So we support the bill in that vein.

I think the guardian ad litem is another key component because I believe that the attorney and the guardian ad litem play different roles. I think people often confuse the roles of the guardian ad litem with that of the attorney. The guardian ad litem is supposed to act as the parent for the child, not as the attorney for the child. So I think once again that Senate 121 is right on point.

But, again, I would just say that there are questions that we need to explore, to debate, but I do think the end result will be adopting two components of that nature will improve the process.

Chairman KENNEDY. We will have a 6-minute rule.

Let me just outline what has been the central concern, and that is that there are too many children that are falling through the cracks. We have no system now that has recognized that we are going to treat these children as children first. Later in our hearing, we will hear from Wendy Young, who says "children first and newcomers second."

As I understand it, the thrust of this whole legislation is that we are going to systematically and comprehensively give responsibility for the care and the attention and the review for each child. That is not happening now, that is not happening now. I mean, neither of you have even suggested that it is happening now.

We know enough about the Immigration Service that it has two functions. One is a law enforcement and one is a support function. The law enforcement is to keep people out that shouldn't be here, and they have a very important responsibility of making sure that that is the case. On the other hand, it is to support those that have legitimate interests in coming here.

The review of the history of responsibility that is given to this program would demonstrate, I think, quite clearly that this has been more of a law enforcement function rather than it has been in terms of a support function to the most vulnerable people in our society, which are the children in our society.

That is what we are looking to you for your reaction and how we are going to deal with this. You can say, well, we are moving the chairs around on the deck of the ship, which all of us have seen at various times before. But we have to understand that we have got a major problem. It is a very real problem, and it is among the most vulnerable people in our society.

Even if we are able to say that this kind of new organization makes some sense, it can be altered and changed tomorrow. That is why the importance of legislating and getting this kind of thing right is of such importance. I wish we had a bit more of the kind of urgency and the kinds of concerns reflected because, as has been pointed out, almost half, 40 percent, of the children are alone and lack relatives in the United States, rendering them particularly vulnerable.

We know very well that when these children appear before INS judges, the outcomes of those cases are twice as favorable to the child as if they do not. I mean, those are statistics. There may be some other justifications or reasons, but those are statistics and those are inherently wrong on their face.

What we are trying to find out is, one, about your suggestions, and I think there have been good suggestions made about various provisions of the legislation, about how it ought to be tailored. But we basically are interested in what kind of assurance you are able to give us that the current situation is going to be altered and changed, and that there is going to be accountability, responsibility, a systemic kind of responsibility for each and every child all of the time.

That is what, I think, is the thrust of this legislation and is essential if we are going to really deal with these children in a humane and decent kind of way. I am just interested in why you think the recommendations you made in terms of the restructuring in the Justice Department and INS are going to provide the kinds of protections that have been included in the legislation.

Judge CREPPY. Well, Senator, I just want to comment that I can assure you that in the immigration hearing process we go through to great lengths to ensure that juveniles get fair hearings, almost to the point where judges will call on attorneys that practice before the court and ask them, will you take the case.

Now, I no longer work for the INS. As you know, the Executive Office for Immigration Review is a separate agency from the INS.

Chairman KENNEDY. That is right.

Judge CREPPY. So the judges are not Immigration and Naturalization Service judges. So I can't really speak to the custody issues, the apprehension issues. But what I can tell you and what I can assure you is that any juvenile appearing in an immigration court, we go to great lengths to ensure that there is somebody that will represent the juvenile. The judges are trained extensively to handle these types of issues.

Chairman KENNEDY. Mr. Anderson?

Mr. ANDERSON. Well, one of the differences would be under the INS restructuring. The Office of Juvenile Affairs would not be in an enforcement office; it would actually be a separate office in neither the service or enforcement part of the INS and it would actually be reporting directly to the commissioner.

We think by giving that attention and, essentially, when necessary, the line authority of the commissioner on any particular case, that will make a significant difference. You know the commissioner and when he wants something done, it is going to get done. That is why we want to make it institutionalized in the whole restructuring and it is not just an ad hoc task force.

In addition, we do also want to have some of the other reforms that have been talked about in terms of dedicated case management officers whose only duties will be juveniles. That is something that is continuing to develop and I think that also will get at the concern you have expressed about children being able to fall through the cracks.

So it is not any one thing; I think it is a whole series of measures. There have been improvements, but as I note in the testimony, we are not satisfied and we would like to see significant improvements continue.

Chairman KENNEDY. My time is up, but as I understand it, Judge Creppy, at least half of the children now go unrepresented, despite the best efforts of the judges. Is that your understanding?

Judge CREPPY. My understanding is that no child will proceed to a hearing that needs an attorney to assist them in that hearing.

Now, I have heard the Senator talk about statistics and data, but the problem with the system—and we are working to improve the system—is that we have no accurate way to account for the number of juveniles coming through the present system. So when people throw out statistics, it is a guesstimate.

So I can't speak to if all or a few, but I can say that a great majority that go through our system will get representation through pro bono representation, through judges asking attorneys and friends to take the case, and that no juvenile gets a hearing alone when a judge feels that he or she does not have the capacity to handle those proceedings.

Chairman KENNEDY. Senator Feinstein?

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Senator Brownback, it is really your call.

Senator BROWNBACK. Please go ahead.

Senator FEINSTEIN. Thank you.

Senator BROWNBACK. And then I do have some questions I would like to ask.

Chairman KENNEDY. Sure.

Senator FEINSTEIN. Thank you.

I am interested in the last question Senator Kennedy asked because according to the Executive Office for Immigration Review, in removal cases undocumented children are unrepresented 50 to 80 percent of the time.

Now, is that your review? Is the Executive Office for Immigration Review your office?

Judge CREPPY. The immigration court falls under the Executive Office for Immigration Review, yes, Senator, that is correct. But I can't speak to where those statistics came from because I can tell you that our system does not accurately track statistics like that. We don't have a system that tracks the date of birth of those respondents.

Senator FEINSTEIN. So you are saying those numbers are wrong, Judge?

Judge CREPPY. I would say that those numbers are not accurate. I can't speak to them without having seen them, but I can speak to that we do not have a system that can accurately give you those types of numbers. We do not have such a system.

Senator FEINSTEIN. Then if you don't have a system, would it be fair to say that you don't really know whether it is true or not? I mean, you can't sit on all cases.

Judge CREPPY. No, I don't sit on all cases. This is why I am saying that there is no accurate way to know the truth or falsity of it. But what I can base my statement on is that I have served in every court in the United States. We have 52 courts throughout the United States and I have inquired from the judges, how do you handle juvenile cases coming before your court? And my understanding is that the majority of unaccompanied juveniles that come before that court get some type of representation or they have a capacity to go forward.

Senator FEINSTEIN. I would very much doubt that, based on what we have seen, but I think I would like to know formally from INS then—this is a major discrepancy—whether those numbers are right or wrong, if you don't mind.

Mr. ANDERSON. Sure. We will get you that, Senator.

Senator FEINSTEIN. I also understand that the Executive Office for Immigration Review, in cooperation with NGO's, non-governmental organizations, did try to put in place the pilot project in Phoenix to ensure that children had legal representation and the



assistance of guardians ad litem. I also am told that the project ultimately did not test the use of guardians ad litem.

Judge CREPPY. That is correct.

Senator FEINSTEIN. So there really is no use of guardians ad litem at the present time. Is that correct?

Judge CREPPY. Right. There is sort of an informal use in some courts where they ask somebody, will you act as a guardian. But we tried to do it in Phoenix and we termed it "the friend of the child," and the problem with it was it never got off the ground because it became a resource question and we could never get people to do it. So we never tested that. That is correct, Senator.

Senator FEINSTEIN. So you are saying you couldn't find suitable guardians?

Judge CREPPY. I think when Wendy Young testifies, she primarily led that charge trying to set up the "friend of the child" for our pilot project. I believe that the reason that it never got off the ground is it was a question of funding, that we couldn't find individuals to do it.

Senator FEINSTEIN. Now, let me ask you this question. I have also heard that INS blocked the use of guardians ad litem, saying that such use would require legislation. True or false?

Judge CREPPY. Well, I don't want to answer true or false. They raised a question as to whether or not having a "friend of the child" would interfere with their obligation as being the custodian of the child. So there was a question there that had to be resolved. So I don't know if I would call it a block, Senator, but they did raise it as an issue.

Senator FEINSTEIN. And after they raised it as an issue, you didn't proceed with it. Is that correct?

Judge CREPPY. Well, my understanding was that we didn't proceed with it because there weren't sufficient resources to get the program off the ground. So I can't say that INS caused us not to proceed with it.

Senator FEINSTEIN. Does INS want to respond?

Mr. ANDERSON. Well, obviously this was before my time, but my understanding is that there were some questions about how the guardian ad litem would work. But what I can say is if there was legislation and it did specifically dictate to have a pilot project, it would definitely happen.

Senator FEINSTEIN. This is the catch-22 because we are told—and I know you don't like legislation, but we are told you are not going to go ahead with the guardian ad litem because it needs legislation. Yet, you don't want the legislation.

Mr. ANDERSON. I am not sure that that was the reason why the guardian ad litem pilot project didn't go forward. It is my understanding that wasn't the reason. I will further investigate it, but again as stated in the testimony, we do support having a pilot project or a series of pilot projects, having them well-structured, having specific deadlines for reports so there can be assurance that we can actually test this and get experience and then know how to adapt this, because it would be an innovation and with any innovation it may work well or there may be ways we would want to fix it.

Senator FEINSTEIN. Right. Now, I think all of don't want children to fall in the hands of smugglers. It is true that we left a lot of this in terms of defining the regs under which the program would function up to the Department.

In Section 202(a)(4), we would require the director of the Office of Children's Services, who would be appointed by the Attorney General, to take steps to ensure that unaccompanied alien children are protected from smugglers or others seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

If there is any way you feel we should be more precise in this, we would surely like to hear it. But the purpose of this was to give you the full ability to set regulations, to the best of your ability, to be able to protect children based on the actual experience that the immigration judges and others have had in these situations. I don't know a better way to do it. If you have one, we would surely like to have it.

Mr. ANDERSON. Well, clearly, protecting juveniles from smugglers is already INS policy. A restatement of that I don't think would affect that.

Senator FEINSTEIN. Well, the problem you had with the attorney provision, having NGO's provide specific attorneys that would be certified by you as competent to do this work, was, well, they might fall in the hands of smugglers. You just said that earlier, or one of the two of you said it.

Mr. ANDERSON. I am not sure having attorneys would necessarily make someone vulnerable to smugglers. I think the issue that needs to be decided on a particular case, especially if there is some concern that the person was smuggled in, if they were immediately released out to someone what would be the security of the particular juvenile. I mean, those are the types of dilemmas that people face.

Senator FEINSTEIN. There is no question about that, but we are talking about, No. 1, wherever it is possible, return the child to the parent.

Mr. ANDERSON. Yes.

Senator FEINSTEIN. We all believe in family reunification.

Second, to find a suitable placement for the child. Right now, the alternative would be, I guess, if you released a child, where do they go right now.

Mr. ANDERSON. Well, I mean a child could be released into foster care if suitable foster care is found

Senator FEINSTEIN. Right, so that wouldn't change. There would still be foster care.

Mr. ANDERSON. Or in a residential care facility.

Senator FEINSTEIN. That wouldn't change.

Mr. ANDERSON. And those combined come out to about 80 percent.

Senator FEINSTEIN. So that wouldn't change, so I don't understand what your concern is. We are trying to strengthen your hand to see that the circumstances a child is in are appropriate for that child and keep them out of circumstances which many of them fall in today, extended detention.

Mr. ANDERSON. Well, again, we support many elements of the legislation and we want to keep working with the Committee on what the right balance is, on what can be administratively flexible, and then what would be helpful for a statute.

Senator FEINSTEIN. Well, we would very much like to work with you because we would like to move this bill.

Mr. ANDERSON. Terrific.

Senator FEINSTEIN. Thank you very much. Thanks, Mr. Chairman.

Chairman KENNEDY. Senator Brownback?

Senator BROWNBACK. Thank you, Mr. Chairman.

Judge Creppy, I would like to ask you, in your personal experience on these proceedings, it seems to me important that we treat children and adults differently in these proceedings, particularly young juveniles that would not be able to comprehend things nearly as well.

Could you describe based on your experiences to what extent unaccompanied children understand what is happening to them in these hearings?

Judge CREPPY. Again, I think as Senator Feinstein pointed out, I don't sit on every case, since we do 270,000 cases.

Senator BROWNBACK. I am asking about your experience.

Judge CREPPY. My experience is that the judges go to great lengths to ensure that the story gets out, that there is somebody that can assist them so that they can rule on the particular case.

Senator BROWNBACK. Has that been your personal experience in these cases?

Judge CREPPY. Yes, sir.

Senator BROWNBACK. Have you had cases where you have adjudicated where there has been a child 10 years or younger of age?

Judge CREPPY. Me, personally, as the chief judge?

Senator BROWNBACK. Yes.

Judge CREPPY. No, I have not, but I have been in courts where other judges have. And again, as I indicated earlier, I did do a survey of all of our courts which involved our judges and asked them the methods which they use to try to make the child comfortable within the court setting so that they could get the story out.

Now, what I can speak to are the number of things that I have done for the judges in terms of training, communications, providing them with books and materials, having some of the top experts in the country involving children's issues speak to them and train them to sensitive them to these types of issues so that when they do appear before the court, they are able to handle it because I think that each case is different and I think that they have to use their discretion and their training and background to decide what will constitute a fair hearing for this particular child.

Senator BROWNBACK. Mr. Anderson, you are long familiar with this problem from sitting on this side up here, and this has been raised in the past. I understand from the Office of the Inspector General, there are approximately—and you said in your testimony about 5,000, and the OIG found about 4,700, plus or minus, unaccompanied alien children each year into U.S. custody.

It seems to me that the problem that we have here is that in many of the cases here then when these children are detained, they

are not detained in INS facilities. They are detained in contracted-for or local facilities that the INS has limited control over. Maybe that is not the correct term to use, but these aren't probably the facilities that the INS would put these children in if they had that choice.

Am I correct that this is the nature of the problem and that you are not really in control of the areas where these children are being detained?

Mr. ANDERSON. Well, we do have contracts, and I don't know if in every case, but I just went up to the Burks facility we have in Pennsylvania. I know we have been trying to get the Subcommittee staff up there, and any of the members. We actually have a facility in San Francisco that you might be interested in when you are back in the State, Senator.

It is worth seeing these places up close because at the residential care facility, for example, in Pennsylvania there is a person on staff there from INS that is able to watch what is happening. And there is a mix of—while it is primarily at the Burks facility, what you call non-secure, there are actually even families there with children.

My observation was that there were education services going on. I mean, kids were going basically 4, 5, 6 hours a day for school. There were computers there to work with. There is health care on staff.

Senator BROWNBAC. Because my time is short, I want to get at a couple of other points here. In my observation, though, what I have seen in other places where there are not INS facilities, you are contracting with local law enforcement to do this, which sometimes is frustrated with the INS. I can tell you from what I get in Kansas that they don't feel like they are getting sometimes the guidance or they are just told, look, just release the people that you have taken into custody.

I think that is probably the area where we are having the issue, isn't it, that you are not in strong control of those facilities? Maybe put it another way, could you set a level of standards in these cases that then have to be met by local contractors?

Mr. ANDERSON. Well, we do have standards. We have the American Correctional Association standards, for example, in those cases. In other standards, we have our own field guidance on people going from INS to keep watch on these facilities. This is an area where the commissioner wants to have continued review and oversight, and that is part of the juvenile policy initiative to make sure in all of these cases that we are having the proper oversight of all the places that we contract with.

Senator BROWNBAC. Well, I want to work with you on this, but I am hearing from too many reputable places that we have got problems in too many places. I am hopeful that you can stay around for the next panel that is up to be able to hear what people are saying to us that is taking place. You are new in and the administration is new in. This is a good chance. You mentioned that the commissioner has no vested interest in the status quo. I think there is a good shot at being able to do some serious work here.

One final question I would ask you about because I am struck by the number here is according to your statement the average

length of stay for a juvenile in detention was 43.5 days. The median length of stay is only 15 days.

Now, if I am understanding this correctly, if a case then really isn't resolved quickly in the first couple of weeks, then the juvenile is probably going to be detained for a couple of months. Is that the situation?

Mr. ANDERSON. There are cases that go on for a long time. I can turn that over to my co-panelist. It is not his fault, obviously, but I mean this is a more elaborate problem. Essentially, it is because the proceedings are taking a very long time. I mean, that is the issue.

Senator BROWNBACK. We want to particularly look at juvenile cases. If they are being detained for lengthy periods of time, we surely want to look at that. I think we need to look at it on any length of time, but some of these go for long periods of time.

Mr. ANDERSON. Right.

Senator BROWNBACK. Mr. Chairman, I think the next panel will be an illuminating one as well and one that can share and enlighten, I would hope, as well both the individuals and the branches that you represent here today.

Chairman KENNEDY. Thank you.

It seems to me we want a seamless web so that any of these children that are coming into the system are going to be followed and tracked. At all times, we are going to know where they are, what their circumstances are. You are going to have child support systems, child welfare systems that are out there, the trained people that are going to be following them. And at any given time on these computers, we are going to know the circumstances and someone is going to take an active review all the time in monitoring these and moving this process through.

That is what we are going to try and do and we want to work with you to try and do it, but there is just too much out there that says that too much is falling through the cracks. I am just not convinced that just moving and rearranging the authority and responsibility on this—I know that you want you to do the job and I know that the INS commissioner wants to do the job, but I think that is what this legislation is attempting to do.

I think we want to work with you in finding ways to try and make it efficient and effective and responsive, but it isn't working now in the way that it should. We appreciate it very much. And I would join Senator Brownback; I hope you can stay and listen to our next panel.

Yes, Senator?

Senator FEINSTEIN. Just one quick question.

Chairman KENNEDY. Sure.

Senator FEINSTEIN. You mentioned a place in San Francisco. Well, my daughter is a juvenile court judge in San Francisco and I asked her about it. She said because San Francisco is a sanctuary city, INS contracts with another county, Sonoma I believe she said, and the children are there, not in San Francisco. So if that is different, I would surely like to go and see where it is.

Mr. ANDERSON. It is in Castro Valley.

Senator FEINSTEIN. Well, that is not San Francisco.

Mr. ANDERSON. Right, outside of San Francisco.

Senator FEINSTEIN. Thank you very much.

Mr. ANDERSON. I meant outside of San Francisco.

Chairman KENNEDY. Thank you very much.

Mr. ANDERSON. Thank you.

Chairman KENNEDY. If our young people want to just stretch, they can stretch. I know you probably have to go, but our next witness is a young person, Edwin Munoz. He is 14 years old, and maybe the young people would like to listen to him, if you have a minute.

Well, they have to go. Thank you very much.

We thank Edwin Munoz for being here. He is a member of our next panel. We want to thank him very much. Edwin applied for asylum because he feared that he would be killed if he were deported to his native Honduras. Like many other unaccompanied children, while awaiting a decision in his case, Edwin was housed not in a shelter but in a facility with violent juvenile offenders. Unlike other children, Edwin had access to a lawyer.

We would like to thank you for coming here. I know it takes a lot of courage to share your story. We will hear from you in just a moment.

For the past 7 years, Wendy Young has served as the Director of Government Relations and U.S. Programs for the Women's Commission for Refugee Women and Children. Ms. Young also oversees the Women's Commission's Detention Asylum Project that addresses the critical protection needs of women and children asylum seekers in the U.S. She has made dozens of visits to detention centers and has written extensively. It is a pleasure to have her here.

Andrew Morton is an associate in the government relations group at Latham and Watkins. Mr. Morton worked as a campaign consultant for numerous Republican candidates, as an aide in the National Republican Congressional Committee, and on the majority staff of the House Committee on the Judiciary. Mr. Morton has been instrumental in an effort entitled the Child Refugee Project, which has provided pro bono legal representation for dozens of unaccompanied alien juveniles in INS custody. Mr. Morton and his law firm have received numerous awards for their excellent work.

Julianne Duncan currently serves as Director of Child Services for the United States Conference of Catholic Bishops. Dr. Duncan has an extensive background in refugee child welfare and mental health programs, having worked in Washington State for Lutheran Social Services.

I would point out that is from the Lutheran Immigration and Refugee Services. They are one of the very best, I must say as someone who has watched them over many years.

So, Edwin, we want to thank you. As you can see, we invited the other children here and they are very interested in what is going on. We are trying to make sure that children are treated the way that you would want them to be treated, and because you are here it is going to help us try and do that. So that is why your presence here is so important. We admire your courage in being here and speaking to us, and also for all the hardships you have gone through. So we thank you very, very much.

You take your time. There is no hurry.

**STATEMENT OF EDWIN LARIOS MUNOZ, GRAND RAPIDS,  
MICHIGAN [TESTIFYING THROUGH AN INTERPRETER, ERIC  
UNTERNAHRER]**

Mr. MUNOZ. Thank you for being here. It is a privilege to be in front of Congress. I am here to tell you my story about what happened when I was in custody of the INS and all the bad things that happened, and I hope that me being here, things can resolve themselves and other children will not be treated like I was.

My name is Edwin Larios Munoz. I am 15 years old and in the eighth grade at Thornapple Kellogg Middle School in Middleville, Michigan. I live with my foster parents. I enjoy math and soccer and want to be an FBI agent when I grow up.

I am a refugee here in the United States. I was born in San Pedro Sula, Honduras. I could not stay in my country because of the abuse I went through for years. After my father died when I was 4, my mother abandoned me. I ultimately ended up living with my cousin.

For 6 years, from when I was 7 to when I was 13, my cousin forced me to work on the streets and give him money. When I didn't earn enough money, he punished me, beating me with a noose, car tools, and other objects, leaving scars on my body, on my knees, legs and arms.

I did not report it to the authorities because my cousin threatened to throw me out into the street. I also did not know how to report him and did not think the police would protect a child like me. I did not want to live on the streets because I had heard that the authorities and gangs kill children living on the streets. I had no other choice but to look for safety and a real family in the United States.

I had heard wonderful things about the United States and how children were treated better there. On or around March of 2000, I left Honduras with 100 lempira, around \$15. I had to walk and beg for rides, and work for food and housing the whole way through Honduras, Guatemala, and Mexico. I finally arrived in Tijuana in August of 2000.

After crossing the border by San Ysidro, California, however, my problems with Immigration began. On August 19, 2000, the U.S. Border Patrol officers in green uniforms arrested me and took me away in handcuffs. They held me 4 days locked up and alone in a cell. They gave me very little food, and bad food, and did not let me outdoors. They did not explain anything to me about what was happening that I could understand. I did not get to make any phone calls or speak with a lawyer. I felt very sick to my stomach and head because of the food and because I was locked up all day.

I was then taken in shackles to South West Key, a place in San Diego for immigrant children paid for by the INS. I could not wear regular clothes, but had to wear their uniform, with flip-flops. They had some classes and recreation outside. I never saw a counselor or social worker in order to talk about my problems in Honduras.

The other boys from other countries there picked on me because I was smaller and from Honduras. When I complained to the guards about the boys' treatment, South West Key officials told me to ignore it. They did not tell the boys to stop.

After 2 weeks at South West Key, an immigration officer arrived. He took me away in shackles, but did not explain why or where we were going. I was brought to San Diego Juvenile Hall, a jail for juvenile criminals. This is the worst place I have ever been in my life.

When I arrived, they forced me to wear a prison uniform, with flip-flops. They then locked me in a cell by myself, without windows. They told me they had to isolate me because I looked very young and that they needed to verify my age. I spent 3 days in the cell sad and afraid.

When they finally released me from the cell, I was placed in another cell with a United States citizen boy who had serious problems with the law. He was not as bad as the other boys in the jail who were there for murder, having weapons, violence, or theft.

I spent around 8 months in this jail. I was locked in the cell around 18 hours a day, since we were only allowed out for a few hours a day for classes. We also had outdoor exercises twice a day for 20 minutes in a fenced-in area. Every time we walked, we had to walk silently with our hands crossed to avoid punishment.

The officers did not know why I or other children picked by the INS were being held there. They treated us the same as others, as criminals. They were mean and aggressive and used lots of bad words. They hit me with their sticks and shoved me and other boys when they thought that we were not following their orders.

Many of the other boys were violent, frequently looking for a fight. Whenever there was a fight, the officers would order all of us into a cover, crouching position and often used pepper spray. Sometimes, the pepper spray would hit children like me who had nothing to do with the incident. I was sprayed twice and it made my eyes sting and I was afraid I would go blind.

I lost weight and was usually sick at this jail, since I could not eat the food, which was different from the food in Honduras, and the jail always smelled like urine. I cried a lot in the cell, wondering why everything was turning out so bad for me here in the United States and wondering if I would ever be free.

After around 6 weeks in detention, I was taken in hand and leg shackles to the immigration court. At my first court, there were many adult criminals in the courtroom. I was scared and afraid that I would be deported. The judge asked me what I wanted to do in my case and I told him I needed to find a family to live with in the United States.

He said he would give me another date and help me find a lawyer to represent me. Several weeks later, I returned to court, again in shackles. There was a nice, free lawyer for me, a good man, Manuel Sanchez, who was willing to represent me. Together, we prepared my case for asylum and the judge granted me asylum in July of 2001. It was hard to prepare my case in jail, even with my attorney Manny. I could not call him for free, and every time he visited they made me take off all my clothes to search my body. This embarrassed me.

I did not like going to the court, even though I would get to be outside. Every court trip meant wearing shackles, even at my final hearing when I was able to tell the judge my whole story. There was no way I could have won the case without an attorney or



Manny. I did not even know that asylum existed before Manny, and I could not fill out all those papers in English and did not know what to do in court.

There was no one to complain to about the jail, since I could not trust the jail officials and never saw an INS officer. INS only came to take me to court in shackles. I once complained to the judge about how horrible the jail was to see if I could be taken somewhere else. The judge said he could not do anything for me; only INS could. The INS attorney did not say or do anything to help me get out of this jail. After winning my asylum, I was brought back to the jail again in shackles. I stayed in the jail another month-and-a-half, wondering why, if I had won this asylum, I was still in jail. Would I ever be free?

Finally, they arranged for me to go with Bethany Christian Services to a foster family in Michigan. I was transported out again in shackles. I asked the INS officer, why do I need shackles? He told me to prevent my escape. Why would I want to escape if I had won my asylum? Your asylum, he said, that is just a piece of paper we can throw away, put you in jail, and then send you back to your own country. It took a while for me to feel at home in Michigan. I still have horrible memories over what I went through with the INS and at the San Diego jail.

I saw many children like me who gave up fighting their immigration cases and accepting deportation because they hated the jail and did not have lawyers like Manny to help them. I am happy that there are people like you who care to help people like me with their problems with the INS. I would like to see that they treat children better so that no child has to go through what I went through with the INS.

I know that there is a proposed law right now that would help that happen, and I am very glad because I don't think any child should have to go through what I did. I know it is bad because I went through it myself.

I hope what I have said today has been of some importance. I had horrible experiences and it was the fault of Immigration that I went through these experiences. I also think that there could be another place besides jail where people like me could be put because it was horrible in the jail. I had very bad experiences in the prison. It was really bad there, and I almost wish that I would have stayed in Honduras rather than come here and pass time in the prisons.

Chairman KENNEDY. Well, we want to thank you very much, Edwin. Thank you very, very much for being here.

[Applause.]

Chairman KENNEDY. How are you liking school now? Do you like Michigan? It is a little cold out there, isn't it? You come to Massachusetts.

[Laughter.]

Chairman KENNEDY. Well, I will tell you your worst days are behind you, and I think you will find that that family that has welcomed you cares for you and loves you. And I think you will find people around the community are so happy that you are here. We are so happy that you are here and we admire you very, very much, and we think you would be a very good FBI agent. They will

be very lucky to get you. I hope the United States will live up to your dreams because we are all trying to make it that way.

We want to thank you very much. Maybe after the hearing here, we will get a chance to see you a little bit and talk to you personally.

Mr. MUNOZ. I would like to meet you.

Chairman KENNEDY. Very good, OK.

[The prepared statement of Mr. Munoz follows:]

STATEMENT OF EDWIN LARIOS MUNOZ, GRAND RAPIDS, MICHIGAN

My name is Edwin Larios Munoz. I am 15 years old and in eighth grade at Thornapple Kellogg Middle School in Middleville, Michigan. I live with my foster parents. I enjoy math and soccer and want to be an FBI agent when I grow up. I am a refugee here in the United States. I was born in San Pedro Sula, Honduras.

I could not stay in my country because of the abuse I lived with for years. After my father died when I was four, my mother abandoned me. I ultimately ended up living with a cousin. For over seven years, from when I was 7 to when I was 13, my cousin forced me to work on the streets and give him the money. When I didn't earn enough money, he punished me, beating me with a noose, car tools and other objects, leaving scars on my body, like the knees, legs and arms. I did not report it to the authorities because my cousin threatened to throw me out onto the street. I also did not know how to report him and did not think the police would protect a child like me. I did not want to live on the streets because I had heard that the authorities and gangs kill children living in the streets. I had no other choice but to look for safety, and a real family, in the United States. I had heard wonderful things about the United States and how children were better treated here.

On or around March, 2000, I left Honduras with about 100 lempira, around \$15. I had to walk and beg for rides and work for food and housing the whole way through Honduras, Guatemala and Mexico. I finally arrived in Tijuana in August, 2000.

After crossing the border by San Ysidro, California, however, my problems with immigration began. On August 19, 2000, the U.S. Border Patrol officers in green uniform arrested me and took me away in handcuffs. They held me four days locked up and alone in a cell. They gave me very little and bad food and did not let me outdoors. They did not explain anything to me about what was happening that I could understand. I did not get to make any phone call or speak with a lawyer. I felt very sick to my stomach and head because of the food and because I was locked up all day.

I was then taken in shackles to South West Key, a place in San Diego for immigrant children paid for by INS. I could not wear regular clothes but had to wear their uniform with flip-flops. They had some classes and recreation outside. I never saw a counselor or social worker to talk about my problems in Honduras. The other boys from other countries there picked on me because I was smaller and from Honduras. When I complained to them about the boys' treatment, South West Key officials told me to ignore it. They did not tell the boys to stop.

After two weeks at South West Key, an immigration officer arrived. He took me away in shackles but did not explain where and why.

I was brought to San Diego Juvenile Hall, a jail for juvenile criminals. This was the worst place I have ever been in life. When I arrived, they forced me to wear a prison uniform with flip-flops. They then locked me in a cell by myself without windows. They told me that they had to isolate me because I looked very young and that they needed to verify my age. I spent three entire days in the cell, sad and afraid.

When they finally released me from the cell, I was placed in another cell with a United States citizen boy who had serious problems with the law. He was not as bad as the other boys in the jail who were in for murder, weapons, violence or theft.

I spent around six months in this jail. I was locked in the cell around 18 hours a day. Since we were only allowed out for a few hours a day for classes. We also had outdoor exercises twice a day for twenty minutes in a fenced-in area. Every time we walked we had to walk silently with our hands crossed to avoid punishment.

The officers did not know why I or other children picked up by INS were being held there. They treated us the same as the others, as criminals. They were mean and aggressive and used a lot of bad words. They sometimes hit me with their sticks

and shoved me and other boys when they thought that we were not following their orders.

Many of the other boys were violent, frequently looking for a fight. Whenever there was a fight, the officers would order all of us into a cover, crouching position and often used pepper-spray. Sometimes the pepper-spray would hit children like me who had nothing to do with the incident. I was sprayed twice and it made my eyes sting and I was afraid that I'd go blind.

I lost weight and was usually sick at this jail since I could not eat the horrible food and the jail constantly smelled like urine. I frequently had nightmares at the jail that the guards and other boys were going to kill me. I cried a lot in the cell wondering why everything was turning out so bad for me in the United States and if I would ever be free.

After around six weeks in detention, I was taken in hand and leg shackles to the immigration court. At my first court, there were many adult criminals in the courtroom. I was scared and afraid that I would be deported. The Judge asked me what I wanted to do in my case and I told him I needed to find a family to live with in the United States. He said he'd give me another date and help me find a lawyer to represent me.

Several weeks later, I returned to court, again in shackles. There was a nice, free lawyer for me, Manuel Sanchez, who was willing to represent me. Together, we prepared my case for asylum and the Judge granted me asylum in January, 2001.

It was hard to prepare my case in the jail even with my attorney Manny. I could not call him for free, and every time he visited, they made me take off all my clothes to search my body. This embarrassed me. I also did not like going to court since, even though I'd get to see the full outdoors, every court trip meant wearing shackles, even at my final hearing when I was able to tell the Judge my whole story.

There was no way I could win my case without an attorney or Manny. I did not even know that asylum existed before Manny and I could not fill out all those papers in English and did not know what to do in court.

There was no one to complain to about the jail since I could not trust the jail officials and never saw an INS officer. INS only came to take me to court in shackles. I once complained to the Judge about how horrible the jail was to see if I could go back to South West Key. The Judge said that he could not do anything for me, only INS could. The INS attorney did not say or do anything to help me get out of this jail.

After winning my asylum, I was brought back to the jail again in shackles. I stayed in the jail another month and a half, wondering why if I won this asylum, I was still in jail. Would I ever be free?

Finally, they arranged for me to go with Bethany Homes to a foster family in Michigan. I was transported out again in shackles. I asked the INS officer why do I need shackles. He told me to prevent my escape. Why would I want to escape if I won my asylum? Your asylum, he said, that's just a piece of paper we can rip up, put you in jail and send you back to your country.

It took a while for me to feel at home in Michigan. I still have horrible memories over what I went through with INS and at the San Diego jail. I saw many children like me who gave up fighting their immigration cases and accepting deportation because they hated the jail and did not have lawyers like Manny to help them.

I am happy that there are now people like you who care to help children like me with their problems with INS. I'd like to see that they treat children better so that no child has to go through what I went through with INS. Thank you for listening to me.

Chairman KENNEDY. Wendy?

**STATEMENT OF WENDY A. YOUNG, DIRECTOR OF GOVERNMENT RELATIONS AND U.S. PROGRAMS, WOMEN'S COMMISSION FOR REFUGEE WOMEN AND CHILDREN, FALLS CHURCH, VIRGINIA**

Ms. YOUNG. Good afternoon. On behalf of the women's Commission for Refugee Women and Children, I would like to thank you for the opportunity to testify regarding the treatment of children held in the custody of the INS. I would like to request that my full written testimony be submitted for the record.

The Women's Commission has identified significant procedural gaps in U.S. policy and practice that jeopardize the protection of

newcomer children. We strongly support S. 121 which, if enacted, would represent the first time that the needs of unaccompanied minors are addressed comprehensively and that they are treated as children first and newcomers second.

We wish to express our appreciation to Senators Feinstein, Kennedy, Durbin, and the other cosponsors of S. 121 for their leadership on this legislation.

The INS detains almost 5,000 unaccompanied children a year. In addition to Edwin, we are joined in the audience today by other young people who were held in INS custody. I would like to ask them to stand as a group for just a moment.

Chairman KENNEDY. Do you want to stand?

[The children stood.]

Chairman KENNEDY. Well, you will give us their names and we will make sure that they are in the record. Thank you very much.

Ms. YOUNG. Thank you.

Children held in INS custody range in age from toddlers to teenagers and represent many nationalities. Many are fleeing armed conflict and human rights abuses. Others have been abused, abandoned or neglected by their families. Some children have been trafficked. All, without question, deserve comprehensive care that is sensitive to their age, past experience, and displacement.

The Juvenile Affairs Division within the INS Detention and Removal Branch is currently responsible for the care and custody of children. Its work is generally carried out through INS regions and districts, each of which has a designated juvenile coordinator. These coordinators are detention and removal officers who lack child welfare expertise. Moreover, the national juvenile coordinator enjoys only dotted-line authority over these officers. This disconnect leads to decentralization, a lack of accountability, and inconsistent practices, often at the child's expense.

The INS is responsible for the care and custody of unaccompanied children at the same time that it oversees their apprehension, detention, and removal. This is an irreconcilable conflict of interest that repeatedly results in the INS favoring its law enforcement goals over the needs of the child.

For example, the INS frequently denies release from detention to children who have been granted asylum by an immigration judge because the agency itself has decided to appeal that grant. The INS has blocked children from pursuing special immigrant juvenile status by refusing to allow the child to proceed to juvenile court to determine whether the child has been abused, abandoned or neglected.

The INS has also encouraged children to agree to voluntary departure from the United States even when children have earlier expressed a fear of return. And in some cases, the INS has returned children under questionable circumstances. A juvenile coordinator admitted to us that she was aware of Chinese children who were arrested and jailed upon their return. A 13-year-old Honduran was deported even though his asylum claim was still pending.

The INS restructuring proposal is largely cosmetic and will not resolve the conflict of interest. Children are inherently different from any other population that the INS encounters and no matter

where the box is moved on the organizational chart, the agency will still lack the child welfare expertise to get the job done.

Moreover, under the INS proposal, it is unclear who would make release and placement decisions on behalf of children. Such authority may well be retained by INS enforcement officers. Comprehensive reform by way of S. 121 is essential.

The Flores agreement requires the INS to release children to parents, relatives or other responsible entities, or to otherwise place them in the least restrictive setting possible. However, the INS often fails to release children even when family is available. Service providers in Houston report that family reunification has dropped from 75 to 35 percent.

Family reunification is especially problematic when the INS is aware that a child has an undocumented relative in the U.S. The INS has refused to release a 16-year-old Guatemalan who has been detained for 8 months in multiple facilities, including at one point an adult prison, because they are aware that his undocumented brother resides in the United States. A Federal judge recently expressed outrage at the arbitrariness of this decision. An 8-year-old Nigerian girl was detained for 15 months before finally being released to her aunt, despite the documented deterioration in her mental well-being.

One-third of children spend anywhere from a few days to more than a year housed in secure detention facilities designed for youthful offenders, including delinquents who have committed violent felonies such as assault, murder, and school shootings. A 14-year-old Honduran asylum seeker shared a cell for 4 months with a boy serving time for assault with a deadly weapon. Such commingling of non-offenders with delinquents is common.

Children are subject to hand-cuffing and shackling even at times during their immigration hearings. Translation assistance is rare. In some facilities, access to the outdoors is extremely limited. Education programs are often conducted in English. Children are sometimes cutoff from religious services in their chosen faith. Children are frequently transferred from facility to facility even when represented, and then without prior notice to counsel. Children are sometimes misclassified as adults and are commingled in adult detention centers or prisons.

Also missing is the critical assistance of professionals who can aid children with their immigration cases. Less than half the children are represented by counsel, and U.S. law fails entirely to appoint them guardians ad litem. This results in ludicrous situations. In one case, an 18-month-old toddler appeared before an immigration judge with no attorney or other adult to help her.

In conclusion, the Women's Commission is gravely concerned that consideration of the best interests of the children, the cornerstone of child welfare policy, is a concept that continues to elude the policies and practices of the INS.

We strongly support the approach of S. 121, which shifts the care and custody of children to an appropriate office and leaves the INS to perform the function it does best, the enforcement of U.S. immigration laws. S. 121 puts in place the structure and resources to quickly identify an appropriate outcome in each child's case, safely repatriating those children who are not eligible for relief and quick-

ly moving those children who are into stable, home-like settings where they can begin their lives anew.

One true measure of a society is its treatment of children. We urge Congress to expeditiously pass S. 121, legislation that ensures a holistic, humane, and effective approach to newcomer children.

Thank you again, Mr. Chairman, for the opportunity to appear before you.

[The prepared statement of Ms. Young follows:]

STATEMENT OF WENDY YOUNG, DIRECTOR OF GOVERNMENT RELATIONS AND U.S. PROGRAMS, WOMEN'S COMMISSION ON REFUGEE WOMEN & CHILDREN, NEW YORK, NEW YORK

### I. INTRODUCTION

Isau is a 13-year-old boy from Honduras. He fled his homeland and came to the United States to escape severe abuse at the hands of his stepfather, who beat Diego with pieces of wood, rods, and a machete handle and burned him with various hot objects. His mother would disappear for months leaving Diego at the mercy of his stepfather. Diego finally fled his stepfather's home and began living on the streets. There, however, he was targeted by government death squads and youth gangs.

The Immigration and Naturalization Service apprehended Diego upon his arrival in the United States and initially placed him in a children's shelter in Houston. It then denied Diego access to juvenile court in order to determine whether he was abused, abandoned, or neglected and eligible for long-term foster care, a finding that would have potentially rendered him eligible to remain in the United States under the Special Immigrant Juvenile program. Meanwhile, Diego appeared in immigration court, without the assistance of counsel, where he was denied asylum. After a pro bono attorney agreed to represent him, Diego filed an asylum appeal, a Convention Against Torture claim, and a withholding of deportation claim. The INS then transferred him to the Liberty County Juvenile Detention Center, one and a half hours drive from Houston where his attorney was based. A year later, the INS unlawfully deported Diego back to Honduras while his appeal was pending. Diego's attorney has since been trying to locate the boy but has been unable to find him. Diego spent two years in detention before his deportation, including more than one year in secure detention.

Good afternoon. My name is Wendy Young. I am the Director of Government Relations and U.S. Programs for the Women's Commission for Refugee Women and Children, a nonprofit organization which seeks to improve the lives of refugee women and children around the world by acting as an expert resource and engaging in a vigorous program of public education and advocacy. On behalf of the Women's Commission, I would like to thank you, Mr. Chairman and members of the Subcommittee, for the opportunity to testify regarding the treatment of children held in the custody of the Immigration and Naturalization Service (INS).

In 1996, the Women's Commission launched an assessment of U.S. detention and asylum policy and its impact on women and children seeking refugee protection in the United States. As part of this project, we have visited 18 facilities used to hold children in INS custody and have monitored numerous immigration court proceedings involving children. This research included a four-state assessment in August 2001 of the treatment of children detained by the INS. This study focused primarily on the use of secure facilities, or juvenile detention centers, by the INS. We also worked with the INS to develop "Guidelines for the Adjudication of Children's Asylum Claims," released in December 1998. In addition, we have acted as an expert resource to attorneys and other service providers working with children around the country.

This work has revealed significant procedural gaps in asylum and immigration law and policy that jeopardize the protection of newcomer children. Too often, the U.S. immigration system is a "one-size-fits-all" process designed for adults that fails to take into account the unique needs of children. As a result, children may be denied asylum or other forms of immigration relief for which they may be eligible and returned to unknown fates in their home countries. They may also endure prolonged detention, often in secure juvenile detention centers in harsh and punitive conditions that fail to address their unique protection needs.

The Women's Commission strongly supports the Unaccompanied Alien Child Protection Act (S. 121). We would like to express our appreciation to Senator Dianne Feinstein, Senator Edward Kennedy, Senator Richard Durbin, and the other co-

sponsors of S. 121 for their leadership on this critical legislation. If enacted, this legislation would represent the first time that the needs of unaccompanied minors who arrive in the United States are addressed systematically and comprehensively, thus ensuring that children are treated as children first and newcomers second. It would accomplish this by establishing a structure specifically to care for newcomer children, by mandating procedures for appropriate custody and placement decisions, and by providing the legal and social services to children that they require to assist them in their immigration proceedings.

What S. 121 does not do is create new forms of immigration relief for children. Instead, it ensures that children are appropriately cared for while their eligibility for relief is determined. It also creates a more efficient system that will lead to quicker decisions in children's cases. S. 121 will be more cost-effective by decreasing the use of secure settings, and will ensure that children who are denied relief are returned efficiently and safely.

This testimony will provide an overview of the current treatment that children receive and will establish the need for legislative reform such as that envisioned under S. 121.

## II. WHY CHILDREN COME TO THE UNITED STATES

In each of the past three fiscal years (1998-2000), the INS has reported an annual total of almost 5,000 unaccompanied children in its custody. On any given day, the agency averages between 400 and 500 children in its care.<sup>1</sup> These children range in age from as young as six months up to 17-years-old. They come from many countries, with the top nationalities being Honduran, Guatemalan, Salvadoran, Mexican, and Chinese. In its own research, the Women's Commission has followed the cases of children from Kosovo, the Democratic Republic of Congo, Burundi, Sierra Leone, Somalia, Algeria, Afghanistan, Nigeria, Haiti, India, Colombia, and other troubled countries.

Children come to the United States for a variety of reasons. Increasingly, children are searching for protection from armed conflict and human rights abuses in their homelands, which may render them eligible for asylum.

Human rights violations inflicted on children may be age-specific, such as recruitment as child soldiers, child prostitution, sexual servitude, child labor, street children abuses, child marriages, female genital mutilation, and slavery. Other children have been abused, abandoned, or neglected by their families, and thus may be eligible for Special Immigrant Juvenile status. Some children are smuggled or trafficked into the United States, and may be eligible for relief under the recently enacted trafficking legislation.

Unaccompanied children arrive in the United States in several ways. They may arrive alone either by crossing a U.S. border or through a U.S. port of entry. Some arrive in the company of a family friend or distant relative who is not the child's traditional caregiver. Some arrive in the company of a smuggler who has been paid to facilitate the child's arrival. Still others are trafficked into the United States by organized criminal enterprises. Approximately 40 percent of children are truly alone and lack relatives in the United States, rendering them particularly vulnerable.

Regardless of their mode of arrival or country of origin, children who arrive alone in the United States are indisputably a population in need of comprehensive care that is sensitive to their age, culture, past experience, and displacement.

## III. THE JUSTICE DEPARTMENT STRUCTURE TO OVERSEE CHILDREN IN INS CUSTODY HAS CHANGED OVER THE YEARS

Over the years, the Department of Justice has shifted jurisdiction over the care and custody of newcomer children from office to office. For many years, shelters which housed children in INS custody were overseen by the Community Relations Service (CRS), an agency that is within the Department of Justice but separate from the INS. CRS maintained a small staff of social workers to administer the children's shelters, the running of which was contracted out to private nonprofit agencies.

However, the INS absorbed the functions of CRS related to immigration in 1996. The CRS staff charged with the oversight of the shelters moved to the INS as well. Both the staff and their continuing operations were housed in the Humanitarian Affairs Branch (HAB). HAB is commonly recognized for its service orientation and centralized operations within the overall INS structure.

<sup>1</sup>"Unaccompanied Juveniles in INS Custody," Office of the Inspector General, Report Number I-2001-009 (September 28, 2001).

Despite the concerns of outside experts, the INS decided in 2000 to consolidate all of its children's programs into its Detention and Removal branch, a department intrinsically tied to the agency's law enforcement functions. Nongovernmental organizations, concerned about the handling of children in INS custody, feared that the transfer of authority would further aggravate the inherent conflict of interest between INS enforcement responsibilities and the agency's ability to provide child welfare services.<sup>2</sup>

The concerns of immigrant and refugee advocates proved well-founded. Increasingly, since the Detention and Removal Branch assumed control over children's programming within INS, enforcement concerns have dominated decisions which are made on behalf of child newcomers. The agency has demonstrated a consistent pattern and practice of neglecting the needs of children in favor of its deportation functions, budgetary concerns, and administrative and logistical priorities.

Moreover, the staffing structure of the INS has exacerbated the law enforcement approach the agency has favored toward the handling of children in its custody. INS staffing for children's programs is highly decentralized. While decentralization characterizes most INS programs, it carries particularly troubling consequences for children.

The INS Juvenile Affairs Division is the central office which directs and oversees juvenile and family detention and shelter care. In practice, however, this supervision is largely implemented through the INS regional and district offices across the country. There are three INS regions and 33 INS districts, all of which function with tremendous autonomy and little accountability to INS headquarters in Washington, DC.

Each region and district has a designated juvenile coordinator. These coordinators, however, are generally not individuals with child welfare expertise but are detention and deportation officers who are charged with overseeing the handling of children in that particular district. In some districts, the appointment as juvenile coordinator is a permanent appointment, but in most cases, it is a temporary assignment and may even be performed on a part-time basis.

Each of the three INS regions are staffed by a regional juvenile coordinator. These posts are full-time, permanent positions.

The line authority over and supervision of the regional and district juvenile coordinators are through the district and regional structures. While counter intuitive, the national juvenile coordinator enjoys only dotted line authority over these officers. This disconnect leads to decentralization, a lack of accountability, and inconsistent practices with regard to children from district to district and region to region.

#### IV. INS EXPERIENCES A CONFLICT OF INTEREST WITH CHILDREN IN ITS CUSTODY

It is often noted that the INS has been given a complex mandate that is simultaneously both law enforcement and service oriented. Perhaps nowhere is this more true than with children in the custody of the INS. The INS is responsible for the care, custody, placement and legal protection of unaccompanied children who arrive in the United States at the same time that it is also responsible for their apprehension, detention, and removal. As a result, the INS is presented with an inherent conflict of interest, under which it is simultaneously acting as a service provider and a law enforcement agency. This conflict ultimately clogs the system with inefficiencies and inequities and threatens the best interests of the children in question. Moreover, the situation is made worse by the fact that the INS simply lacks the requisite child welfare expertise to appropriately care for children in its custody.

This conflict of interest was exacerbated in 2000, when the INS consolidated its children's programs under its Office of Field Operations, Detention and Removal branch. By doing so, it removed oversight of the children's shelters from the HAB, which included staff experienced in child welfare.

Since the consolidation of children's programs under the Detention and Removal branch, we have witnessed a trend toward further favoring law enforcement goals over the needs of the child. Following are just a few examples of how the INS leverages its custody of children to advance its law enforcement goals:

- The INS has frequently denied release to children who have been granted asylum by an immigration judge, because the agency itself has decided to appeal the grant and has deemed the child a flight risk.

<sup>2</sup> See letter from Ralston H. Deffenbaugh Jr., Lutheran Immigration and refugee Service, on behalf of more than 50 non governmental organizations and individuals, to Doreis Meissner, Immigration and Naturalization Service (October 17, 2000).



- The INS has blocked abused children from pursuing Special Immigrant Juvenile visas. For children in its custody, the INS retains the authority to consent to the jurisdiction of a juvenile court for a determination as to whether the child is eligible for long-term foster care due to abuse, abandonment, or neglect. Such a determination is required before a child can pursue a Special Immigrant Juvenile visa. Consistently, the INS refuses to allow the child to proceed to juvenile court, thus cutting the child off from a critical form of protection that would otherwise offer the child protection from domestic violence or life on the streets.

The INS has increasingly required undocumented relatives to appear at its offices to accept custody of children, at which time it issues a Notice to Appear for the relative. It adheres to this policy even when other relatives, relatives, or licensed placements are available and willing to accept custody. This acts as a tremendous deterrent against parents and others stepping forward to care for their children. Perhaps even more significant is the guilt caused to the children, who are effectively being used as bait to lure the parent to appear. It also often results in the prolonged detention of the child.

- Service providers have reported cases in which the INS has encouraged children to abandon their pursuit of immigration relief. In Houston, for example, service providers reported that the INS juvenile coordinator told a child that "The judge won't buy your story, and you'll end up being in detention for a long time." Service providers in Spokane reported that the juvenile coordinator encourages children to agree to voluntary departure from the United States.

- The INS in some cases has returned children under questionable circumstances. The San Francisco juvenile coordinator admitted that she was aware of Chinese children who were arrested and jailed upon their return to China, especially those returned to Beijing. A Honduran 13-year-old was deported by the INS Houston District, even though his claim to asylum, relief under the Convention Against Torture, and SIJ petition were still pending adjudication.

#### V. THE INS RESTRUCTURING PROPOSAL WILL NOT RESOLVE THE CONFLICT OF INTEREST THE INS EXPERIENCES WITH CHILDREN IN ITS CUSTODY

The INS has recently announced steps to reform its policies and practices with regard to children as part of its overall "Restructuring Proposal."<sup>3</sup> The heart of the proposal is to separate the agency's service and law enforcement functions into two bureaus, which would continue to report to the INS Commissioner. Certain departments would not be lodged in either the service or the law enforcement branch, including a new "Office of Juvenile Affairs," reporting to the INS Commissioner.

The INS has stated that the mandate of the Office of Juvenile Affairs will be to act as the central policy office on children's matters and to direct national programs to address the needs of unaccompanied minors in INS custody. It has indicated that this will include responsibility for developing research-based best practices and service approaches, ensuring consistent application of policies and procedures, facilitating family reunification, and developing effective case management systems.<sup>4</sup>

However, we believe that the INS's proposal will not get far enough to truly reform the agency's practices toward children. While this change reflects the INS's growing awareness that it must revamp its treatment of children, it does not promise the kind of meaningful reform that would ensure that children receive appropriate care while their eligibility for immigration relief is being determined.

First and most critically, children are inherently different from any other population that the INS encounters. In contrast to adults, who are typically able to understand at least the fundamentals of the immigration system as they seek to regularize their immigration status, children lack the capacity to appreciate the complexities of U.S. immigration law and to make decisions that will fundamentally affect their futures.

Second, the INS's proposal fails to address the fundamental conflict of interest that the INS experiences when charged with both the care and custody of children at the same time that it is seeking their removal from the United States. These dual functions are diametrically opposed and fundamentally irreconcilable.

<sup>3</sup> "Restructuring Proposal," Immigration and Naturalization Service (November 2001).

<sup>4</sup> *Ibid.*, p. 26.

Because the INS is dominated by enforcement concerns at the same time that it is completely lacking in child welfare expertise, its law enforcement functions frequently override consideration of the best interests of the children in its custody.

Third, it is unclear who would have the authority to make placement and other critical service decisions on behalf of children under the INS Restructuring Proposal. Such authority may well be retained by INS enforcement officials, who lack the child welfare expertise to determine the most appropriate care arrangements for children.

Currently, the INS National Juvenile Coordinator in Washington, DC only has "dotted line" authority over regional and district juvenile coordinators, who remain under the supervision of their respective districts and regions. This results in decentralization, inconsistency, and a lack of accountability. The INS Restructuring Proposal does not appear to address this structural flaw.

Fourth, the INS proposal is only an administrative measure that does not carry the force of law. Nothing would prevent future Administrations from revisiting these changes and reverting to old structures. History has already shown the tendency of the Department of Justice to shift jurisdiction over children's programming from office to office.

Most importantly, the INS proposal will not resolve the endemic management issues within the agency that favor law enforcement over service. The proposal itself acknowledges this dilemma when it notes that "reorganization should not be seen as a panacea for all the challenges the INS faces." The chronic failure of the INS to address critical protection issues confronted by children in its care and the lack of transparency in INS operations are issues that are likely to continue to plague the agency.

Concerns about the INS' handling of children have been raised by immigration, refugee, and child welfare experts for almost two decades. Improvements have been made incrementally in some areas while in other aspects INS practices have deteriorated. Without fundamental changes in infrastructure, staffing, attitude and philosophy, the changes proposed under the INS Restructuring Proposal are likely to remain cosmetic at best. We cannot allow children to continue to pay the price while we give the INS yet another opportunity to experiment with their care.

## VI. INS COMPLIANCE WITH CLASS ACTION SETTLEMENT AGREEMENT THAT GUIDES PLACEMENT DECISIONS IS INCONSISTENT

### THE *flores* agreement

The legal framework for the custodial care and treatment of unaccompanied newcomer children derives from a consent decree known as the *Flores v. Reno* settlement agreement.<sup>5</sup> Filed as a class action lawsuit in U.S. federal court in 1985, the *Flores* case challenged the constitutionality of policies and practices regarding the detention and release of unaccompanied children taken into custody by the INS. The case went to the U.S. Supreme Court before being remanded to the court in which it originated, the District Court of the Southern District of California, at which point the plaintiffs and the government reached a settlement in 1996.<sup>6</sup>

The *Flores* agreement addresses a range of custody issues pertaining to children, including release to family members or other responsible entities, placement, transportation, monitoring, and attorney-client visitation. In addition, the agreement delineates minimum standards of care for licensed programs with which the INS contracts for the placement of children in its custody, such as access to health care, recreation, education, religious services, and legal representation.

The *Flores* agreement is premised on the notion that the INS must treat children in its custody with "dignity, respect, and special concern for their vulnerability as minors."<sup>7</sup> It requires the INS to release children without unnecessary delay unless detention is required to secure the child's appearance in court or to ensure the safety of the child or others.<sup>8</sup> The agreement lays out in order of preference categories of relatives, unrelated adults, and licensed child care settings to which children are to be released.<sup>9</sup>

The agreement also requires the INS to place children for whom release is pending, or for whom no release option is available, in the least restrictive setting pos-

<sup>5</sup> Stipulated Settlement Agreement, *Flores v. Reno*, Case No. CV85-4544-RJK (C.D. Cal. 1996), available at <http://www.centerforhumanrights.org/FloresSettle.html>.

<sup>6</sup> *Reno v. Flores*, 507 U.S. 292 (1993).

<sup>7</sup> Stipulated Settlement Agreement, *Flores v. Reno*, Case No. CV85-4544-RJK (C.D. Cal. 1996), available at <http://www.centerforhumanrights.org/FloresSettle.html>.

<sup>8</sup> *Ibid.*, paragraph 14.

<sup>9</sup> *Ibid.*

sible that is appropriate to the child's age and special needs.<sup>10</sup> However, the agreement defines exceptions to this general rule for children whom the INS has deemed escape risks, children who are believed or found to be criminal or delinquent, children whom the INS actually believes to be over the age of 18, children who present a risk to their own safety or that of others, or in cases of an emergency or influx of children.<sup>11</sup> In such cases, the INS can place the minor in an INS-contracted facility or a state or county juvenile detention facility that has separate accommodations for minors. Under *Flores*, however, the child is supposed to be housed separately from the delinquent population in the facility.<sup>12</sup> Any child placed in a medium secure or secure facility must also be provided a written notice of the reasons why.<sup>13</sup>

The *Flores* agreement has become a critical yardstick against which to evaluate INS practices with regard to children in its custody. It also provides the opportunity to challenge in federal court the placement of a child in a secure setting.<sup>14</sup>

However, at least until recently, INS compliance with *Flores* has remained almost entirely self-initiated and self-monitored.<sup>15</sup> Attorneys for children and others concerned about the treatment of newcomer children have lacked the resources to challenge violations of the *Flores* requirements. Moreover, the INS itself—as it has for its detention policies and practices overall—has delegated the vast majority of its detention authority over children to its district and regional offices. As a result, release and placement decisions for children have frequently remained ad hoc, arbitrary, and inconsistent, with insufficient attention given to what is in the best interests of each child.

#### *Release to Family and Other Responsible Parties*

The *Flores* agreement spells out a list of parties to whom children may be released in order of preference. These include:

- A parent;
- A legal guardian;
- An adult relative;
- An adult individual or entity designated by the parent or legal guardian as capable and willing to care for the child;
- A licensed program willing to accept custody; or
- An adult individual or entity seeking custody, at the discretion of the INS, when there appears to be no likely alternative to long term detention and family reunification does not appear to reasonably possible.

Increasingly, the INS has failed to exercise release of children even when one of these options appears available. Service providers in Houston, for example, report that family reunification for children held in the custody of the INS Houston District has dropped from 75 percent to 35 percent. Providers indicated that this shift in policy began when the INS consolidated children's programs under its Detention and Removal branch in 2000.

Family reunification is particularly problematic in cases involving release to undocumented parents or relatives. In such cases, the INS has increasingly moved toward requiring the undocumented individual to come forward to accept his or her child relative, even when a U.S. citizen or permanent resident relative is available to facilitate the reunification. In effect, the INS has interpreted the list of possible sponsors under *Flores* not as a preferential delineation of parties but as a hierarchical list.

In such cases, the INS then often places the undocumented relative into removal proceedings by issuing him or her a "Notice to Appear." The child in effect is used as bait to force the relative to appear before the INS. The Women's Commission has documented that this is now the practice in the Seattle, Los Angeles, Houston, Philadelphia, Phoenix, and Miami Districts. It may be the policy in other districts as well.

One Houston service provider observed, "The INS often cites the best interests of the child when it refuses to release a child to a family member. But, in fact, they are using the best interests principle as a barrier to family reunification." Another service provider in Los Angeles noted, "This puts the kids in a terrible position.

<sup>10</sup> *Ibid.*, paragraph 11.

<sup>11</sup> *Ibid.*, paragraph 12, 21.

<sup>12</sup> *Ibid.*, paragraph 12.

<sup>13</sup> *Ibid.*, paragraph 24.

<sup>14</sup> *Ibid.*

<sup>15</sup> A number of agencies are beginning to monitor INS compliance with the *Flores* agreement. These included the American Bar Association, the Center for Human Rights and Constitutional Law, the Florida Immigrant Advocacy Center, the Southern Poverty Law Center, and the law firm of Latham & Watkins.

They feel guilty that their family member has to risk their own situation in order to pick them up.”

A case is currently pending before the U.S. District Court for the Southern District of Florida regarding treatment of a Guatemalan boy who has been held in INS custody for several months, transferred from facility to facility (including at one point to an adult prison), even though there are licensed shelters which have indicated their willingness to care for the boy. The boy is currently housed in a hotel, where he has been held in isolation for three weeks. In the course of a preliminary hearing on the boy's request for a temporary restraining order, the INS Miami District juvenile coordinator indicated that he would not release the boy to a licensed shelter program as required under the *Flores* agreement, even if petitioned to do so, because the INS was aware that the boy had an 18-year-old undocumented brother in the United States. The juvenile coordinator stated:

“I would recommend denial [of release] in this case because. . . we already know that he has blood relatives in this country who are circumventing the law and refusing to come forward because they would be subjected to an immigration arrest. . . . So I'm not going to allow release to a non-relative when we know that there are relatives in the United States.”<sup>16</sup>

The district court judge then responded:

“I am outraged that someone would have made up his mind before hearing any evidence whatsoever. . . . Because right now what I have heard is that the INS is telling the petitioner, 'Don't file any petition, because before we even consider whether to release him in accordance with the regulations, I made up my mind and I am not going to do it.'”<sup>17</sup>

#### *Placement in Shelter Care*

Since the *Flores* agreement has been in place, the INS has increased its shelter care space to approximately 400 beds. The majority of these shelters are institutional in nature and offer an environment of “soft detention.” The children are allowed to wear street clothing, are offered educational classes, and are housed in dormitory-style accommodations rather than being locked in cells or cell pods. Occasionally, they engage in recreational or educational trips off-site in the company of shelter staff. However, the children's activities are closely monitored, the doors are frequently locked or alarmed, the premises may be fenced, and children are not allowed to leave the facility unless accompanied by facility staff.

Moreover, children may languish in the shelters for prolonged periods, despite the fact that the shelters are set up for short-term care only. The Women's Commission followed closely the case of an eight-year-old Nigerian girl who was held in a Miami shelter for 15 months. Fega had begun to lose her ability to speak her native language and was instead speaking a combination of Creole, Spanish, and English by the time the INS finally released her to her aunt. A social worker documented a deterioration in her mental well-being as a result of her prolonged institutionalization.

The INS also has a limited foster care program, offering approximately 36 placements nationwide. These foster homes are generally used for young children, girls, long-term detainees for whom there is no sponsor, or children with special needs.

The limited foster care available to place children in INS custody is of grave concern. Foster care offers a home-like environment to children and an alternative to institutional care. It also is a much cheaper alternative to detention than either a secure facility or a shelter.

### VII. CHILDREN ARE OFTEN HELD IN SECURE FACILITIES

As a result of a lack of readily available bed space, poor case management, and often questionable placement decisions by the INS, a significant percentage—an estimated one-third—of children in INS custody spend at least some time housed in secure juvenile detention centers, designed for the incarceration of youthful offenders. Children in INS custody may be detained in such settings for anywhere from a few days to more than a year.

The *Flores* agreement theoretically limits the use of such facilities to just five narrow categories of children:

<sup>16</sup> Transcript of Hearing, *A.L.S. v. Ashcroft*, case number 02-20421-CIV-MORENO (U.S. District Court, Southern District of Florida), p. 40.

<sup>17</sup> *Ibid.*, p. 42.

- Children who have been charged with or are chargeable with a crime or a delinquent act, unless that is an isolated offense that does not involve violence;
- Children who have committed or threatened to commit a violent or malicious act while in INS custody;
- Children who have been disruptive while placed in a non-secure setting;
- Children who have been deemed a flight risk; and
- Children who must be held in secure facilities for their own safety.

Under *Flores*, children who do not fall into one of these categories must be placed in the least restrictive setting possible within the first three to five days after apprehension by the INS. However, in 1999 only 675 cases out of 1,958 incidences of children placed in secure confinement were suspected or adjudicated delinquent.<sup>18</sup> In 2000, non-delinquent children accounted for 1,569 of the 1,933 instances of secure detention.<sup>19</sup> We believe that the INS is consistently overusing secure confinement, placing children there who should have been in shelter or foster care. When the Women's Commission visited the Yuma County Juvenile Justice Center in Arizona, the facility administrator told us that he assumed that the children the INS had placed in the facility had been adjudicated delinquent. He asked, "Why else would they be here?"

Often the children themselves and their attorneys are unaware of the reasons for their placement in secure facilities. Placement decisions are generally made at the local level by INS district offices, and are rarely reviewed. While under the *Flores* agreement placement decisions can be challenged in federal court, this remains an unrealistic option for most children, particularly those who are unrepresented by counsel. Furthermore, in many cases it appears that once placement decisions are made, they are never subsequently reviewed, leaving some children languishing in secure settings for prolonged periods.

The INS frequently justifies its placement of children in secure settings under a significant exception included in the *Flores* agreement that suspends application of the least restrictive setting requirement. In cases of emergencies or an influx of children, the INS may place a child in any facility having space, including a secure facility. The agreement defines an "emergency" to include natural disasters, facility fires, civil disturbances, and medical emergencies. The term "influx" is defined as those circumstances in which the INS has more than 130 children eligible for placement in non-secure settings in its custody.

The influx exception is particularly problematic. The threshold number of 130 was agreed upon by the parties to the *Flores* settlement at the time of negotiation, as that was the number of shelter and foster bed placements that was then available to the INS. Since the agreement took effect, however, the INS has expanded its shelter and foster care program to approximately 400 beds. Because the threshold number embraced by the agreement has not kept pace with this reality, in effect the exception has overtaken the rule. In fact, the Women's Commission found in its August 2001 assessment of juvenile detention centers used by the INS that in many cases the INS justified placement of children in secure facilities by citing the influx exception. In the San Diego Juvenile Hall, for example, some of the children had notices of secure placement in their possession that cited the influx exception. Some had been in the facility for several months. The delegation had also learned that at least one INS shelter had been running under capacity for most of the year.

This has been a consistent practice by the INS over the years. When the Women's Commission visited the Liberty County Jail in 1998, 83 children in INS custody were detained in the facility. The Houston Juvenile coordinator justified these placements by stating that there had been an "influx" of children. The Women's Commission, however, learned that in fact there were several beds open in the Houston shelter at the same time, a facility that is less than two hours away, undermining the INS District's assertion that it had experienced an influx of children.

Children are also sometimes arbitrarily labeled as "flight risks." This has become increasingly common for children who are denied relief by an immigration judge and whose cases are on appeal to the Board of Immigration Appeals. The INS will frequently transfer such children to secure detention facilities. The San Francisco juvenile coordinator told the Women's Commission in August 2001 that it is the policy of the district to deem any child who has been issued a final order of removal a flight risk and move him or her to a secure facility, unless the child is very young.

The juvenile detention centers from which the INS rents space are typically harsh and punitive in their environment. They are designed for the detention of youthful

<sup>18</sup> Tom Brune, "INS Housing Children in Jails," *Newsday*, p. A5 (February 4, 2000).

<sup>19</sup> "Unaccompanied Juveniles in INS Custody," Office of the Inspector General, Report Number I-2001-009 (September 28, 2001), P. 2.

offenders and very often hold youth who have committed serious crimes. The facilities which the Women's Commission visited included in their populations young people who had committed violent felonies such as assault and battery, murder, and school shootings. In the secure facilities, the children often become indistinguishable from the general population. They are typically forced to wear prison uniforms or institutional wear.

One 14-year-old Honduran asylum seeker remarked to the Women's Commission, "I crossed a border, no more. But they treat me as if I am a criminal.

Other boys here have used weapons and drugs. All I did was cross a border. I look at these four walls and go crazy." The boy had been held at the San Diego Juvenile Hall for four months.

Children are allowed little privacy in the secure facilities. For example, during a Women's Commission's visit to the San Diego Juvenile Detention Center, a male guard was overseeing the girls' wing. From his control station, the girls' toilets and showers were in plain view. The doors to the toilets and showers, moreover, were only two to three feet in height, offering little privacy. Ironically, the boys' wing was monitored by female guards. Again, the toilets and showers were almost completely exposed to view and offered little privacy.

Children in INS custody, moreover, may remain in secure detention for prolonged periods, in some cases much longer than the children who are held in county custody. For example, the administrators at the D.E. Long facility in Oregon indicated that Chinese children in the custody of the INS had remained in the facility for a prolonged period, noting "Our [county] kids are here for 30-90 days. We're just not equipped to handle a longer stay." One Chinese girl was detained in the facility for approximately six months before being granted asylum. Even then, it took the INS several more weeks to release her to her uncle.<sup>20</sup>

Many of the secure facilities used by the INS, of which there are approximately 90 nationwide, are located in rural areas far from the legal and other services that can assist children through their immigration proceedings.

The remote location of many of these facilities has led to the use of video conferencing to conduct the children's immigration hearings in some INS districts, such as Philadelphia and Seattle. The use of video conferencing raises serious due process concerns, particularly for children.<sup>21</sup> Attorneys who represent children held at Martin Hall in Spokane, Washington reported that their child clients are very confused by the video conference process, and in at least one case, reacted by answering "no" to every question the immigration judge posed. An attorney observed, "Video hearings are a nightmare."

Some facility staff have questioned the placement of INS-detained children in secure settings and the treatment they receive there. A caseworker who had worked at Martin Hall left his position at the facility partly out of concern over the treatment of children in INS custody. He indicated that the INS-detained children were viewed as a source of funding for the three counties which operate Martin Hall, and that the facility administration discouraged him from working with the children. He reported that his supervisors told him, "Don't spend your time with the INS kids, they'll all be deported anyway."

#### VIII. CHILDREN IN INS CUSTODY ARE FREQUENTLY COMMINGLED WITH YOUTHFUL OFFENDERS

The *Flores* agreement forbids the commingling of children in INS custody with the general population of youthful offenders in secure facilities.<sup>22</sup> However, the Women's Commission has documented numerous violations of this requirement, including in the Liberty County Juvenile Detention Center, TX; the Yuma County Juvenile Hall, AZ; the San Diego Juvenile Hall, CA; Martin Hall, WA; and D.E. Long Juvenile Detention Center, OR. In some cases, INS-detained children share cells with youthful offenders. The Women's Commission interviewed a 14-year-old asylum seeker from Honduras in the San Diego facility who had shared a cell for four months with a boy serving time for assault and battery.

The Office of the Inspector General also found that the majority of secure facilities used by the INS did not segregate INS-detained children from delinquent youth.<sup>23</sup>

<sup>20</sup> Julie Sullivan, "Political Asylum and a Child Behind Bars," *The Oregonian*, p. A1 (December 10, 1999).

<sup>21</sup> See Beth Lyon, "Detainees Isolated in Remote County Jail for Hearings by Video," *Detention Watch Network News* (February 1998).

<sup>22</sup> It should be noted that the INS limits its reading of the *Flores* prohibition on commingling to apply only until a child is formally placed in secure.

<sup>23</sup> "Unaccompanied Juveniles in INS Custody," Office of the Inspector General, Report Number I-2001-009 (September 28, 2001), p. 2.

It reported that 34 out of 57 facilities did not have procedures or facilities to properly segregate delinquent from non-delinquent youth. It further extrapolated that of the 1,933 instances of secure placement in 2000, 484 were likely to have been placement of non-delinquent children with delinquent children in facilities where the two populations are commingled.<sup>24</sup>

The INS generally provides little information to the juvenile detention centers about the children it places with them. This makes it extremely difficult for the facility to distinguish any special needs that the child may have.

The administrator at the San Diego Juvenile Hall indicated that the INS provides scanty information about the children who are held at the facility. No files are transferred to the facility outlining why the child is in INS custody or the status of the child's immigration proceedings. The INS only provides the child's name, his "A" number, and the dates on which the child is to appear in immigration court.

Facility administrators at the D.E. Long Juvenile Detention Center also expressed concern about the lack of information provided to the facility about children in INS custody. The facility received extensive media coverage when it was revealed that eight Chinese youth seeking asylum were housed there in 1999. One administrator observed, "We found out more about the children from the interpreter than we did from the INS. The INS only gave us rudimentary information. No records came with the kids. We don't know if the kids are just undocumented or if they have been adjudicated delinquent. The INS doesn't differentiate between them."

The Office of the Inspector General reported that the juvenile coordinators in half of the INS Districts it visited failed to visit detained children on a weekly basis, as required under internal INS policy. This failure is in part due to heavy work loads and in part due to the remote location of many facilities.<sup>25</sup>

#### IX. CHILDREN ARE OFTEN SUBJECT TO HANDCUFFING AND SHACKLING

INS policy regarding the handcuffing and shackling of children during transport varies among districts. The San Francisco District, for example, does not handcuff or shackle children. The Los Angeles District does, however. Moreover, at the Tulare County Juvenile Detention Facility, a center that until recently was used by both districts, the facility administrator indicated that INS-detained children are shackled whenever they are taken outside their cell pod, including to go to the medical clinic on-site at the facility. During the Women's Commission's visit, it witnessed children in shackles squatting against a wall outside the medical clinic.

The San Diego Juvenile Jail has a blanket policy requiring the use of restraints when children are transported or when they misbehave while in the facility. This includes handcuffs, shackles, and waist chains. Children in INS custody are not exempt from this policy.

Children in INS custody at the San Diego facility are also subject to strip searches. Ironically, children who are status offenders are exempt from this policy. However, INS-detained children who have not committed a crime are still subject to strip searches. Strip searches are conducted after any visit the child receives with the exception of attorney visits.

Children held at Martin Hall are subject to handcuffing and shackling when transported to the federal building in which their video hearings are conducted. They remain shackled during the hearing. The INS, however, indicated that this policy is in place due to the U.S. Marshals Service and disavowed responsibility itself, despite the fact that the children are in INS custody. The Seattle juvenile coordinator also noted that any use of handcuffs and shackles inside of Martin Hall is subject to the policies of Martin Hall, again disavowing any responsibility on the part of the INS.

Facility administrators at the D.E. Long facility indicated that they witnessed children in INS custody subjected to handcuffing and shackling when transported.

The San Diego Juvenile Hall administrator also indicated that the staff at the facility frequently use pepper spray to control the youth.

#### X. CONDITIONS OF DETENTION GENERALLY FAIL TO MEET THE NEEDS OF CHILDREN

Many of the secure facilities used by the INS are simply not equipped to meet the needs of newcomer children in immigration proceedings. This includes even basic communication, as translation assistance is rarely available in the juvenile detention centers with which the INS contracts and is often not even available in the INS shelters. In the Liberty County Juvenile Detention Center, for example, a Chi-

<sup>24</sup> Ibid.

<sup>25</sup> Ibid., p. 3.

nese boy appeared upset when he reported to the Women's Commission that there was no one in the facility who could speak Chinese. He also reported that he attends classes in the facility, but that he does not speak in class because his English was not good enough. A Guatemalan boy was transferred from a Miami shelter to an adult prison, because he failed to comply with instructions given to him by the shelter staff. However, he did not understand the instructions because he speaks only Mam and the staff spoke only Spanish.

The administrator at the San Diego Juvenile Hall conceded that the diversity of languages spoken by INS-detained children and the lack of translation services are difficult for the facility to handle. He stated, "It's hard for us. It creates a lot of problems."

The Portland INS District resisted providing adequate translation services to assist children who were detained at the D.E. Long facility. In response to a request from the facility for additional Chinese interpretation services, the INS responded that it would provide 12 hours of such services. When the facility advised the INS that it would need more than 12 hours of such services, the INS informed the facility that it would authorize further services on an emergency basis but that pre-approval for those expenses would be required. The INS officer also indicated that "he was spending taxpayers' money and had to be very judicious in this regard."<sup>26</sup>

In some facilities, access to the outdoors is extremely limited. Children held at Martin Hall in Washington are not allowed outside every day. When they are allowed outside, it is typically for 20 minutes at a time before classes. During the weekends, time outside is extended to 1-2 hours. The outdoor area is an extremely small cement area. A Guatemalan teenager held at Martin Hall told the Women's Commission that the children do not go outside at all on some days. When they do go outside, there is no sports equipment available. He said, "We just stand around and talk."

Education programs at many of the facilities used by the INS are conducted in English. Moreover, they are often based on the assumption that children will be in the facility for a short period of time, and thus the classes are repetitive for children held for prolonged periods.

Access to telephones is inconsistent among facilities. In secure facilities, children are typically forced to rely on collect calls or phone cards to make long distance calls, even to their attorneys. This undermines the ability of children without financial resources to reach out to their lawyers and families. Privacy is also an issue in some facilities, as the telephones are sometimes located in common areas.

Children are also often cut off from religious services in their chosen faiths. This is sometimes due to the remote rural locations of the facilities. For example, the chaplain at the Tulare County Juvenile Detention Facility was only able to arrange visits from representatives of the Catholic and Evangelical faiths, even though many of the children held there were Buddhist. The San Diego Juvenile Hall provides Catholic and Protestant religious services, but is unable to provide Muslim or Buddhist services, as there are no representatives of those faiths available in the community.

#### XI. ACCESS TO SECURE FACILITIES IS DIFFICULT FOR HUMAN RIGHTS GROUPS

In August 2001, the Women's Commission sought access to twelve secure facilities used by the INS in California, Washington, Oregon, and Texas.

To obtain access to the facilities, the Women's Commission wrote letters to the INS National Juvenile Coordinator and the local facilities themselves several weeks before the scheduled start of the tour. The INS Juvenile Coordinator expressed his support for the assessment. All but one center expressed its willingness to allow access to the Women's Commission, although in some cases the facility administrators indicated that they would also have to obtain approval from the INS district and/or regional offices. The administrator of the Marin County facility outright denied access for a visit, with the justification that a visit had recently been conducted by the law firm of Latham & Watkins and that he was disinclined to allow another visit.

Given the cooperation from INS headquarters in Washington, DC, the delegation fully expected to receive a similar level of openness at the district and regional levels. However, this did not hold true. In the majority of cases, the delegation met with opposition when it approached the regional and district INS staff.

Unfortunately, this resulted in the outright denial of access to some facilities and limitations to access in others. The Houston INS District forbid the delegation en-

<sup>26</sup> E-mail from Ron G. Pitney to Rich K. Scott regarding "INS Interpreter Services for Young Ladies" (May 21, 1998).



trance entirely. Therefore, the delegation was only able to visit the Liberty County facility, and then only because it accompanied an attorney of a child detained there. As the visit was conducted under the rubric of an attorney/client visit, however, the delegation was unable to tour the facility. The delegation was denied any form of access to the Medina County Juvenile Detention Facility and the Catholic Charities Children's shelter. It should be noted that the Women's Commission was granted access to the Catholic Charities shelter in 1998, at which time it was impressed with the openness of the facility and the professionalism of the staff. That same year, it was also given full access to the Liberty County facility, about which it raised serious concerns regarding the punitive conditions of detention in the facility.

The Women's Commission delegation's ability to access the facilities used by the San Francisco and Los Angeles INS Districts was somewhat more successful than in Texas, but still hampered by restrictions placed on the visits. It was allowed to tour Central Juvenile Hall, Los Podrinos Juvenile Hall, and Tulare County Juvenile Detention Facility, but was denied the ability to speak with INS-detained children.

This denial was particularly disturbing in the case of the Tulare Juvenile Detention Center. The delegation drove three and a half hours from Los Angeles to rural central California to reach the facility, accompanied by a Chinese interpreter, who was to facilitate interviews with several Chinese children detained in the center. The delegation had obtained the written permission of the attorney representing the children to interview her clients. Once the delegation arrived at the facility, however, the San Francisco INS District juvenile coordinator informed its members that they would not be allowed to speak with the children. The INS regional juvenile coordinator indicated that the prior approval of the children's attorney was insufficient to facilitate access, stating that he had no means to authenticate the letter, despite the fact that the letter was on letterhead and indicated the attorney's willingness to confirm her consent by telephone. Even after an on-site telephonic conversation with INS headquarters, the INS stood behind the position of the regional and district juvenile coordinators.

The delegation's subsequent visit to the San Diego Juvenile Hall further confirmed the arbitrariness of INS policy regarding access to juvenile detention centers. The delegation met with no resistance from the San Diego facility administrators, was provided a thorough tour of the facility, and was allowed to speak with INS-detained children in private. The delegation had notified both the facility and the INS National Juvenile Coordinator of its intent to visit the facility, but in this case, the facility administrator apparently felt no need to confer with the INS San Diego District office.

The delegation encountered further inconsistencies in INS policy during its visits to facilities in Washington and Oregon. Its visits to the Spokane County Juvenile Detention Center and the Grant County Juvenile Detention Center were open and unrestricted. However, it should be noted that the INS rarely uses either facility, and in fact, did not have children detained in either location at the time of the Women's Commission's visit.

The delegation did encounter resistance to its visit to Martin Hall, which is used regularly by the INS. The INS Seattle District juvenile coordinator attempted to prevent the delegation from speaking with the children in INS custody. However, the delegation overcame her refusal because the children's attorney had accompanied the delegation and he insisted that the delegation be allowed to speak with his clients. The administrators of the D.E. Long Juvenile Detention Center in Oregon cooperated in the delegation's visit and provided a full tour of the facility. However, the INS has greatly curtailed its use of the Long center.

The repeated denial of access to the Women's Commission delegation was troubling on a number of fronts. First, there currently exists no written policy on access to children's facilities, even though the INS has issued written guidelines for such visits to adult detention centers.<sup>27</sup> The delegation operated in good faith and relied on the expression of cooperation from the national juvenile coordinator. The ability of local INS officers to override the authority of the INS headquarters is confusing and reflective of a flawed management structure that permeates the policies and procedures for handling children in the custody of the INS. Subsequent to the delegation's tour, INS headquarters indicated that it would develop a written access policy but to date no such policy has been issued.

Second, the ability of human rights organizations such as the Women's Commission to evaluate U.S. treatment of children newcomers hinges on access to such facilities. Such organizations can play a valuable role in assessing current practices and offering recommendations for reform.

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<sup>27</sup> Immigration and Naturalization Service, Detention Operation Manual, "Visitation" (September 20, 2000).

Third, the INS's denial of access to the Women's Commission delegation was also questionable in its legality in one important aspect. An attorney designated under the *Flores* agreement as an attorney of record for all children in INS custody with regard to their conditions of confinement was a part of the Women's Commission delegation. Under the *Flores* agreement, such attorneys are to be given unfettered access to children in INS detention. The INS failed to adhere to this *Flores* requirement, however, even for this attorney. Its stated rationale for this was that the attorney was "switching hats" and that for purposes of the Women's Commission delegation was unable to act as a *Flores* attorney. It persisted in this justification even when the Women's Commission agreed to back off its own request for access in order to facilitate a *Flores* visit by the *Flores* attorney, even though under the agreement such attorneys may designate additional parties for purposes of a *Flores* visit.

The INS would be better served if it welcomed a public/private partnership with organizations with expertise in immigration, refugee protection, and children's rights and was transparent about its policies and practices, including access to children's facilities. While clearly the INS must regulate visits to the facilities in order to ensure the safety of the children and the smooth operation of the facilities, an arbitrary denial of such visits, or an effort to create an artificial impression of conditions in such facilities, does not serve either goal.

## XII. INS-DETAINED CHILDREN ARE SOMETIMES WRONGFULLY HELD IN ADULT DETENTION CENTERS

The Women's Commission has followed many cases in which youth under 18 years of age have been incorrectly identified by the INS as adults. This misclassification as adults carries serious consequences for the handling of the youth's cases and their placement in detention. Adults may be immediately returned to their home countries under the system of expedited removal unless they express a fear of return, whereas children under age 18 may not.<sup>28</sup> Moreover, young people misidentified as adults may be commingled with adults in adult INS detention centers or prisons.

Mekabou Fofana, a Liberian teenager, described his experience in detention after the INS misclassified him as an adult,

"I arrived at JFK International Airport on July 11, 1999, nine days before my 16th birthday. . . . I was taken to the Wackenhut Detention Center in Queens, New York. I was held at an adult facility even though I was a minor, because the INS claimed that they could tell that I was over 18 from a dental examination. I was detained at Wackenhut for about six months. I was very sad at Wackenhut because I was put with adults and I wasn't supposed to be with them. . . . I was transferred to Lehigh County Prison, a criminal prison in Pennsylvania—moving me far from my family and my pro bono lawyers. I was detained there with criminals for one week. I felt like I was treated like a criminal. I was the youngest one among them and was very scared that the criminal detainees would hurt me. My cellmate had killed someone and would tell me about the crimes he had done. I was so afraid that I couldn't sleep at night. . . . I was transferred to York County Prison, another remote detention facility in Pennsylvania. I was detained there about five months....I felt like my life was finished. I was too young to be there."<sup>29</sup>

Mekabou was detained as an adult for one and a half years before being granted asylum by the Board of Immigration Appeals.

To determine the age of young people whose age is not readily apparent, the INS relies primarily on dental radiography exams. Such exams base age assessments on the eruption patterns of teeth. Dental experts have questioned the use of such exams for definitive age determinations. For example, in a letter to the Women's Commission, Dr. Herbert H. Frommer, DDS, Professor and Chair of Radiology at New York University, concluded, "It is my opinion that it is impossible to make an

<sup>28</sup>"Unaccompanied Minors Subject to Expedited Removal," Memorandum from the INS Office of Programs (August 21, 1997).

<sup>29</sup>Testimony of Mekabou Fofana, before the Senate Committee on the Judiciary Immigration Subcommittee (May 3, 2001).

exact judgement based on radiographs of whether an individual is above or below the age of 18."<sup>30</sup> Other experts have echoed Dr. Frommer's concerns.<sup>31</sup>

These concerns are also shared by the Department of State. It discontinued the use of bone testing to establish age in 1998 out of recognition that ethnic and individual variations in development may also be exacerbated by cultural differences, malnutrition, and disease.<sup>32</sup>

### XIII. INS TRANSFER POLICIES FOR CHILDREN

The INS has designated all bed spaces as "national." This means that any INS district can request transfer and placement of a child to wherever a shelter, foster care, or secure placement is available. This policy is critical to ensuring that the *Flores* mandate of placement in the least secure setting possible is fulfilled, as many INS districts lack shelter care facilities in their jurisdictions. However, it also means that children are frequently transferred hundreds or thousands of miles from their original port of arrival into the United States, even if their family members or attorneys are located at that site.

Transfers of children, in fact, occur frequently and often seem to be conducted for arbitrary reasons that have more to do with the logistical concerns of the INS than to do with the best interests of the child. Moreover, the attorney representing the child is often not notified of the transfer ahead of time, even though this is required under the *Flores* agreement.

The experience of three Guatemalan youth demonstrates the disruption caused by transfers. In March 2001, three Guatemalan youth ranging in age from fifteen to seventeen were given 30 minutes notice in which to pack their bags and prepare for transfer from Miami to Chicago. Two of the three youngsters had been held in a Miami shelter facility for more than a year. The third had recently arrived and was scheduled for her first immigration court appearance the next day. Despite this, their attorney, who works for a local charitable organization, was not notified of the transfer and only found out when she arrived at the shelter the next day. The INS meanwhile had convinced the immigration judge to change venue over the case to Chicago, thus precluding her continued representation of the three youth. The attorney was given several justifications for the transfer from the INS Miami District, including a lack of bed space and an influx of Colombian children. However, she discovered that the shelter in Miami was in fact not full and that only three Colombian children were housed there.

### XIV. CHILDREN LACK THE SERVICES NEEDED TO NAVIGATE THE U.S. IMMIGRATION SYSTEM

Also absent in the current system for children in INS custody are professionals who can assist children through their immigration proceedings. Less than half of the children in INS custody are represented by counsel. U.S. law also fails to appoint guardians ad litem to unaccompanied children.

The Women's Commission was pleased and encouraged by the INS's issuance of "Guidelines for Children's Asylum Claims" in 1998. The United States is only the second country in the world to establish a framework for the consideration of children's asylum claims. The Guidelines are groundbreaking in their comprehensive establishment of legal, evidentiary, and procedural standards to guide adjudicators.

However, the continuing success of the Guidelines in identifying and ensuring protection of refugee children will hinge in large part on the adequacy of the assistance they are provided to navigate U.S. asylum law. Children must be provided the assistance of counsel and guardians ad litem to identify any relief for which they may be eligible and to advocate for such relief in immigration court. Asylum proceedings are extraordinarily complex, and a recent study revealed that represented

<sup>30</sup> Letter from Herbert H. Frommer, DDS, Professor and Chair of Radiology New York University, to Rachel K. Jones, Fellow, Women's Commission for Refugee Women and Children (August 7, 1997).

<sup>31</sup> See letter from Neil Serman, BDS, DDS, MS(Rad), Professor and Head, Division of Oral Radiology, Columbia University School of Dental and Oral Surgery, to Rachel Jones, Fellow, Women's Commission for Refugee Women and Children (August 21, 1997) (noting that there is great variation in age in eruption patterns of teeth); Alan Elsner, "New York Dentists Can Settle Fate of Migrants," Reuters (January 11, 2002) (citing concerns from dental experts that dental x-rays cannot accurately identify a person's age).

<sup>32</sup> Alan Elsner, "New York Dentists Can Settle Fate of Migrants," Reuters (January 11, 2002).

asylum seekers are 4-6 times more likely to win their asylum cases.<sup>33</sup> The ability of children who remain unrepresented to win their cases is even more questionable given their inherent lack of capacity to understand the proceedings in which they have been placed.

The American Bar Association, working in cooperation with charitable organizations, local bar associations, and law firms such as Latham & Watkins, has done an extraordinary job of raising awareness about the needs of children in immigration proceedings and increasing the pro bono services available to them. However, the practical reality for most detained children is that they cannot afford or cannot access legal counsel. Moreover, they may not be aware of the importance of counsel to their cases. In addition, the sheer number of detention facilities in which children in INS custody are detained, combined with the remote location of many of these facilities, create innumerable obstacles which charitable legal services organizations lack the resources to overcome. The lack of legal representation results in sometimes ludicrous situations; in one case, an 18-month-old toddler appeared at a master calendar hearing before an immigration judge with no attorney or other adult representative to help her.

Also out of step with the practice of other countries, as well as the practice in other areas of U.S. law such as abuse and neglect proceedings, is the fact that unaccompanied children in immigration proceedings are not appointed guardians ad litem. A guardian could facilitate the child's participation in his or her immigration proceeding by helping the child to understand the proceedings and encouraging the child to participate to the fullest extent possible in the proceedings. The guardian could also gather information regarding the reasons why the child is in the United States, advising the child's attorney and the immigration judge about the circumstances of the child.

The experience of two young Indian children who appeared before an immigration judge in Chicago demonstrates the efficacy of appointing guardians ad litem to unaccompanied children. The attorney representing the children had struggled to understand the children's situation and reasons for being in the United States. After the immigration judge had agreed to the appointment of a guardian, who was a trained social worker, the guardian quickly determined that the 8-year-old boy wished to return to his parents in India, who then readily agreed to accept his return. The 11-year-old girl, on the other hand, revealed for the first time to the guardian that she had been subjected to severe child abuse and had been sold by her parents to traffickers. The guardian testified at their immigration hearing and the child was granted asylum.

The lack of adult assistance available to children asylum seekers means that many of them give up hope and agree to deportation; in some cases, children had actually earlier expressed a fear of return. In other cases, children are forced to struggle through their immigration proceedings alone with an inadequate understanding of the laws and procedures that dictate the handling of their cases.

## XV. CONCLUSION

The Women's Commission remains gravely concerned about the disturbing lack of attention to the needs and rights of children asylum seekers and other young newcomers who are in the custody of the INS. The frequent failure to make individualized determinations with regard to each child's placement and psycho-social needs leads to an inconsistent and *ad hoc* system based more on the logistical needs of the agency charged with their care and its institutional bias toward law enforcement than on the needs of the child. Consideration of the best interest of the child, the cornerstone of child welfare policy and practice, is a concept that continues to allude the policies and practices of the INS. While we appreciate INS Commissioner James Ziglar's stated commitment to improving the agency's handling of children, we do not believe that the agency has the expertise to adequately take into account the unique needs of this vulnerable population.

We strongly support the approach of S. 121, which shifts the care of custody of children to an appropriate office with no interest in the outcome of the child's immigration proceedings and leaves the INS to perform the functions it does best: the enforcement of U.S. immigration laws. The development of an Office of Children's Services and the provision of legal counsel and guardians *ad litem* to unaccompanied children is not only a humane solution to the problems outlined above, it is also a cost-effective solution. S. 121 puts in place the structure and resources necessary to quickly identify an appropriate outcome to each child's case, safely return-

<sup>33</sup> Memorandum from Andrew Schoenholtz, Georgetown University Institute for the Study of International Migration (Washington, D.C.: September 12, 2000).

ing those children who are not eligible for relief from removal to their homelands and quickly moving those children who are provided relief into stable, home-like foster care settings where they can begin their lives anew.

In conclusion, one true measure of a society is its treatment of children. The United States must acknowledge and uphold the rights and needs of newcomer children in order to live up to its reputation as a leader in human rights and a nation that cherishes and protects children. We urge Congress to expeditiously pass S. 121, legislation that ensures a holistic, human, and effective approach to newcomer children.

Thank you for considering our input on this. I would be happy to address any questions you may have.

Chairman KENNEDY. Very, very helpful and knowledgeable, but troubling comments. Thank you.

Mr. Morton?

**STATEMENT OF ANDREW D. MORTON, LATHAM AND WATKINS,  
WASHINGTON, D.C.**

Mr. MORTON. Good afternoon, Chairman Kennedy, Senators Brownback and Feinstein. We thank you for convening this hearing.

I appreciate the opportunity to share my experiences working on behalf of the vulnerable population of unaccompanied alien juveniles in INS custody. We appreciate your support of the Unaccompanied Alien Child Protection Act, bipartisan legislation that will bring objectivity, efficiency, and accountability to the custodial care of these children.

My testimony today focuses on a key deficiency in the current system of custodial care for these unaccompanied alien juveniles, the need for safeguards of legal counsel while children are detained through the pendency of an immigration proceeding. This bill would foster a network of pro bono private attorneys, as well as create a safety net of court-appointed counsel for those rare instances where pro bono representation is not available.

In the seminal case establishing a child's right to counsel under domestic law, Judge Fortas wrote, "The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child requires the guiding hand of counsel at every step in the proceedings against him."

Those words ring as true today as 35 years ago, and as true for undocumented minors as for juveniles in domestic proceedings. Mr. Chairman, they should ring as true for members of this Congress as they did for the Justices of the U.S. Supreme Court.

During the adjudication of every removal proceeding, the Government is represented by INS staff attorneys who are trained and experienced in prosecuting violations of immigration law. In contrast, more than half of unaccompanied juveniles now appear in court with a lawyer, a guardian or adult assistance of any kind. Without such objective and informed support, it is impossible to ensure a detained child's due process rights and it is not feasible to expect a determination truly based on a full consideration of each child's individual circumstances.

This lack of legal assistance is especially troubling, given the life-altering decisions that are reached in asylum cases and other immigration-related adjudication. Alarming, these same children

that we do not permit to be unaccompanied in some department stores and movie theaters are expected to fend for themselves alone in a court of immigration law.

Notably, in other legal proceedings, children regularly are appointed attorneys to assist them through the process. For juvenile appearances in many State courts, ranging from delinquency hearings, to civil suits, to allegations of parental abuse and neglect, States, including Massachusetts, Kansas and California, mandate the appointment of counsel to ensure a fair and objective adjudication for minors who are ill-equipped to represent themselves.

Surprisingly, under the present system INS functions as legal guardian for each and every one of these children. Thus, the responsibility to care for the well-being of these juveniles lies with the very agency whose primary mission is to secure the deportation of undocumented aliens. The obligation to ensure decisions in the child's legal interest falls upon a Government bureaucracy with no child welfare expertise and with an incurable predisposition toward law enforcement motives.

Every daily assessment affecting custodial care, and more critically the final determinations of appropriate substantive relief, constantly is vulnerable to this unsettling conflict of interest. INS now has the incompatible yet simultaneous roles as caregiver, prosecutor, and jailer.

And most troubling, in the absence of counsel to advocate and safeguard a child's legal interests, each and every INS decision respecting the well-being of a detained and unrepresented child remains completely unchecked. My written testimony outlines the litany of examples that document this conflict and its appalling effects.

As Americans, we never would stand for a system where the district attorney serves as public defender in the same case. For these same reasons, the INS, with its primary mission of immigration law enforcement, simply cannot ensure the legal interests of an unrepresented child. They should not want that responsibility, they should not have that responsibility. The system is to blame and the system must be fixed.

Without appropriate legal assistance, many abused, abandoned and neglected children with valid claims to asylum or the special immigrant juvenile visa face tremendous obstacles to accessing these legal remedies. By the same token, without counsel to review each child's circumstances, the system is clogged with the inefficiencies of cases for which there is no substantive relief.

Often, it will be the conclusion of an attorney that no legitimate immigration claim is available and the client properly is advised to accept voluntary departure. This was exactly the case in Latham and Watkins' first child refugee case. Without this legal analysis, countless children risk being removed and returned to violent situations and subjected to further human rights abuses. The role of counsel simply cannot be underestimated in these high-stakes proceedings which necessarily result either in securing appropriate immigration relief or, on the contrary, to the potentially uncertain fate of deportation.

As Judge Creppy has testified, immigration judges are reluctant to issue a final order of removal against an unrepresented child,

and instead continue the case, in his words, two, three, four, five times, resulting in protracted detention in juvenile jails and institutional shelters. Not only does this prolong confinement and inflict an unnecessary and substantial emotional cost on these young children, but at contracted daily rates of up to \$250 a day, the lack of representation inflicts a substantial cost on the budget as well, needlessly wasting taxpayer dollars on extended detention and repeated court proceedings. Having the assistance of counsel for these juveniles invariably would speed the adjudication process and minimize both the emotional harm of detaining a child and the senseless taxpayer cost of an inefficient system.

Mr. Chairman, the advocacy of an attorney for alien juveniles is essential to secure bedrock American principles of due process and equal justice under law. Moreover, access to counsel is of paramount importance to safeguard against the conflict of interest and unchecked authority inherent in INS legal custody.

By implementing a system to grant representation to unaccompanied alien juveniles, the entire immigration process will be resolved in a manner that is more effective, more efficient, and more just. Mr. Chairman, I urge your support of the Unaccompanied Alien Child Protection Act and I welcome your questions.

Thank you.

[The prepared statement of Mr. Morton follows:]

STATEMENT OF ANDREW MORTON, ATTORNEY, LATHAM & WATKINS, WASHINGTON, D.C.

"The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child requires the guiding hand of counsel at every step in the proceedings against him"—Justice Abe Fortas, *In re Gault*<sup>1</sup>

Chairman Kennedy, Senator Brownback, Senator Feinstein, members of the Committee-good afternoon, and thank you for convening this hearing on the conditions of confinement and governing legal standards faced by unaccompanied alien juveniles detained by the Immigration and Naturalization Service (INS). My name is Andrew Morton, and I am an Associate practicing with the Government Relations Group of the law firm of Latham & Watkins ("Latham"), which currently includes over 1,400 attorneys in twenty offices throughout the world. I appreciate the opportunity to testify and share my experiences working on behalf of this vulnerable population of children.

I also strongly encourage your support of S. 121, the "Unaccompanied Alien Child Protection Act"—critical bipartisan legislation that would bring objectivity, efficiency, and accountability to the system of custodial care affecting these children.

#### I. THE NEED FOR COUNSEL IN JUVENILE REMOVAL PROCEEDINGS

My testimony today focuses on a key deficiency in the current system of custodial care for the nearly five thousand unaccompanied alien juveniles apprehended annually by the INS—the critical need for these children to receive the guidance and safeguards of legal counsel while detained through the pendency of an immigration proceeding. Enacting S. 121, the "Unaccompanied Alien Child Protection Act," would remedy this need by fostering a network of *pro bono* private attorneys, as well as by creating a safety net of court-appointed counsel for the rare instances where *pro bono* representation is not available.

These unaccompanied alien children detained and taken into legal custody by the INS range in age from toddlers to teens. Most lack even the most basic English skills, to say nothing of understanding the complex legal provisions that govern the standards of detention and various forms of substantive immigration relief. Many are the victims of smuggling and trafficking operations, meaning that they had no

<sup>1</sup> 387 U.S. 1 (1967).

involvement and should not be punished for the circumstances that led to their undocumented arrival in the United States. Perhaps for the first time, each unaccompanied juvenile is experiencing separation from family, so quite understandably they become frightened, confused, and depressed. Frequently they are detained in facilities with no one to whom they can speak in their native language-or even are restricted to an "English only" rule in some facilities when fortunate enough to be detained with another native speaker. In any event, the vast majority are without the guidance and support of a responsible adult to speak on their behalf, let alone competent legal counsel to evaluate their situation and advise them of their rights.

In the seminal case establishing a child's right to counsel in domestic law, Justice Abe Fortas wrote that "[t]he juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child requires the guiding hand of counsel at every step in the proceedings against him."<sup>2</sup> His words ring as true today as thirty-five years ago, and as true for undocumented minors as for juveniles in domestic proceedings. Mr. Chairman, they also should ring as true for the members of this Congress as they did for the Justices of the United States Supreme Court.

During the adjudication of every undocumented child's removal proceeding, the government is represented before immigration judges by INS staff attorneys who are trained and experienced in prosecuting violations of immigration law. Of these nearly five thousand unaccompanied juveniles apprehended annually by INS, however, as many as 80% appear in an immigration court without the benefit of a lawyer, a guardian ad litem, or adult assistance of any kind. Often these children are placed in remote contract facilities-great distances from urban centers where willing *pro bono* attorneys may be located and trained. Without such objective and informed assistance, it is impossible to ensure that a detained child's due process rights are respected. Moreover, it is not feasible to expect a proper determination in their case that truly is based on a full consideration of the individual child's circumstances. This lack of legal assistance is especially troubling given the life altering decisions that are reached in asylum cases and other immigration related adjudication. Alarming, these same children who we do not permit to be unaccompanied in some movie theaters and department stores are left to fend for themselves in a court of immigration law.

In United States legal proceedings apart from the context of immigration, children regularly are appointed attorneys to assist them through the process. In fact, for a wide variety of juvenile state court proceedings-ranging from delinquency charges, to civil suits, to allegations of abuse and neglect-states such as California, Kansas, Massachusetts, Ohio, and Pennsylvania mandate the appointment of counsel to ensure a fair and objective adjudication to the benefit of minors, who invariably are ill-equipped to represent themselves.<sup>3</sup>

Surprisingly under the present system, however, the responsibility to care for the well-being of these juveniles lies with the INS itself-the very agency whose primary mission is to secure the deportation of undocumented aliens-which accepts and maintains the legal custody of each and every one of these children. In essence, the sensitive obligation to ensure decisions in the child's legal interests falls upon a government bureaucracy with absolutely no child welfare expertise, and with an incurable predisposition towards law enforcement motives. Thus, daily assessments affecting custodial care-and more critically the final determinations of appropriate substantive relief-constantly are vulnerable to the agency's inherent conflict of interest, given INS's incompatible yet simultaneous roles as caregiver, prosecutor, and jailer. And most troubling, in the absence of legal counsel to advocate on behalf of a child and safeguard legal interests, each and every INS decision respecting the well-being of a detained and unrepresented child remains completely unchecked.

<sup>2</sup> In re Gault, 387 U.S. 1 (1967).

<sup>3</sup> See, e.g. Cal. Welfare and Institutions Code §317 (2002) ("Where a child is not represented by counsel, the court shall appoint counsel for the child. . . ."); Iowa Code Ann. §232.126 (2000) ("The court shall appoint counsel or a guardian ad litem to represent the interests of the child . . . unless the child already has such counsel or guardian."); Kan. Stat. Ann. § 60-217 (2000) ("[T]he court shall appoint a person who is an attorney to serve as guardian ad litem for a child. . . ."); Mass. Gen. Laws ch. 119, §29 (2001) ("[A] child shall have and shall be informed of the right to counsel at all hearings, and if said child is not able to retain counsel, the court shall appoint counsel for said child."); Ohio Rev. Code Ann. Juv. R.4 (2001) ("Every party [in a juvenile proceeding] shall have the right to be represented by counsel. . . . When the complainant alleges that a child is an abused child, the court must appoint an attorney to represent the interests of the child."); PA, Cons. Stat. Ann. Tit. 42, §6311 (2002) ("[T]he court shall appoint a guardian ad litem to represent the legal interest and the best interests of the [dependent] child. The guardian ad litem must be an attorney at law.")



As Americans we would not stand for a system where the district attorney serves as a public defender, or where an arresting officer is appointed the guardian ad litem for a juvenile. For the same reasons, Mr. Chairman, the INS with its primary mission of immigration law enforcement simply cannot be expected to ensure the legal interests of an unrepresented child. The system is to blame for this ineffectual situation, and that system must be fixed.

## II. RESPONSIBILITIES OF COUNSEL FOR UNACCOMPANIED JUVENILES

Effective representation for these vulnerable children includes all aspects of ensuring the legal interests of the child that arise during often complicated and protracted immigration proceedings. Such issues include conferring with the INS to secure that a child is detained in the least restrictive setting appropriate; evaluating the child's ability to access any available forms of immigration relief; filing applications, pleadings, and motions before immigration judges; representing the child during hearings and asylum interviews; safeguarding proper INS compliance with transfer and age determination requirements; and attempting to reunite children with parents or suitable adult relatives living in the United States or abroad.

Because the current system lacks a procedure for ensuring that every child is afforded the opportunity to receive appropriate legal assistance, however, many abused, abandoned, and neglected children with valid claims to asylum or the special immigrant juvenile visa face tremendous obstacles in accessing these legal remedies. By the same token, without counsel to review each child's circumstances, the system is clogged with the inefficiencies of cases for which there is no substantive relief available—often it would be the conclusion of an attorney that no immigration relief is available, and the client properly is advised to accept voluntary departure. But without this objective legal analysis, countless undocumented children in the United States risk being removed and returned to violent situations in a home country where they will be subjected to further human rights abuses. The role of counsel simply cannot be underestimated in these high-stakes proceedings, which necessarily result either in securing appropriate immigration relief, or on the contrary to the potentially uncertain fate of deportation.

Knowing this, immigration judges may be reluctant to issue a final order of removal against an unrepresented child and instead choose to continue the case, necessarily resulting in protracted detention in juvenile jails and institutional INS shelters. Not only does this prolonged confinement inflict an unnecessary and substantial cost on the emotional development of these young children, but at contracted daily rates of up to \$250/day, the consequence of having children appear without representation inflicts a substantial cost on the budget as well—needlessly wasting taxpayer dollars spent on extended detention and repeated court proceedings. Having the assistance of counsel for these juveniles, however, invariably would lead to structural improvements that will speed adjudication, and minimize both the emotional harm of detaining a child and the taxpayer cost of an inefficient system.

Furthermore, apart from the unassailable need for counsel when navigating the various forms of potential substantive immigration relief, the presence of an attorney is critical to secure rigid adherence with the laws and regulations that govern a detained juvenile's conditions of confinement. Over the past year, Latham attorneys have inspected numerous facilities that contract with the INS to house unaccompanied minors, and have conducted interviews with countless detained children. During the course of this review and oversight, our efforts have uncovered widespread and egregious violations of the conditions of confinement mandated by the *Flores v. Reno* consent decree, a 1997 settlement agreement that forms the basis of legal standards to which the INS must adhere when taking legal and physical custody of an unaccompanied minor.<sup>4</sup> Many of these findings were confirmed by the Department of Justice Office of the Inspector General's "Report on Unaccompanied Children in INS Custody"<sup>5</sup> ("OIG Report"). Representative examples of violations include the following:

"Children must be placed in the "least restrictive setting appropriate"<sup>6</sup> under the circumstances, however, last year INS detained nearly two thou-

<sup>4</sup> See Stipulated Settlement Agreement, *Flores v. Reno*, Case No. CV-85-4544-RJK (C.D. Cal. 1996), available at <http://www.centerforhumanrights.org/floresSettle.html>.

<sup>5</sup> U.S. Department of Justice, Office of the Inspector General, *Unaccompanied Juveniles in INS Custody*, Rep. No. 1-2001-009 (Sept. 28, 2001), available at <http://www.usdoj.gov/oig/i0109/index.htm> [hereinafter *Report*].

<sup>6</sup> *Flores* ¶11 ("The INS shall place each detained minor in the least restrictive setting appropriate. . .").

sand children in secure facilities (i.e., juvenile jails), and more than eighty percent of these minors were *non-delinquent juveniles*.<sup>7</sup> This is the case notwithstanding the INS's continuing obligation to transfer a non-delinquent juvenile from secure confinement into a licensed shelter care program "as expeditiously as possible."<sup>8</sup>

"Non-offender alien juveniles in secure confinement must at all times be provided with sight-and-sound separation from adjudicated delinquents,<sup>9</sup> yet the majority of the secure facilities housing undocumented minors have no such segregation procedures in place.<sup>10</sup> In fact, many of these facilities commingle non-offenders with delinquents as a matter of necessity, lacking the physical structure to separate the two populations. In one instance during a Latham inspection, a non-offender INS detainee was assigned to share a tiny jail cell with a violent juvenile delinquent convicted of felony drug possession and assault with a deadly weapon.

"Flores provides for the prompt release of unaccompanied minors to responsible adults based on an established "order of preference," which includes parents, designated legal guardians, and close relatives.<sup>11</sup> Current INS procedure, however, does not permit an unaccompanied minor's release to appropriate related adults when the agency believes that an undocumented parent is in the United States. Instead, INS may use the minor as bait, requiring the undocumented parent to come forward under a threat of the child's protracted detention, and then placing the parent into removal proceedings on arrival to claim their children.<sup>12</sup>

"INS policy specifically prohibits a contract facility from the use of restraints for non delinquent juveniles.<sup>13</sup> Latham interviews and the OIG Report confirm, however, that standards are not in place to document compliance, more than one half of facilities ignore this procedure, and *non-delinquent children routinely are shackled during transport, movement within facilities, and appearances in immigration court proceedings.*<sup>14</sup>

### III. THE LATHAM & WATKINS CHILD REFUGEE PROJECT

In March, 2001, after learning of this vast need for representation of unaccompanied alien juveniles, Latham created a firm-wide pro bono effort titled the "Child Refugee Project." The project involves three aspects of legal representation, each benefiting this largely unaided and at risk population of undocumented minors. First, the firm serves as pro bono counsel to the Women's Commission for Refugee Women and Children, a non-profit research and advocacy organization dedicated to protecting refugee women and children around the world. Together, Latham and the Women's Commission-in conjunction with dozens of non-profit advocacy groups-formed a wide-ranging coalition to support S. 121 and H.R. 1904, the "Unaccompanied Alien Child Protection Act." Owing to extensive efforts by the dedicated members of this coalition, the bill enjoys broad bipartisan support in both chambers of Congress.

In addition, Latham became co-counsel with the Center for Human Rights and Constitution Law (CHRCL), the non-profit legal service provider that served as attorneys to the plaintiff class of unaccompanied alien juveniles in the landmark Flores case. Despite the INS's failure over the past five years to promulgate regulations that would codify these requirements, the settlement agreement contained a sunset provision that this month would have resulted in the expiration of these legal stand-

<sup>7</sup> See Report, ch. 2 (documenting that non-delinquents accounted for 1,569 of the 1,933 secure detentions).

<sup>8</sup> Flores ¶ 12(A)(3).

<sup>9</sup> See Flores ¶ 12 ("[M]inors shall be separated from delinquent offenders.")

<sup>10</sup> See Report, ch. 2 (noting that thirty-four of fifty-seven secure facilities housing INS juveniles in FY 2000 cannot guarantee segregation of non-delinquent INS juveniles from the population of INS, county, and state delinquent juveniles).

<sup>11</sup> Flores ¶ 14; see also Report ch. 4 ("The Flores agreement, while preferring a parent or legal guardian, did not seem to prohibit passing over them to one of the family members specified.")

<sup>12</sup> See Report, at Exec. Summary ("An undocumented parent must report to an INS officer and enter immigration court proceedings before the INS will release the juvenile. If the parent is unwilling to come forward, the juvenile will remain in INS custody, even when another acceptable sponsor is available").

<sup>13</sup> See Immigration and Naturalization Service, *Detention and Deportation Officers' Field Manual*, at VII.C.2.a ("Agencies handling non-criminal juveniles under contract or inter-agency agreement with the Service do not have the authority to restrain such juveniles.")

<sup>14</sup> See Report, ch. 2 ("Contract guards and secure facilities under contract with the INS or that have signed interagency agreements with the INS, as a regular course of action, restrain in INS's unaccompanied non-delinquent juveniles during transport.")

ards, leaving unaccompanied children with no basis for a legal challenge to individual conditions of confinement. Through persistent discussions with the INS, however, Latham and CHRCL were able to negotiate the republication of a proposed rule that will codify the agreement into regulations.<sup>15</sup> Further, the negotiations led to a stipulation that modifies the sunset date of the Flores consent decree—extending the required adherence of its provisions until 45-days after the INS publishes those regulations as a final rule.

Finally, through this project, Latham's lawyers around the country provide individual pro bono counsel and services to ensure the appropriate conditions of confinement for otherwise unrepresented alien juveniles in INS custody, as well as to assist these children with navigating the complexity of immigration and asylum proceedings. Latham's individual child refugee clients come from a wide variety of troubling backgrounds, circumstances, and ages, including: Honduran and Guatemalan youth who have fled the documented genocide of street children in those countries; young Chinese and Indian children who have been the victims of trafficking and smuggling operations; and many other victims of unspeakable persecution—including intended victims of forced labor, sexual servitude, parental abuse and neglect, forced marriages as child brides, or female genital mutilation.

Since the project's inception not quite one year ago, Latham lawyers and staff have donated more than six thousand hours in pro bono services on behalf of refugee children. To date, the project has resulted in an equivalent of more than \$1.4 million donated to representation and advocacy on behalf of unaccompanied alien children, helping to ensure that every child's legal interests are protected. Additionally, Latham's lawyers are working in partnership with various child advocacy groups and legal service providers across the country including: the Midwest Immigrant & Human Rights Center, the Florida Immigrant Advocacy Center, the Florence Project, Catholic Legal Immigration Network Incorporated, Hebrew Immigrant Aid Society, the Pennsylvania Immigration Resource Center, Casa Cornelia, and the San Francisco Bar Legal Services Program.

For its commitment to pro bono legal efforts—including these much-needed services to unaccompanied alien juveniles—in 2001, Latham's pro bono program and the Child Refugee Project won numerous awards from many organizations, including: the National Law Journal pro bono recognition; the District of Columbia Bar Association's "pro bono Firm of the Year"; the Bar Association of San Francisco's "Outstanding Law Firm in Public Service"; and the Los Angeles Public Counsel's "Law Firm of the Year."

To expand further the universe of dedicated law firms addressing this pressing need for pro bono assistance, the American Bar Association ("ABA") leadership mobilized to address the plight of detained immigrant and refugee children, launching the Detained Immigrant and Refugee Children's Emergency pro bono Representation Initiative ("Initiative"). Through the Initiative, the ABA has provided ten grants to major detention sites for comprehensive pro bono legal care programs for immigrant and refugee children detained in Arizona, California, Florida, Georgia, Illinois, Pennsylvania and Texas, and is developing two additional programs in New York and Washington State. In August, 2000, the ABA sponsored a national summit for pro bono attorneys and grantees in Chicago resulting in the training of more than 115 pro bono attorneys from over twenty-five states. Through the coordination and training of the ABA, participating state and local bar associations, and pro bono legal service agencies, Latham and other private firms thus far have donated over \$3.5 million in billable hours representing detained alien children across the country.

Regrettably, even the admirable and extensive efforts of these concerned private organizations have only scratched the surface of providing representation for unaccompanied alien children. For both institutional and jurisdictional reasons, the INS itself would not and cannot provide counsel to the detained children in its legal custody—rectifying this situation is a problem that requires the congressional action of a legislative solution, and promptly enacting S. 121, the "Unaccompanied Alien Child Protection Act" would do just that.

#### IV. CONCLUSION

Mr. Chairman, the advocacy of an attorney for alien juveniles is essential to secure the bedrock principles of due process and equal justice under law. Moreover, for these vulnerable children, access to counsel is of paramount importance to safeguard against the conflicts of interest and unchecked authority inherent in the cur-

<sup>15</sup> Processing, Detention, and Release of Juveniles, 64 Fed. Reg. 39,759 (proposed July 24, 1998) to be codified at 8 C.D.R. pt. 236).

rent system of INS legal custody. By implementing a system to grant legal representation to unaccompanied alien juveniles, however, the entire immigration process will be resolved in a manner that is more effective, more efficient, and more just.

Therefore, Mr. Chairman, I urge your support of S. 121, the "Unaccompanied Alien Child Protection Act," and I welcome any of your questions. Thank you.

Chairman KENNEDY. Julianne Duncan?

**STATEMENT OF JULIANNE DUNCAN, DIRECTOR, OFFICE OF CHILDREN'S SERVICES, MIGRATION AND REFUGEE SERVICES/U.S. CONFERENCE OF CATHOLIC BISHOPS, WASHINGTON, D.C.**

Ms. DUNCAN. I am Julianne Duncan. I am responsible for children's services at Migration and Refugee Services of the United States Conference of Catholic Bishops. I come before you today as a child welfare professional with 25 years of experience in the field, predominantly with refugees and immigrant children.

I also testify today on behalf of Lutheran Immigration and Refugee Service. Our two agencies both offer child welfare services to unaccompanied alien children, including foster care placement and family reunification services. On behalf of our agencies, I would like to thank you for convening these hearings, and I would like especially to thank Senator Feinstein for her great advocacy in this very important cause.

Mr. Chairman, the main theme of our testimony today is that child welfare principles should govern our Nation's treatment of unaccompanied children. In every child welfare system in the United States, the best interests of a child is placed ahead of other concerns. Unfortunately, and tragically, this is not the case in the system which handles unaccompanied alien children.

We think that we must conform our handling of these vulnerable children with the principles endorsed and legislated by this very body for United States children: first, that a child's best interests are primary; that children are placed in the least restrictive setting possible; and that permanency planning is a central component of any child welfare system. Children, no matter what their country of origin, should not be mistreated simply because they lack documentation.

Before I proceed, I would like to reaffirm our agency's support of the entirety of Senate bill 121, the enactment of which would enshrine child welfare principles into our handling of unaccompanied alien children. In particular, we strongly support the creation of a new Office of Children's Services within the Department of Justice. We support the requirement that attorneys be made available for unaccompanied children. We support the streamlining of procedures for making special immigrant juvenile visas available for children who qualify and the establishment of appropriate standards of care.

The more specific focus of my testimony today is the requirement that INS more liberally use alternatives to detention, such as foster care and family reunification services, as well as that guardians ad litem be appointed to assist unaccompanied alien children.

Our two agencies work with INS to identify and screen prospective foster care settings, including families and small-group homes, for unaccompanied alien children who await adjudication of their

asylum claims. We believe that foster care can provide an appropriate, secure setting for a vulnerable child.

In fact, however, INS rarely uses foster care as an alternative to detention. During fiscal year 2001, our two agencies combined provided foster care homes to only 16 child asylees, including Edwin. These are children who waited in various INS detention facilities until their cases could be finally adjudicated. In addition, we provided care for seven children whose asylum claims were still in process.

The average length of stay in detention for those children whose asylum claims were granted and who were eventually placed in care—their average length of stay in detention was 8 months.

Since the beginning of fiscal year 2002, we have placed only one child in foster care. This is in spite of the fact that our agencies have the capability to place several hundred children in foster care. Between us, we have recently placed more than 600 refugee and asylee children, placed predominantly from overseas.

Chairman KENNEDY. Your point isn't that they have to stay in detention while they are looking for someone. You are suggesting now that you would be able to place them very, very quickly. Do I understand this part of your testimony?

Ms. DUNCAN. Yes, that is right.

Chairman KENNEDY. There is a lot of availability out there, is what I am hearing from you.

Ms. DUNCAN. That is right. We can increase capacity if capacity is needed, but right now we have unused capacity.

In regard to family reunification, another task of our two agencies is that we provide family reunification services for Chinese and Indian unaccompanied alien children, including locating and identifying whether or not these are true family members and assessing the suitability of the home. We do believe that this is an alternative to detention that is underutilized as well, especially for children who are awaiting their asylum hearings.

Guardians ad litem, we think, are of just invaluable assistance to children who are in the custody of the Federal Government. The bill proposes that a guardian ad litem, normally a child welfare professional, would be appointed to look after the well-being and best interests of the child. The legislation spells out the qualifications and duties of the guardian, who is charged with interviewing the child and investigating the child's situation so that the courts can understand the full range of circumstances of the child and can assist in developing a long-term plan for the child's care.

The guardian ad litem could also accompany the child throughout the immigration proceedings, advising the child of his or her situation and ensuring that a child's best interests are served. Guardians are routinely appointed for children in State and local child welfare systems and in any situation in which a parent is not available to look out for the child's welfare. It is not an unusual concept in the United States child welfare system.

Guardians are especially necessary for unaccompanied children who are alone. They have no adult guidance, they are in a new culture, and they are in a land with a different language and an extremely complex system. Guardians ensure that the due process

rights of children are respected and that a determination of the case is based on a full consideration of the child's circumstances.

The role of the attorney is to represent the child in the immigration proceedings. The guardian looks out after the best interests of the child both in terms of treatment in the United States, making sure that basic needs are met, and that an appropriate long-term plan of care is instituted.

We think that the guardians would not only benefit the child; we think it would also benefit the system. With full knowledge of the circumstances and a trusted adult, a child is much more likely to provide information which is helpful in resolving their plight. The decisionmakers would have complete information upon which to make a judgment about a case.

In earlier testimony, two of the gentlemen testifying for the Government have made much of the difficulties of designating and implementing a guardian ad litem program and the difficulty of conducting home assessments overseas. I would like to speak to those points very briefly.

Chairman KENNEDY. Very quickly.

Ms. DUNCAN. Guardian ad litem programs exist in most States. Almost all State and local courts have them. It is not impossible to do this. Our agencies would be prepared to assist.

Overseas home assessments are also not insurmountable problems. Each of our agencies has considerable experience in conducting both domestic and foreign home assessments. Other international agencies do this work as well. The International Committee for the Red Cross and the International Organization for Migration both do this work in certain circumstances. We are prepared to assist in the design of an appropriate program.

My final thought: While I understand that the INS is creating a new Office of Juvenile Affairs, from a child welfare perspective I agree with my colleagues that charging one agency with responsibility both for law enforcement and for child welfare planning cuts against all the principles that we operate on within the United States. Child welfare planning and detention and enforcement are separate functions in State and local child welfare systems. We believe that they should be separate in the case of alien minors as well.

Thank you.

[The prepared statement of Ms. Duncan follows:]

STATEMENT OF JULIANNE DUNCAN, OFFICE OF CHILDREN'S SERVICES, MIGRATION AND REFUGEE SERVICES/UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, WASHINGTON, D.C.

I am Julianne Duncan, Director of Children's Services for Migration and Refugee Services of the United States Conference of Catholic Bishops (MRS/USCCB) I testify today on behalf of MRS and the Lutheran Immigration and Refugee Service (LIRS).

Mr. Chairman, I would like to thank you for your leadership in holding this hearing and for the leadership you have shown in advocating on behalf of immigrants and refugees over the years. I would also like to thank Senator Brownback, who has shown special sensitivity and attention to the plight of immigrants and refugees.

Most particularly, I would like to extend the bishops' gratitude to Senator Dianne Feinstein, Representative Zoe Lofgren and Representative Chris Cannon, who are the primary sponsors of the Unaccompanied Alien Child Protection Act of 2001. Senator Feinstein's leadership and foresight, in particular, in introducing this important legislation has been instrumental in bringing attention to the plight of Unac-

companied Alien Children and will be critical to ensuring its passage in the days ahead.

The Lutheran Immigration and Refugee Service (LIRS) was founded in 1939 and has helped resettle more than 280,000 refugees from all over the world. A hallmark of LIRS' work has been its work on behalf of Unaccompanied Alien Children, including family reunion services and foster-care placement to children who enter the United States alone. LIRS has long been concerned about our government's practice of detaining immigrant children.

LIRS advocates for just, compassionate policies for all newcomers to the United States and administers a fund from Lutheran and Presbyterian churches that provides grants to independent grassroots programs to serve particularly vulnerable newcomers, including children in detention.

MRS/USCCB is the resettlement agency of the U.S. Catholic bishops and provides foster-care, family reunification, and other child welfare services to unaccompanied minors who enter the United States. During calendar year 2000, we assisted a number of unaccompanied alien minors obtain foster-care families and reunify with immediate or extended family members. We also have resettled 250 unaccompanied refugee minors in the United States during the past year.

The U.S. Catholic Bishops have spoken out on behalf of children, especially immigrant and refugee children. Upon the introduction of the Unaccompanied Alien Child Protection Act, Bishop Nicholas DiMarzio, chairman of the USCCB Committee on Migration, stated that the legislation was necessary to reverse our nation's shameful treatment of children: "Our country must employ a national policy which protects children and is governed by the best interest of the child. Because of their special vulnerabilities as children and the special circumstances in which they enter our country—alone and without support—we must provide special care to these children, no matter their country-of-origin."<sup>1</sup> Thus, from the perspective of the Catholic Church, all children around the world deserve special care and consideration and that care is preferably provided within a family setting.

Together, MRS/USCCB and LIRS have resettled unaccompanied refugee minors for 25 years, providing child welfare services to more than 12,000 unaccompanied children. We also work with the Immigration and Naturalization Service (INS) to provide family reunion services to Chinese and Indian youth and to place asylee children into foster-care services. We speak with one voice today united in our support for the Unaccompanied Alien Child Protection Act of 2001.

#### SUMMARY OF RECOMMENDATIONS IN TESTIMONY

The bulk of our testimony will focus upon our support for provisions in S. 121 that promote alternatives to detention for Unaccompanied Alien Children, the need for and availability of expanded use of foster care for these children, the need for guardians ad litem to make recommendations about what is in their best interests, and the urgent need for Congress to legislate changes in the care and custody of Unaccompanied Alien Children rather than depending on yet another administrative restructuring of the entities charged with these responsibilities.

We also wish to take this opportunity to express our strong support for other important aspects of the bill. In particular, we urge that, as the Committee moves to markup this legislation and report it to the full Senate, at a minimum, it maintains the following important aspects of the legislation:

- the creation of an office within the Department of Justice to handle children's care and custody issues that is separate from the Immigration and Naturalization Service (INS);
- the provision of access to counsel for Unaccompanied Alien Children so as to help them navigate the legal processes in which they are involved;
- the provision of impartial guardians ad litem to investigate Unaccompanied Alien Children's circumstances and make recommendations on what would be in their best interests;
- the enactment of standards of detention that ensure that Unaccompanied Alien Children are not mistreated by being placed in facilities with adults, in facilities with juvenile offenders, and are not unnecessarily restrained;
- the enactment of unambiguous standards ensuring that Unaccompanied Alien Children are placed in the least restrictive settings possible pending the resolution of their immigration situation, and that those settings take into account their educational, health, recreational, and spiritual needs;

<sup>1</sup>Statement of Bishop Nicholas DiMarzio, Chairman, NCCB Committee on Migration, On The Unaccompanied Alien Child Protection Act of 2000, Office of Migration and Refugee Services, September 27, 2000.

- the enactment of standards favoring the release of children to responsible caregivers if the children are not a danger to themselves or the community;
- the establishment of family reunification as a desired principle in placement decisions; and
- reforms in the Special Immigrant "J" visa to make it a more useful option for permanent protection to abused, neglected, and abandoned children.

#### THE GOVERNMENT'S SPECIAL RESPONSIBILITY TO UNACCOMPANIED ALIEN CHILDREN

The main theme of our testimony today is that Unaccompanied Alien Children should be treated under the same standards and be afforded the same child welfare protections that are available to other children in the United States. Such standards were developed to protect children as vulnerable human beings; they should not discriminate based upon legal status or national origin, but they currently do. These fundamental principles of making decisions based on the best interest of the child, of placing children in the least restrictive setting, and of moving children towards permanency as soon as possible are absent from current laws and regulations governing our treatment of Unaccompanied Alien Children.

Indeed, Congress itself already has ensured that these protections are incorporated for U.S.-citizen children in child welfare systems in the United States. Under the Federal Adoption Assistance and Child Welfare Act of 1980, Congress requires that a child's case plan be designed to achieve placement in the least restrictive, most family-like setting available, consistent with the best interest and special needs of the child. The same law, which governs the treatment of children in the foster care system of the United States, defined child welfare services as social services that seek to: 1) promote and protect the welfare of all children; 2) prevent or resolve problems which may result in the maltreatment or delinquency of children; 3) prevent the unnecessary separation of children from their families; 4) reunite families and children; and 5) assure adequate care of children away from their home.

S. 121 would enshrine these fundamental protections into law for Unaccompanied Alien Children as well, bringing the treatment of these children into alignment with other domestic approaches to helping children in need. It also would bring the United States up to date with Canadian and European guidelines which have developed over time to deal appropriately with alien children in their societies.

**PRINCIPLES THAT SHOULD GOVERN TREATMENT OF UNACCOMPANIED ALIEN CHILDREN**  
 BECAUSE OF OUR LONG EXPERIENCE IN CARING FOR AND ADVOCATING ON BEHALF OF UNACCOMPANIED MINORS, MR. CHAIRMAN, OUR TESTIMONY TODAY WILL POINT OUT CHANGES IN LAW WE BELIEVE ARE REQUIRED, AS LAID OUT IN SENATOR FEINSTEIN'S BILL, TO REFORM THE CURRENT SYSTEM. IN THE VIEW OF MRS/USCCB AND LIRS, OUR GOVERNMENT'S TREATMENT OF UNACCOMPANIED ALIEN CHILDREN SHOULD BE GOVERNED BY THE FOLLOWING PRINCIPLES:

- The Federal government has a special responsibility to ensure that Unaccompanied Alien Children are treated with dignity and care. Children are our most precious gifts. Their youthfulness, lack of maturity, and inexperience make them inherently vulnerable and in the need of the protection of adults. Unaccompanied Alien Children are among the most vulnerable of this vulnerable population. They are separated from both their families and their communities of origin, they are often escaping persecution and exploitation, they often find themselves in a land in which the language and culture are alien to them, and they are thrust into complex legal proceedings that even adults have great difficulty navigating and understanding.
- Unaccompanied minors should be held in the least restrictive setting as possible, preferably with family members or with a foster family. Secure facilities should be used on a very limited basis and only when absolutely necessary to protect a child's immediate safety or the safety of the community.
- Minors should be reunited with parents, guardians, or other family members within the United States as soon as possible. While a family is in temporary detention, they should not be separated unless it is in the best interest of the child.
- Because of their special vulnerability and inability to represent themselves, unaccompanied children should be provided with legal representation and guardians as litem to assist them in immigration proceedings and to see that care and placement decisions are made with a child's best interest in mind.



Mr. Chairman, these principles are not currently governing U.S. policy toward Unaccompanied Alien Children in the United States. Instead, thousands of children each year are held in detention, some with juvenile criminal offenders, with little or no access to legal assistance and with decreasing ability to reunite with family members. Some children are detained for months awaiting their asylum hearing, while others are deported immediately back to their country-of-origin without substantial attempts to locate their parents or immediate family members.

Moreover, as a child welfare expert with knowledge of the foster care and juvenile justice systems, I find it shocking to see how children in INS custody are treated. Equally disturbing is that children in immigration proceedings are not ensured legal representation, a practice which is not accepted in other types of court proceedings.

The Unaccompanied Alien Child Protection Act of 2001, introduced by Senator Feinstein, would reform U.S. policy governing Unaccompanied Alien Children. It would ensure that children are provided appropriate child welfare services and are placed in an appropriate settings. The legislation would create a new office within the Department of Justice, staffed by child welfare professionals, to handle the care of unaccompanied children who enter the United States. It also would require the appointment of guardians as *litam* to look after the best interests of the child and it would provide for attorney representation of these children in any immigration proceeding. The bill also would encourage family reunification or other appropriate placement for Unaccompanied Alien Children whenever possible.

#### U.S. TREATMENT OF UNACCOMPANIED ALIEN CHILDREN

"After I was transferred, I was always put in handcuffs for court. It always made me feel like a criminal and not a refugee."<sup>2</sup>

Unaccompanied alien minors are children under 18 years of age who are found in the United States without legal status and who have no parent or guardian to care for them. Many enter the United States to escape persecution while others are smuggled into our nation or, in some cases, are victims of trafficking subject to forced prostitution or labor. An increasing number are victims of human rights abuses such as child prostitution, street children abuses, child marriages, slavery, and recruitment as child soldiers. Unaccompanied children come to the United States from all parts of the world, most especially from Central America, India, China, and some parts of Africa.

The Immigration and Naturalization Service (INS) is charged with responsibility for apprehending, detaining, caring for, placement of, legal protection of, and removal of Unaccompanied Alien Children. Many unaccompanied children are apprehended by the INS and returned to their country of origin, while others are placed in detention settings to await their asylum hearing or removal hearing. A number are released to relatives after a short amount of time. A handful are placed in appropriate foster care settings.

Unaccompanied minors are particularly vulnerable because of emotional and physical traumas they have experienced. Some of these children may be victims of abuse, neglect, or abandonment, while others, separated from their families, become depressed, moody, withdrawn, or experience psychosomatic symptoms.<sup>3</sup> Separated from their communities of origin, unaccompanied children experience an unfamiliar culture and loss of a social network. They should be treated with special attention and care instead of shackled and placed in detention.

#### RESPONSIBILITY FOR THE CARE AND CUSTODY OF CHILDREN SHOULD BE PLACED OUTSIDE INS

"I don't know why they [INS] are so mean. They treat you like they don't care about you. I wish they wouldn't make you feel so scared. Sometimes you don't know what's going on. They don't tell you. And it's worse when you don't speak the language."<sup>4</sup>

We strongly support the provision in S. 121 that creates an Office of Children's Services within the Department of Justice and outside the INS. Under S. 121, this new office would be charged with the custody, placement, and release of Unaccompanied Alien Children and staffed by child welfare professionals. We believe that

<sup>2</sup>Quotations are from interviews with unaccompanied alien children conducted in August 2001 by Satish Moorthy, Human Rights Coordinator, Center for International Studies, University of Chicago. Interviews were conducted voluntarily and anonymously of children already awarded asylum. Children are identified by interview. Interview L is source of above quotation.

<sup>3</sup>E.M. Ressler, N. Booth by, and D.J. Steinbock, *Unaccompanied Children: Care and Protection in Wars, Natural Disasters, and Refugee Movement* (New York: Oxford, 1988).

<sup>4</sup>Moorthy, Interview D.

such an office would eliminate the current conflict of interest within INS and ensure that a child's best interests drive decision-making in these cases.

Currently, the Detention and Removal branch handles the placement of unaccompanied minors, a direct conflict of interest which sometime pits a child's best interest against the INS' role as jailer and deporter.<sup>5</sup>

Because of its role as enforcer of U.S. immigration law, the INS has great difficulty in providing care for children it is charged with removing from the country. All too often, it seems as though the INS' enforcement concerns supersede the best interests of the child.

There are many examples of this conflict in current practice in which a child's needs are sacrificed. For example, unaccompanied minors are regularly transferred from one facility to another without notice to their attorney or family members. Children also are placed with juvenile offenders "as a safety precaution," regardless of their need for a more nurturing and less threatening environment. And the INS often appeals grants of asylum to unaccompanied minors, leaving them languishing in detention for additional months while the appeal is heard. Finally, the INS often denies consent to the jurisdiction of a juvenile court for purposes of special immigrant juvenile visa (SIJ) relief for children who are abused, abandoned, or neglected.

The Department of Justice has shifted responsibility for dealing with Unaccompanied Alien Children from office-to-office over the last twenty years:

- Prior to 1996, responsibility for the care of these children resided in the Department's Community Relations Service (CRS), which contracted out to private nonprofit agencies the responsibility of operating shelter facilities for them. At the time, CRS maintained a small staff of social workers to administer the program.
- In 1996, the Immigration and Naturalization Service took over the functions of handling these children. Initially, the functions were handled by the International Affairs Office, which also managed the INS's asylum and refugee operations.
- In 2000, the INS moved responsibility for handling these children to INS's Detention and Removal branch, much to the dismay of child welfare advocates who feared that placing control for care and custody of these children in the hands of the agency responsible for removing them would exacerbate what they viewed to be an already unacceptable situation, whereby the INS was using care and custody issues as a tool in their efforts to remove children, regardless of the merits of the child's efforts to remain in the United States.

INS Commissioner James Ziglar recently announced plans to create yet another structure for dealing with these children. He indicated that soon he will create an Office of Juvenile Affairs which would be directly under the supervision of the INS commissioner.

It is critical that the Committee retain the provision in S. 121 that would remove control of care and custody of Unaccompanied Alien Children from the INS and, instead, place it into the new Office of Children's Services that the bill would create.

First, the INS does not possess the child welfare expertise critical to the care of vulnerable children. Unlike most adults, children are less able to understand the complex immigration system or articulate their needs. They also are in need of special attention and care because of their youth.

Second, Commissioner Ziglar's proposal would not eliminate the ever present and potential conflict-of-interest between enforcement goals and the care of children. For example, it would not change the decision-making authority of regional juvenile coordinators who regularly place children in juvenile detention centers.

Third, an administrative change does not carry the effect of the force of law, leaving future INS officials to alter any new structure, however carefully planned.

Fourth, in a more general way, because of its role as enforcer of our nation's immigration laws, it would be inappropriate and unworkable for the INS to implement many of the much needed reforms included in S. 121, such as the appointment of attorneys and guardians as *litem* for children.

Finally, in no other child welfare system in the United States is the entity charged with enforcing the law also charged with the well-being of the child. For example, in the foster-care system enforcement officials become involved in investigating cases of child abuse and grounds for removal, while child welfare professionals determine appropriate placement and care. The same is true of the U.S. juvenile justice system, in which law enforcement does not impinge upon the role of

<sup>5</sup>In the Houston district, providers indicate that family reunification for children's programs under the Detention and Removal branch in 2000.

the child welfare system, which is to rehabilitate a juvenile offender, where appropriate.

#### DETENTION OF UNACCOMPANIED ALIEN MINORS

"I was transferred to Reading, PA. I stayed in the shelter for 5 months. But they said I behaved bad. I remember that if you did anything wrong they would make you do push ups and make you sit with your head down for an hour. It made me feel so bad. They [the staff] used to hassle me. The Chinese kids and I got into a fight, after that I was transferred to a detention center in Berks County. It was a place where there were criminals. I was there for 4 months. It was not right how they treated me. I was not a criminal."<sup>6</sup>

As stated, MRS/USCCB and LIRS believe that children should be held in the least restrictive setting, preferably with family members or a foster-care family. An estimated 475 unaccompanied minors are in INS custody at any given time, ranging between the ages of six months to 17 years old. Children may be detained in separate facilities from their parents or family members and remain in secure facilities for months until their status is resolved or they are removed to their country of origin. Some of these detention facilities are INS shelter care, or "soft" detention, and others are juvenile facilities for convicted offenders. During Fiscal Year 2000, the INS detained 4,136 unaccompanied children for more than 72 hours, placing one-third in juvenile detention centers and a large majority of the remainder in shelter care.

Of particular concern to us is the placement of children in secure detention facilities with juvenile offenders, some of whom have committed violent crimes. In these detention centers, children remain confined and have few opportunities for education in their native language or any field trips outside of the facility.<sup>7</sup> They are commingled with violent persons, sometimes in the same cell. The psychological and emotional effects on a child in secure detention, alone and often unable to speak the language, can be devastating. Upon apprehension, INS sometimes transports these children by shackling their legs and arms, despite the fact that they have committed no criminal acts.

A recent report by the Office of the Inspector General of the Department of Justice concluded that the INS often commingles non-delinquent juveniles with juvenile offenders in secure facilities, a violation of a court settlement known as *Flores v. Reno*. The settlement stipulates that, absent evidence of delinquent behavior, unaccompanied alien minors should be placed in the least restrictive setting possible. According to the report, in FY 2000, 34 of 57 secure facilities did not have proper procedures or facilities to segregate non-delinquent from delinquent juveniles. During the same fiscal year, the INS held 1,933 unaccompanied alien minors in juvenile jails, of which 1,569 were non-delinquent juveniles. It further concluded that at least 484 instances occurred in which non-delinquent children were commingled with delinquent children.<sup>8</sup>

The OIG also found that the INS commonly does not use readily available bed space in shelter-care facilities to house non-delinquent juveniles. Citing an exception in the Flores settlement which allows for the placement of children in secure facilities as a result of an "influx"—defined as 131 children at the time—the INS often places non-delinquent juveniles in juvenile jails. This occurs despite the fact that available shelter bed space has nearly tripled since the settlement, from 130 to over 400.<sup>9</sup>

In addition, the INS regularly transfers children from one facility to another, often at different places throughout the country and without notice to guardians or attorneys, a violation of the Flores agreement. This leads to a lack of permanency and sense of isolation for the child. It also limits the ability of guardians or attorneys to maintain access to the child. In a recent case, a 16-year old Mayan boy fleeing persecution in Guatemala was transferred seven times within two months. Currently, he is being held at Berks County Youth Center in Pennsylvania, 1200 miles from his attorneys in Miami.

Over the past year, MRS/USCCB and LIRS placed 16 children into foster-care who went through their entire asylum proceedings while in INS detention. Their average length of detention was eight months. Children seeking asylum arguably are

<sup>6</sup> Moorthy, Interview K.

<sup>7</sup> Human Rights Watch, *Detained and Deprived of Rights: Children in the Custody of the U.S. Immigration and Naturalization Service*, December 1998.

<sup>8</sup> U.S. Department of Justice, Office of the Inspector General, *Unaccompanied Juveniles in INS Custody*, Report No. 1-2001-009, September 2001, p. ii, 13.

<sup>9</sup> OIG Report, p. 10.

the most vulnerable of all children but spend the most time in INS detention. In one case, twin brothers fled physical abuse and separation in their native Honduras, arriving here at the age of 14. They were held in an INS facility in Texas. Due to a state regulation that children could not remain in the shelter for longer than 3 months, they were transferred after 3 months to foster care for one day and then returned to the shelter. This was repeated again at 6 months. The brothers were held for 8 months before they were granted asylum and permanently released to foster-care, funded by the Office of Refugee Resettlement.

In another case, a 14-year old Honduran boy made his way to the United States after his caretaker grandmother died, leaving him to live on the street. Upon arriving in the United States, he gave himself up to the INS because he was tired, cold, and hungry with no money and no one to care for him. He then spent his next 11 months in INS detention. Because of his young age, he was placed in foster care for 3 weeks. Unfortunately, though, he later was transferred to a detention facility for the next ten months. He says he missed being part of a family when returned to the detention facility, where he often felt scared and alone and felt he had no one to turn to for help.

The Unaccompanied Alien Child Protection Act of 2001 would help ensure that children are placed in appropriate and less restrictive settings. It would expand shelter care facilities and foster care services as alternatives to detention; require family reunification or other appropriate placement for children, wherever possible; and house release decisions with child welfare professionals, not enforcement personnel.

#### ACCESS TO LEGAL REMEDIES FOR UNACCOMPANIED MINORS

"A paralegal from the attorney's office would visit me and prepare me for court. She was very great. After 10 months in the shelter, I got asylum."<sup>10</sup>

Many children found in the United States without parent or guardian have experienced persecution directed at them or their families and are in need of protection. Under the current U.S. system, however, children in INS custody often receive little information about legal resources and often have no legal representation. Attorneys who do represent unaccompanied minors have trouble doing so because children often are transferred from one facility to another, sometimes in different parts of the country. As a result, even those children with valid asylum claims often have difficulty obtaining fair representation. According to the Catholic Legal Immigration Network, Inc. (CLINIC) and the Women's Commission on Refugee Women and Children, less than 11 percent of INS detainees receive representation. Children detainees receive even less assistance.<sup>11</sup> Without appropriate legal assistance and representation, children with valid asylum claims are less likely to obtain asylum and more likely to be sent back to their countries of origin and possible persecution.

Assuring representation by counsel is necessary for this particular class of children, who face overwhelming obstacles in a complex immigration system. S. 121 would permit the new Office of Children's Services to develop relationships with non-profit organizations to enhance their ability to represent children. The minimal cost of the appointments of legal counsel, when such appointments are necessary, would be offset by greater efficiencies and effectiveness for INS and reduced court and detention time. In addition, S. 121 targets an extremely limited class of beneficiaries. Similarly-situated children in other child welfare systems are provided legal representation.

In addition, a child's asylum claim and well-being would be aided by the appointment of a guardian as *litem*, an adult, preferably a child welfare professional, who would look after the best interest of the child in immigration proceedings and in decisions regarding appropriate placement. The guardian as *litem* would investigate the circumstances of a child's presence in the United States, and, using that information, develop recommendations for the child's placement and avenues for legal relief. Guardians are used for children in other areas of U.S. law, such as in abuse or custody cases. Moreover, the INS Guidelines for Children's Asylum Claims calls for the appointment of an individual to play a guardians as *litem* role, explaining that a "trusted adult" can help the child explain his/her asylum claim, assist the child psychologically, and provide comfort and assistance for the child.<sup>12</sup>

<sup>10</sup> Moorthy, Interview L.

<sup>11</sup> See Don Kerwin, "Throwing Awmy the Key: Lifers in INS Custody," Interpreter Releases 649 (May 11, 1998), and "Protecting the Rights of Children: The Need for U.S. Children's Asylum Guidelines," Women's Commission for Refugee Women and Children, December, 1998.

<sup>12</sup> Immigration and Naturalization Service, Guidelines for Children's Asylum Claims, September, 1998.

S. 121 would address the lack of legal representation and other assistance to children by requiring that all children have access to legal counsel and that a guardian as *litem* be appointed for each child. Legal counsel would be appointed to help children through the complexities of immigration proceedings, representing their legal interests in asylum court, and in filing the appropriate paperwork with INS and other relevant agencies. A guardian as *litem* would make recommendations to ensure that the child's best interests are served.

Additionally, S. 121 streamlines the procedure for vulnerable children to obtain a special immigrant juvenile visa (SIJ), legal relief which often is inaccessible to many children. Under legislation enacted in 1990, unaccompanied alien minors who a children's court determines should not be returned to their home country and are eligible for long-term foster care (family reunification is not possible) may obtain a special immigrant juvenile visa (SIJ) and legal permanent residency.

Unfortunately, because of lack of knowledge of their rights and access to representation, children often do not obtain this form of relief. Moreover, the INS commonly does not pursue this avenue for children and must "expressly consent" to a judge's order that the visa was sought for relief for abuse and neglect and not primarily for immigration purposes. Again, a conflict of interest arises in this situation, in that INS maintains undue authority over a child's ability to even seek legal relief at the same time it seeks to deport the child. Despite the thousands of children detained by INS each year, INS rarely allows children in its custody to apply for SIJS.

S. 121 revamps the system for the grant of a SIJ visa by granting the new Office of Children's Services (OCS)—staffed by child welfare professionals—the authority to certify to the Attorney General that a child has been abused, abandoned, or neglected. This requirement removes the conflict of interest that the INS has while also ensuring the SIJ system is not abused. It also gives children fairer access to juvenile courts and to possible relief and permanency.

Another area of concern which S. 121 addresses is children's access to asylum protection. First, because of lack of access to legal representation, most children are unable to navigate the complex legal system to pursue asylum claims or other forms of relief. For those who do obtain representation, their chances of relief are markedly improved.<sup>13</sup> The INS does not maintain statistics concerning the percentage of children who win asylum, although reports from attorneys and private organizations indicate it is very low.<sup>14</sup> Second, once a child wins asylum, the INS often appeals the decision, extending a child's stay in detention.

In 1998, the INS took a step in the right direction by adopting guidelines for asylum officers to use in adjudicating children's claims. Known as the Guidelines for Children's Asylum Claims, the new policy has aided asylum officers in their handling of juvenile cases. Unfortunately, many children present their cases before immigration judges who are not required to follow the guidelines in their decision-making. Further, other immigration officers, such as enforcement officials, have not been trained in the rights of children and their special circumstances as outlined in the guidelines. S. 121 calls upon the Executive Office for Immigration Review (EOIR) to adopt the guidelines and requires all immigration officers and personnel who come into contact with children to receive special training on the special needs and circumstances of children asylum seekers.

#### ALTERNATIVES TO DETENTION

"My foster care family cares for me and I care for them. It's better than the shelter because I can be free and I have a home where people care for me. It's the opportunity to have a family that I never had before even in my home country. It makes me feel included. They never exclude me from anything."<sup>15</sup>

In order to ensure that children are protected and cared for, alternatives to detention are available and necessary which address a child's special needs, especially the need for emotional security, love, and attention. Studies have demonstrated that children are better adjusted emotionally, psychologically, and mentally, when placed in a family setting. LIRS and MRS/USCCB assist the INS by identifying family members of children and, in the alternative, recruiting foster-care families to provide a home for a child until an asylum claim is adjudicated.

Despite the wide availability of foster-care settings, the INS rarely uses this appropriate alternative to detention, regardless of the fact that foster care (\$55 per

<sup>13</sup> See *Slipping through the Cracks: Unaccompanied Children Detained by the Immigration and Naturalization Service*, Human Rights Watch, April, 1997.

<sup>14</sup> During FY 2000, USCCB and LIRS provided foster care services to only 40 children out of a total of 4,614 detained by INS.

<sup>15</sup> Moorthy, Interview G.

day) is much cheaper than detention (\$200 per day). The INS has placed very few children in foster-care settings, citing security concerns and the likelihood that children may take flight. During FY 2001, LIRS placed 5 and MRS/USCCB 2 children in foster-care settings pending the completion of immigration proceedings.

As child welfare providers, it has been the experience of LIRS and MRS/USCCB that children do not take flight if appropriate services are in place to ensure that they are safe and loved. For example, the presence of a guardian *as litem* to explain the asylum process to a child would help calm the child. In addition, requiring suitability studies of families in countries of origin would help assure a child that he/she would be safe upon return to their homeland.

Perhaps more troubling is that the INS does not follow any criteria or guidelines for determining whether a foster-care setting is appropriate for a certain child: those children who are placed in foster care families often are done so on an *ad hoc* basis and only following lengthy detention. For example, no guidelines or procedures are in place for INS to identify a child victim of trafficking or a child with other special needs.

MRS/USCCB and LIRS also help locate family members in the United States for children and conduct suitability assessments of U.S.-based families of Chinese and Indian youth and children granted asylum. Absent mitigating circumstances, such as evidence of abuse, children should be reunited with their families, especially their parents. Suitability assessments are necessary in determining the validity of family relationships, whether family members or relatives are willing or able to care for a child, and whether there is a safe and appropriate home.

Suitability assessments are an important tool in ensuring a child's safety prior to placement. Therefore, S. 121 requires the INS to conduct suitability assessments overseas for children repatriated to their country of origin. Such a process is necessary to ensure that children are not being sent back into an abusive family situation from which they originally fled. Non-governmental organizations, such as International Social Service, are able to conduct such assessments in the child's country of origin.

Further, other countries ensure that children are returned to safety in their home country. The United Kingdom, Norway, Switzerland, and Holland will not return a child to their home country unless country conditions are satisfactory and there is a suitable caregiver available. Holland requests the International Organization on Migration (IOM) to ensure that an appropriate caregiver exists in the home country. Denmark notifies the Red Cross when a child is returned and the Red Cross attempts to ensure that a caregiver is available. Finally, Canada follows guidelines that require a child not be returned unless a suitable caregiver has agreed and is able to assume responsibility for the child and to provide appropriate care and protection.<sup>16</sup>

Again, for flight reasons the INS is reluctant to place some children with family members in the United States prior to adjudication of their asylum claims. The Flores agreement spells out a list of parties to which a child can be released. The list includes, in descending order, parent(s), legal guardians, an adult relative, a licensed program willing to accept custody, or another adult or individual who INS approves and is willing to accept. Nevertheless, INS consistently has failed to release children to relatives or even legal guardians.

If a parent is undocumented, the INS requires a parent to report to them for processing; otherwise the child remains in detention. The INS also declines to place a child with a relative if an undocumented parent is available but will not report. While we do not condone undocumented migration, we oppose the practice of using children "as bait" to apprehend undocumented migrants.<sup>17</sup> Children should not be punished or used in this manner. At a minimum, INS should place a child with a legal relative even if an undocumented parent is present.

The INS must use alternatives to detention for children on a more regular basis. S. 121 requires family reunification or other appropriate placements, such as foster-care, for children as well as clear guidelines for the standards of care for children, including the provision of education, recreation, health care, and access to an interpreter and an attorney.

<sup>16</sup> Children or refugees? A survey of West European policies on unaccompanied refugee children, Children's Legal Center, United Kingdom, 1992.

<sup>17</sup> For more information, see "Unaccompanied Juveniles in INS Custody," U.S. Department of Justice, Office of the Inspector General, Evaluations and Inspections Division. Report no. 1-2001-009.

THE NEED FOR CONGRESS TO LEGISLATE ON THIS ISSUE

We are aware that there are some who have contended that the principles embodied in S. 121 can be accomplished by an administrative reorganization of the entities responsible for the care and custody of unaccompanied children. Indeed, INS Commissioner Ziglar recently announced a number of steps which he said would improve the treatment of these children, at least hinting that this would obviate the need for legislation.

We have no reason to doubt Commissioner Ziglar's sincerity. However, we strongly believe that the reforms embodied in S. 121 must be legislated by Congress and should not be left to either his ability to harness a INS bureaucracy and field structure that is well known for ignoring directives of the Commissioner, or left to the discretion and whim of whomever is occupying the Commissioner's position at any given time.

The United States government has a special responsibility to ensure the well-being of children in its custody, regardless of their legal status or national origin. This is especially the case for Unaccompanied Alien Children. Since 1996 alone there have been three separate administratively-mandated structures for the care and custody of these children. Each time their conditions have grown worse, not better. Commissioner Ziglar has just announced his intention to impose yet another administratively-mandated structure. We strongly believe that it is time for Congress to step in and set the direction and policy for handling these children. S. 121 would accomplish this; these children should not have to wait any longer.

CONCLUSION

Mr. Chairman, we believe that removing responsibility for the care and custody of children from the culture of enforcement which pervades the INS is essential. Approximately five-thousand Unaccompanied Alien Children are found in our nation each year and are placed in the custody of the federal government. They are not a threat to our society and only seek our protection. As a leader in human rights around the world, our treatment of unaccompanied alien minors is shameful and undercuts our ability to defend the rights of others, especially children, around the world.

It is time to conform how we treat Unaccompanied Alien Children with the standards which govern our treatment of U.S. children. Children, our world's most precious resource, should not be discriminated against because of their lack of documentation or their country of birth. Being undocumented should not equate with criminality and we should not treat children as such. Instead, our system should ensure that an Unaccompanied Alien Child's best interests are a primary consideration, that their care and custody should take place in the least restrictive setting possible, and that permanency planning becomes a central component of an Unaccompanied Alien Child's care.

With long experience in caring for unaccompanied alien minors and as advocates on their behalf, LIRS and MRS/USCCB ask the subcommittee to consider more seriously the impact of U.S. policy on unaccompanied alien minors. Mr. Chairman, it is incumbent upon our government to fashion a system which places the welfare of a child, no matter their country-of-origin, as primary, regardless of legal status. The Unaccompanied Alien Child Protection Act would help reform our system for handling unaccompanied minors appropriately and should be enacted.

Thank you for your consideration of our views.

Chairman KENNEDY. Thank you very much.

I want to just thank Eric—is it Unternahrer?

Mr. UNTERNAHRER. Unternahrer.

Chairman KENNEDY. Unternahrer. We want to thank you very much for being here. The idea that you are translating and speaking and listening, doing all of those things at the same time, is perplexing. We have trouble doing one of them up here and doing it right, so we want to thank you very much for your good work and your appearance.

Senator Brownback?

Senator BROWNBACK. Thank you, Mr. Chairman.

I am going to have to leave in a few minutes and the chairman has graciously allowed me to make a comment or two, if I could.

No. 1, I would like to announce I am going to join the Feinstein bill. It is a great piece of legislation.

[Applause.]

Senator BROWNBACK. Thanks to Senator Feinstein for bringing this forward. This is, to me, reminiscent of a hearing we held about a year ago on asylum seekers where we were keeping these people locked up for long periods of time for what appeared to be not any good reason.

I think actually, Wendy, you testified at that hearing. And, Mr. Morton, I don't know if you did or not.

Mr. MORTON. I was sitting behind her.

Senator BROWNBACK. But it was the same situation where we have got these wonderful people that are fleeing a horrible situation and they come here and they are locked up. It is even worse when it is a child in the situation, like what Edwin so bravely brought forward here today. It just doesn't make any sense, where we have excess capacity, as Ms. Duncan was noting. I know there are other ways to be able to handle this than children sitting in jail. That is not necessary to do.

I am really hopeful that we can correct this because this just doesn't need to take place the way it is. So I am very appreciative of the hearing and I am very appreciative of the legislation and the work of Senator Feinstein, who has worked on this for some period of time and has brought it on forward. I am hopeful we can get this passed.

I would note for Senator Hatch, who is ranking member of the Committee, that he wanted to be here. He couldn't; he had a conflict. He apologizes for that. He has got a statement that he wants to put into the record and he wanted to discuss a bill that he put forward that deals with an adjoining issue, but not this one, the DREAM Act, a student adjustment bill. He wanted to particularly thank Edwin Munoz for being here to testify.

Edwin, he had a present that he wants to give you today.

Chairman KENNEDY. Is it one of his disks?

Oh, there we go.

Senator FEINSTEIN. There is your FBI hat.

Senator BROWNBACK. Would you care to come up? I want to give this cap to you.

Senator FEINSTEIN. Boy, you are on the spot.

Chairman KENNEDY. You are on the ball here.

Senator BROWNBACK. No, Edwin is.

Chairman KENNEDY. Look back and see which staffer deserves a gold medal on that one.

[Laughter.]

Chairman KENNEDY. I know it was Senator Brownback's idea.

[An FBI cap was presented to Mr. Munoz by Senator Brownback.]

Chairman KENNEDY. Good for you, all right.

Senator FEINSTEIN. There you go.

Chairman KENNEDY. Well done, good for you. Congratulations.

[Applause.]

Senator BROWNBACK. A fine young man.



Mr. Chairman, we should move forward aggressively. There is no reason to delay on this. Thank you for holding the hearing, and thank you really for pressing this issue, Senator Feinstein.

Chairman KENNEDY. Thank you, Senator Brownback.

I just would pick up on this point. Let me ask Mr. Morton, Wendy, and Ms. Duncan, why not do it the way that has been recommended in the earlier panel? Why not just do this under the proposed restructuring plan that will place an Office of Juvenile Affairs directly under the commissioner, with the assurance that there would be responsibility under that program for following through to give the kinds of protections intended to be given under the Feinstein legislation? Why won't the restructuring they talk about do the job?

Then, second, the judge mentioned some of the technical matters. We always welcome ideas, particularly from those who have experience dealing with these kinds of problems, and their suggestions. Do you think any of these points that the judge mentioned are insurmountable?

Ms. YOUNG. First, let me thank Senator Brownback, even though he has left, for joining in this effort. I think that is very, very important.

In response to your first question, Senator Kennedy, first of all something that I didn't have time to bring out in my oral testimony but which is in my written testimony is if you look back over the years, the Department of Justice has actually moved these functions from office to office, with the Community Relations Service, which is outside the INS, then moving it within the Humanitarian Affairs Branch of the INS, which is where the Asylum Corps is lodged, and then in 2000 moving it into the Detention and Removal Branch.

My point here is that unless this is statutorily codified, what is to stop a future administration from moving this office once again? I do appreciate Commissioner Ziglar's commitment to looking at these issues and trying to find a new approach, but I believe this is too critical an issue for Congress not to step in and make sure that these kids are treated appropriately this year as well as in coming years.

Second, I would like to flag again that I am very concerned that the restructuring proposal does not outline clearly that the officers who have the day-to-day responsibilities with these children will, in fact, be reporting directly to that new Office of Juvenile Affairs.

Mr. MORTON. Wendy is a great client to have. She speaks so well, I don't need to respond to your first question, but I will address your second question.

With respect to attorneys, there are some implementation issues, unquestionably. I believe that if we go with the outlined structure in the bill, if we have an Office of Children's Services, it will be very simple to move forward with implementing programs such as right now we have with the American Bar Association, grant programs which get pro bono training, get pro bono counsel off the ground.

For as little as a \$100,000 grant, you can establish a program that can provide 100 to 150 pro bono lawyers in one location. What that is going to do is if we codify this bill, if we put the responsi-

bility of INS to provide counsel for these children, then that will give them an incentive to move children to the areas where the counsel are located.

One of the problems now is that their incentive is not to provide counsel. In fact, for their law enforcement motives, it is not to provide counsel, and we see children in facilities like Tulare Juvenile Hall three-and-a-half hours away from San Francisco and Los Angeles. There is no way to expect pro bono counsel to drive those lengths to take on a case and represent those children.

If we put the incentive to have counsel, then they will move these children where they should be located, near the urban centers, near these programs, and we can move forward with the implementation issues without a problem.

Chairman KENNEDY. I might ask you if you would, then, Mr. Morton, and the other members of the panel, if you have technical recommendations I would invite you to work with our staff in terms of dealing with them.

Ms. Duncan, is there anything that you wanted to add?

Ms. DUNCAN. No. I think I covered in my testimony that we believe that the detention function is a separate function and that the child welfare planning should not be housed in the detention section.

Chairman KENNEDY. I just want to underline your testimony about the guardians ad litem. As I understand it, there are 900 programs. Every State in the U.S. has volunteer guardians.

While family court objectives in the system are somewhat different from the immigration system, my question would be do you believe that it is time that unaccompanied alien children have someone to look out for their best interests and do you think that the kind of training that they would need would be generally pretty accessible to have them do the job?

Ms. DUNCAN. Yes, I do. I think that States and localities have great experience providing this kind of service to children and the service can be provided to alien children as well.

Chairman KENNEDY. Senator Feinstein?

Senator FEINSTEIN. Thanks very much, Senator.

Ms. Young, let me begin with you. My understanding is that you visited 18 facilities used by the INS to hold unaccompanied children.

Ms. YOUNG. That is correct.

Senator FEINSTEIN. I want to ask you a question. What did you see in those facilities, and do you think these changes that INS wants to do are sufficient to solve an improve the way INS handles these children?

Ms. YOUNG. What we saw in visiting those 18 facilities was a real spectrum and variety in facilities. The INS shelter care facilities offer an environment of what we call soft detention.

Senator FEINSTEIN. I missed that.

Ms. YOUNG. They offer an environment of what we call soft detention. In other words, it is a better environment than the juvenile detention halls that the INS utilizes. Kids are provided some educational services. They are wearing their own street clothing. They do have some activities. However, the facilities still remain highly

monitored, sometimes fenced, sometimes using security cameras, and the child is not free to come and go as he or she pleases.

In addition, what we are concerned about in these facilities is children may remain in those facilities for very, very long periods of time. And whether better than the juvenile detention centers or not, they are still institutional in nature and that is not a good environment to leave a child in for a prolonged period.

The juvenile jails stand in a category of their own. These are facilities, it is very important to remember, that were designed primarily to punish and to incarcerate youthful offenders. And the children that we are talking about, the large percentage of them, have in no way committed a crime of any sort and, in fact, are seeking relief to which they are rightly eligible under our immigration laws.

Senator FEINSTEIN. Let me stop you right here. As Edwin made his remarks, it is very clear that Edwin isn't a gang-banger. It is very clear that he is a sensitive young man, and anybody ought to be able to see that within the first 3 minutes that they deal with him. On the other hand, there are those problems out there.

If you automatically put a child in a situation—let's say a teenager, let's say a 16-, 17-year-old—where they can go and come before you have had the opportunity to do the necessary classification, as they would say in the other sector, to know what you are dealing with, that minor can just disappear, as has been said up here by the Ariana Felix organization in Tijuana, for example.

Ms. YOUNG. I think what really is the heart of S. 121 and is so critical that we put in place is that we make individualized determinations in each and every child's case.

Senator FEINSTEIN. That is right.

Ms. YOUNG. Yes, there will be children whom the INS encounters who may have some problem with the law, but we should treat those children accordingly. I believe S. 121 really puts in place the structure so that we can make those kinds of nuanced, sophisticated decisions on behalf of each child.

Senator FEINSTEIN. Mr. Morton, under the Constitution and your interpretation of the law, is a child in this situation entitled to representation?

Mr. MORTON. I would not sit here and try to make a constitutional claim for the right to counsel of alien juveniles. In fact, there is a body of law that dictates how many constitutional rights an alien has and a separate body of law that dictates the constitutional rights that are extended to children. And where these two intersect, I think that we need to depend upon legislation to move forward with counsel for juveniles.

Senator FEINSTEIN. What I would like those people who have helped us with the legislation to know is I went over the legislation word by word the other day and we took some things out and we tightened it up, and I would love for you to take a look at it.

One of the aspects that concerned me was really whether there should be in Justice. I think the Attorney General ought to make the appointment and the head of the office ought to be responsible to the Attorney General, not to the Commissioner of INS. But my question to you who work in this area is does it make sense to leave it within the INS as long as the reporting chain is outside?

Ms. YOUNG. If I could suggest perhaps that there is a little bit of a model here that we could look at, which is the fact that—I can't remember what year it was, but at one point we did move the Executive Office for Immigration Review out from underneath the INS and made it into a separate office within the Department of Justice responding to the Attorney General.

I think that is a model that we should really follow here. I think it is a clean break. It separates those functions well. I agree with you that probably there is some tightening that needs to be done in this legislation, but I do believe that this is a structure that we should leave intact within the legislation.

Mr. MORTON. I would agree with that and I would just also say again I outlined in my testimony what we perceive to be some very inherent conflicts of interest within a law enforcement agency to provide for the interests of the child.

Keeping it with the INS, no matter where it is within INS, it is still within INS. According to the restructuring plan, as Wendy mentioned earlier, there is a great deal of ambiguity. What kind of direct line authority would work its way down from this Office of Juvenile Affairs?

We have had experiences with the current structure where it is very clear that anybody who works with INS will tell you these are fiefdoms; these are district directors who do not feel like they report to headquarters. And we were told directly from the districts that they do not report to the juvenile director.

Unless there is a great deal of assurance that this new office that they are proposing has direct line authority, can make decisions, will take care of placements, will take care of transfers, and will not be some policy office with nebulous oversight of the system, then I just do not feel that that would ever be the right solution.

Senator FEINSTEIN. There is an infrastructure there, the connection between the Border Patrol, not to have to set up a whole other infrastructure, but to be able to utilize the good part of what is there and then remove the bad part by law.

Mr. MORTON. I would have to be assured that there was a great deal of separation between the Enforcement Branch and the children's services office. According to what has been proposed thus far, it does not appear that this is anything more than a policy with shared responsibility, where district directors, district juvenile coordinators, Border Patrol-type people, removal officers, detention officers, will be making the decisions about care and custody of children.

Senator FEINSTEIN. Well, all right, go back to Edwin's case. He comes across the border. He is picked up by the Border Patrol, who then takes him to an INS facility. Now, under our plan, how do you see this functioning from the time the individual is picked up by the Border Patrol?

Mr. MORTON. Within S. 121, with the Office of Children's Services?

Senator FEINSTEIN. Yes.

Mr. MORTON. Well, what the bill would do is transfer the legal and physical custody of the child from INS Border Patrol, local law enforcement, whoever picks up the child, and transfers that custody to the Office of Children's Services, the key being that the of-

office is staffed with child welfare professionals and has no vested interest in the outcome of the case.

Senator FEINSTEIN. You are talking about an imminent place to keep him out of detention?

Mr. MORTON. I think that within the first several days, we are always going to be in a situation where the detention needs are going to have to be met. Even under the governing law right now, *Flores v. Reno*, that settlement agreement, within the first 72 hours INS can detain children wherever they need to. That includes secure facilities.

But once that window has past, once they have gone beyond the 72 hours, they need to put the child into the least restrictive setting appropriate, and that is what I envision the Office of Children's Services would do. I don't think that there is any way that we can ensure from the moment that they get picked up that they would never be detained in an unpleasant situation because the fact is that some of the border-crossing areas, that is just the closest place to detain the child.

But very soon thereafter, once the custody is transferred to an agency without an interest in the outcome of the immigration proceeding, I think that you would see a very different set of circumstances for where these placements would be made in areas like foster care, like shelter care, like residential facilities, and that is just not the case right now.

Senator FEINSTEIN. My understanding is that at any given time there are approximately 500 children that are going through this process, and I just wonder if you can get done what you have to get done within 72 hours.

Ms. YOUNG. Can I jump in here for just a second?

Senator FEINSTEIN. Yes, please.

Ms. YOUNG. I think picking up on a phrase Senator Kennedy used, I think the point here is to create, as best we can, a seamless web for these children. There is the practical reality and there is also the ideal. I think the practical reality is, of course, the INS will probably be the agency that first encounters these children and that they will need to have a place to house these children.

The 72 hours is incorporated into S. 121 that custody be transferred at that point from the INS to the Office of Children's Services. However, I think if this bill were to become law, we may be able to actually move toward the ideal, my thought being that we would probably reach a point where the Office of Children's Services might have services available readily at those points where kids are encountered along the border.

Senator FEINSTEIN. Ms. Duncan?

Ms. DUNCAN. It is typical in county or State child welfare systems to have a system of receiving care where children are held in safe haven while their initial case parameters are being determined. It is likely that INS will need to have some sort of secure facilities while things are being sorted out.

But it is also probable that there could be safe haven foster care settings or safe haven receiving care settings where children could be held for a short period of time. Ten-year-olds may not need to be in a security facility; 5-year-olds probably don't. So it wouldn't happen right away, but the Office of Children's Services could de-

wise a series of placements so that there are places for children to go.

Senator FEINSTEIN. Thank you.

Edwin, let me just give you my thanks. You are a very brave young man and I have no doubt that you are going to be successful. If you study hard, who knows, you may even be head of the FBI 1 day. I have a little thing to go you afterwards, if I might.

Chairman KENNEDY. Very good. We want to thank all of you for excellent testimony, very helpful, a lot of very important information and a great deal of thoughtful commentaries from people who have really lived through this system in a very important way. Their experience and insights, and most of all their sense of compassion and decency has come through so well today. I want to thank all of you very much for a very, very helpful hearing.

The Committee stands adjourned.

[Whereupon, at 4:46 p.m., the Subcommittee was adjourned.]

[Submissions for the record follow.]

#### SUBMISSIONS FOR THE RECORD

March 12, 2002

The Hon. Edward M. Kennedy  
Chair, Subcommittee on Immigration  
Committee on the Judiciary  
United States Senate  
Washington, DC 20515

Mr. Chairman and members of the Subcommittee:

We the undersigned are writing on behalf of the Philadelphia legal community to express our support for the Unaccompanied Alien Child Protection Act (S. 121). This legislation is essential to ensure that the best interests of the child will govern the care and custody of unaccompanied minors who travel to this country seeking protection from further persecution, abuse, mistreatment and neglect.

*I. S. 121 cures the INS's conflict of interest with respect to children in its custody in which the INS has favored prosecution over care.*

Currently, the U.S. Immigration and Naturalization Office ("INS ") is charged with both the care and prosecution of children it takes into custody. The INS role as custodian of unaccompanied minors is severely compromised by its primary function as an enforcement agency.

This conflict perhaps is best exemplified by INS' refusal to release children to parents without legal status unless the parents are in removal proceedings. Even though other family members with legal status may be available to take custody, the INS holds children as 'bait' until their parents place themselves in removal proceedings. This practice places unnecessary stress on a child by pitting her against her parents.

The INS is required to release children to relatives. However, it frequently detains children despite the presence of close relatives who are willing to care for them.

"Sara" is a 14-year old girl from Eritrea. Her parents and siblings were arrested 4 years ago for political reasons, but Sara escaped arrest because she was spending the night at a friend's house the night that the police came for her family. She hid with friends of her family in a neighboring country and then came to the U.S. in September 2001. Her aunt, who is a legal permanent resident, lives in Ohio and was desperate to have Sara released to her, but INS challenged whether their relationship was valid. INS was provided with extensive documentation, including the birth certificates of Sara and her aunt, school records listing family members, and notarized affidavits from family friends, tax documents from the aunt, and the aunt's resident alien and social security cards but INS continued to demand further documentation from Sara's representatives. Sara was released to her aunt in March 2002, nearly six months after she was placed in detention.

Even when family members seek custody, the INS often conditions release on arbitrary and unreasonable demands, so that detention is unnecessarily protracted.

This prolonged, unnecessary detention is psychologically damaging to the children and a needless expense to taxpayers.

"Sonia" a nine year old child was detained for over four months although her father, present in the US and already in court proceedings, produced all the necessary documentation for her release within a few days of her arrival. This non-English speaking child endured not only separation from her family, but extensive weight loss due to dietary changes. She also contracted the chicken pox and was held isolated in quarantine.

In Pennsylvania, children with active immigration cases have remained in detention for over a year, even when less restrictive alternatives are available and even mandated by the INS' existing Flores agreement. Often this is due to INS' failure to use foster care options while a child's case is pending.

The INS frequently shuffles children in detention from facilities in one state to another. This unnecessarily prolongs the child's stay in detention by delaying the proceedings while the hearings are rescheduled in the local tribunal. Furthermore, it impacts the child's access to legal representation. Many of these children were able to secure pro bono counsel where they were first detained, but the transfer forces them to search anew for local counsel who must then be brought up to speed on their case.

The INS also arbitrarily and unfairly hinders the ability of children victimized by abuse, abandonment and neglect to secure special protections for which they are eligible. Last year, the Philadelphia District INS refused to release from its custody six children who were entitled to seek a dependency order from juvenile court in order to obtain a Special Immigrant Juvenile Visa from the INS. In each of these cases, the Philadelphia District INS ignored the fundamental principle of acting in the best interest of the child and either ignored the request and allowed the child to "age out", or denied the request outright.

"Vladimir" is a 17-year old boy from Azerbaijan. His parents, who were Christians of Russian and Armenian ethnicity, were killed by Muslims from the Azerbaijani ethnic group during the civil war in Azerbaijan in the 1980's. Vladimir went to live with a family friend in Russia, but had no legal immigration status there. When he was 15, the family friend died and he ended up living on the streets. As an orphaned child, Vladimir is eligible for a Special Immigrant Juvenile visa, and asked for INS to grant permission for him to pursue this visa in December 2001. In March 2002, his request was denied.

One of the most crucial aspects of the proposed legislation is that it offers a constructive solution to this untenable conflict of interest. It is impractical and irresponsible to expect the INS to balance the competing interests of prosecution and custodial care, and we do not hold any other enforcement agency to this expectation. By placing these children in the care of a special Office of Children's Services, this would ensure that the physical and mental health of the child are not disregarded in the face of the INS interest in deportation.

*II. S. 121 assures that children in INS custody will have access to legal representation and counsel, as well as other essential health care services*

Each year, nearly 5,000 children arrive in this country without lawful immigration status and no parent or legal guardian to provide them with care and legal custody. A significant number of these children are routinely placed in secure detention facilities by the INS, further victimizing them. Placing the children under the care of a newly created Office of Children's Services, charged with assuring comprehensive care with a team-based approach to providing an array of social, medical and educational services, supported by legal representation, is a substantial improvement to the current system of detention.

A host of legal, social and psychological issues surround children in detention:

- The legal needs of unaccompanied minors are complex, ranging from developing a defense for their removal proceedings, working towards their release to family members, or securing their voluntary departure back to their country of origin. Detained children frequently face linguistic barriers and cultural isolation, in addition to experiencing trauma from their extended separation from family.
- Children detained by the INS often have experienced emotional or physical persecution by individuals in their home country; some have seen family and friends killed and/or tortured; and others, are victims of abuse, abandonment or neglect. Many of these children have suffered unspeakable torture, the loss of family members and loved ones, hunger and deprivation prior to their arrival in this country. INS detention often compounds the

anxiety and stress of these children. Moreover, the detention causes many children to abandon viable claims for relief because they cannot bear the conditions of confinement.

- Most troubling is the placement of children who suffer from serious mental health problems in secure detention, a practice the INS alleges is for their own protection.

Most of the detention facilities are located more than one hour outside the nearest urban center. This significantly restricts access to experienced immigration attorneys, social service providers and interpreters to assist children with their legal case or address other medical and/or mental health needs.

The Philadelphia District INS detains unaccompanied minors between the ages of 7 and 17 at the Berks County Youth Center (BCYC). In 2001, INS detained approximately 200 unaccompanied or separated children at BCYC. BCYC is located nearly 1½ hours from Philadelphia, making it difficult to recruit pro bono attorneys, secure interpreters and other social services providers, and to meet the legal, medical and mental health needs of the children.

BCYC consists of two medium secure units with 24 hour intensive staff supervision and a high security or "secure" facility that holds immigration detainees and U.S. citizen juvenile offenders.

The secure facility used by Philadelphia District INS is highly punitive, depriving children of the most basic services. The children are strip-searched after attorney visits, prevented from speaking any language except English, handcuffed while transported and physical restraints by staff are frequently reported for small transgressions.

"Jin" was placed in Secure detention by INS after INS claimed he acted out in shelter care. He was told that he would be sent to secure detention until he learned to behave himself and after a few days he would be brought back to "regular detention". Weeks went by and this boy with no criminal convictions sat languishing in a secure cell. He was not allowed to speak his language and was stripsearched after visits from his representative. Jin was so upset by his stay in secure that whenever his representative visited him to discuss his asylum case he only wanted to talk about how difficult it was for him to stay in secure.

Sara, Sonia, Vladamir and Jin's experiences illustrate the need for 5.121. They are just a few examples of the thousands of unaccompanied children whose best interests have been compromised as a result of the system that combines care and custody with prosecution. Presently, 5.121 provides the only viable alternative to ensuring that the unique needs of unaccompanied immigrant children are served.

We strongly encourage the members of this committee to take advantage of the opportunity presented by S. 121 to adopt well-established national and international conventions and laws safeguarding the best interest of children. These reforms embody a free, democratic and civilized society.

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Southeast Regional Immigrant and Citizens Coalition



**Statement of Hon. Maria Cantwell, a U.S. Senator from the State of Washington**

I would like to thank Senator Kennedy for chairing this important hearing on S. 121, the Unaccompanied Alien Child Protection Act introduced by Senators Dianne Feinstein and Bob Graham. I am pleased to cosponsor this bill.

Every year, the INS detains thousands of children who arrive at our borders without documentation and without a parent or guardian. Due to the lack of adequate detention facilities for these minors, the INS often places these children among juvenile offenders or even adult prisoners. This happens in every state including my own. The children are often subjected to disciplinary measures such as handcuffing, shackling, and solitary confinement.

These children, who generally speak little or no English, have no right to a guardian ad litem or government-appointed counsel. They consequently appear in immigration court alone against experienced INS attorneys. Attorneys who represent these children have difficulty communicating with their clients because the children can be moved from one facility to another without their attorney's knowledge. Without proper legal assistance, these children are at high risk of deportation to countries where persecution, civil unrest, and human rights abuses abound. The inherent conflict of the INS overseeing both the care and deportation of these children is further compounded by the absence of any special office within the INS to monitor these children and their welfare.

Of the thousands of children subjected to this process each year, one that I am personally familiar with is that of Ramon Zepeda. Ramon was born in Nicaragua to a mother who abused him and sold him into slavery. He later became homeless, and after spending years living on the streets, Ramon walked out of Nicaragua, through Honduras and El Salvador, and eventually into Mexico. He was apprehended at the border when he tried to gain entry into the United States. At the age of 16, Ramon was initially placed in a detention facility in Arizona with adult men. Prior to being granted asylum before an immigration judge, Ramon spent five months in juvenile jails in four states ending up in Washington. Fortunately, a loving couple from my state in Bellingham is working with the INS to become foster parents for Ramon. Many children like Ramon do not find such a happy ending.

I want to commend INS Commissioner Ziglar for acknowledging the problems with the current system, and I am pleased that he recently announced the creation of the Office of Juvenile Affairs to oversee the protection of juveniles. While I applaud this initiative, I remain concerned that children still remain under INS jurisdiction, and will not receive counsel and guidance from outside the INS.

The Unaccompanied Alien Child Protection Act responds to many of these concerns by establishing the Office of Children's Services within the Department of Justice to coordinate legal and social services for unaccompanied minors. The Office of Children's

Services would establish standards for custody, detention, and release to ensure that detention is in an appropriate facility, to require release whenever possible to parents and legal guardians, and to expand the use of foster care placement. Additionally, the Act provides minors with access to counsel and a guardian ad litem to safeguard their legal rights. Finally, this legislation protects the immigration status of children who age-out of eligibility while INS approval of an immigrant visa is pending.

The Unaccompanied Alien Child Protection Act does not change INS jurisdiction over enforcement matters or adjudication of asylum claims, nor does it interfere with custodial rights of parents or guardians to seek family reunification.

The Unaccompanied Alien Child Protection Act is a pro-children bill that addresses the special circumstances of unaccompanied alien children with respect to their particular custodial and legal needs. I look forward to working with my colleagues on this important piece of legislation.

Thank you again, Mr. Chairman.

**Florence Immigrant & Refugee Rights Project, Holly S. Cooper, Florence, Arizona**

**MENTALLY RETARDED CHILD HIGHLIGHTS NEED FOR S121**

Juan Carlos (real name withheld) crossed the border on October 6, 2000. He was placed in a county jail in Yuma, Arizona because there was no room at the INS shelter. After space became available at the INS shelter, Juan Carlos was moved the Southwest Key in Casa Grande, Arizona.

Juan Carlos, however, was transferred out of the shelter only twenty-four days after his arrival. On November 3, 2000, Southwest Key requested Juan Carlos be removed from the program and recommended he be placed in a juvenile jail. Staff believed he did not take the rules of the shelter seriously because he would smile when reprimanded for what appeared to be escape attempts. Staff at Southwest Key also noted that client refused to participate in class due to withdrawn behavior.

Juan Carlos was then transferred to a juvenile jail in Globe, Arizona. In the jail, Juan Carlos was "hog-tied" when he refused to go back to his cell. He was reprimanded for trying to hold another child's hand. Undoubtedly, the boy was confused and had no understanding of what was happening.

The Immigration Court in Phoenix contacted the Florence Immigrant & Refugee Rights Project to see if they could represent the child. The Florence Immigrant & Refugee Rights Project had not yet begun to work with children but agreed to visit Juan Carlos and engage in representation. I, Holly Cooper, agreed to assist Juan Carlos and I immediately noted that the child was so completely withdrawn that he could not even speak. He answered "yes" to every question, even if the question did not call for a yes or no answer.

After several visits, I discovered the child could not speak Spanish. The boy was an indigenous Guatemalan who spoke and indigenous language. When an indigenous translator attempted to communicate with the child, it became apparent that the child was either so neglected or so mentally disabled that he could speak no language fluently. The child and I slowly began to develop our own special language, using key words that we both understood. I learned that the child had lived alone in Mexico since he was eight years old. He had no contact information for any family. He had no one left in Guatemala. The child guessed that he was about 15 years old but did not know his true age. Slowly, the child and I came to form a trusting relationship.

On January 31, 2001 at 3:30 p.m., I was informed that the INS was having procurement issues with the jail in Globe and Juan Carlos was going to be moved to Los Padrinos Juvenile Hall in Los Angeles, California. The child was moved about one hour after the phone call.

The next day, with the help of another child, Juan Carlos called me collect from a staging area in San Diego. The children all stated that they had not eaten in twenty-four hours. He asked the me, "Will I be going to a better place?"

The next day the child was admitted to Los Padrinos Juvenile Hall. I then requested a psychological evaluation for the child, but was told that he would be provided a psychological evaluation when he arrived at Tulare County Juvenile Jail in Visalia, California. Twelve days later Juan Carlos was transferred to Tulare County Jail. The same day of the transfer, a social worker approached Juan Carlos to see if a psychological evaluation was necessary. The social worker said the child would not get a referral because he was merely a behavioral problem because he refused to talk to her.

The INS said that they would not transfer the child back to Arizona but they would allow his court case to stay in Arizona. Knowing I could not adequately represent him due to the distance between Florence, Arizona and Visalia, California. I tried to find a volunteer lawyer to help Juan Carlos but Visalia, California was four hours from either Los Angeles or San Francisco. No attorney could help. I then personally paid for a plane flight and transportation to visit Juan Carlos because as attorney of record I had to prepare for his legal case.

On March 6, 2001, Juan Carlos was transferred back to the Gila County Juvenile Detention Center in Globe, Arizona. Then in May 2001, INS agreed to transfer Juan Carlos back to the shelter at Southwest Key.

I continually requested a psychological evaluation for the child. The INS finally agreed to a psychological evaluation. The INS sent Juan Carlos to a psychological examination where a doctor conducted a thirty-minute exam translated by a deportation officer.

The attorney then begged INS to have a private psychologist do a comprehensive examination of Juan Carlos. The INS agreed to the evaluation only if the child would agree to waive the psycho-therapist privilege.

The psychologist discovered that Juan Carlos is mildly retarded and has the maturity level of a five to six-year old. Juan Carlos eventually won his asylum case. Juan Carlos' request for state court jurisdiction for purposes of Special Immigrant Juvenile Visa status was never adjudicated. Juan Carlos currently lives in foster care in New York. The child was detained for eighteen months and was released on February 26, 2002.

This case highlights the following:

(1) Why a guardian ad litem is necessary: If Juan Carlos had been appointed a guardian ad litem, the child could have had someone determining his "best interest" from the initiation of proceedings. The guardian could have understood that Juan Carlos was mentally incompetent from the outset and there never would have been the initial misunderstanding which sent Juan Carlos to juvenile jail for seven months. Presumably, the guardian could make an independent request for a psychological evaluation that would have been respected.

(2) Why INS should not adjudicate consent requests: In this particular case, INS never adjudicated the consent request. Even though INS stipulated that the child's family was in Mexico and that the child was mentally disabled, the INS still thought it was in the child's best interest to be deported to Guatemala where he had no family. INS' job is to deport people to their countries of origin if there is no legal relief under US immigration laws. The INS cannot create a special firewall in their judgment for children. The INS cannot realistically articulate a child's best interest while seeking deportation. Also, INS has NO specialized training in determining what is in a child's best interest.

SOCIAL WORKERS/CLINICIANS WORKING IN THE INS SHELTERS CANNOT PROVIDE FOR CHILDREN'S PSYCHO-SOCIAL NEEDS BECAUSE COMMUNICATIONS ARE NOT CONFIDENTIAL AND SOCIAL WORKERS/CLINICIANS ARE VIOLATING THEIR LICENSING REQUIREMENTS

At Southwest Key, an INS shelter, there are two categories of individuals who pose liability concerns for INS: (1) the clinician and (2) the caseworker. Communications to both these persons should be confidential and when the worker violates that right, it subjects INS to potential liability for violation of the child's privacy.

The clinician provides for each child's psycho-social needs while detained. For example, if a child is struggling to deal with the psychological affects of child abuse, the child would confide in the clinician at Southwest Key. However, because the clinician is under the umbrella of the INS enforcement office, the communications between the clinician and the child are NOT confidential. The clinician has weekly meetings where s/he discusses each child's case with the caseworkers and the program director. The information a child discloses can prejudice the child because the information can be given to the INS trial attorneys and the INS deportations officers. Many times the reports are used to transfer a child from a shelter environment to a jail.

In one instance the Program Director at Southwest Key recommended the removal from the shelter a child diagnosed with Post-Traumatic Stress Disorder. This "referral" letter always results in the child being placed in a juvenile jail and removed from the shelter. Thus, the psychological evaluation of the child was in part used to have him removed from the shelter. Moreover, the shelter staff have used declarations from other children to serve as witnesses against their peers.

The caseworker also poses unique ethical questions for the INS. First, the caseworker's title is often translated into Spanish as "trabajador social" which means "social worker" in English. Representation of oneself as a social worker invokes the ethical responsibility of confidentiality on each caseworker.

Notwithstanding the title confusion, the role of the caseworker/social worker also sends mixed signals to the children. The caseworkers call the children their "clients." From the child's point of view this person is there to help them and serve their needs - just as a social worker would be in a normal setting. The caseworker is responsible for helping each child seek reunification with his or her family. The caseworker initiates contact with the family and verifies if the family members are documented or undocumented. If the family members are undocumented, the caseworker/social worker would report the family member's legal status to the INS deportation's branch. Moreover, if parents or brothers and sisters are in the country illegally, the INS will use the child as bait until the parents or siblings "come forward" to be processed for deportation. Thus, a caseworker telling the INS that a child's parents are in the U.S. illegally can mean long-term detention for the child.

On the one hand, the caseworker sends the signal to the child that they are "helping" the child reunify with family, on the other hand, the caseworker in most cases reports illegal family members to the INS and inhibits the child's ability to be released from detention.

Thus, the S 121 Bill would help create a firewall between social workers/clinicians and the INS' enforcement responsibilities. Currently, the system is unworkable. Children cannot trust the clinicians. The children are coping with trauma of child abuse, persecution, and mistreatment by smugglers. The children must have an opportunity to voice their concerns to a person who they can trust and who can respect the child's privacy. Moreover, the currently system violates each child's privacy rights and could subject the INS to enormous liabilities if the system is not promptly remediated.

PROVIDING FREE LEGAL ASSISTANCE TO "TRAFFICKED" CHILDREN DECREASES THE  
SMUGGLER'S ACCESS TO THE CHILD

Zheng Wei Zun (real name withheld) had been represented by an attorney for over one year. The attorney never appeared in court yet promised her they would help her win her case. The case was continually reset by the court because the attorney failed to appear.

When the Florence Immigrant & Refugee Rights Project finally began its representation of detained minors, the Court requested that the attorneys help the child. Within three months, the child was granted political asylum and released from detention. The child later confessed that she feared her attorney because she believed she was hired by a smuggler.

This fact pattern has repeated itself countless times. It is relevant because it shows:

- (1) economic waste because children are detained for longer periods of time at government expense while incompetent attorneys drag cases on for unconscionable periods of time;
- (2) psychological harm to children because they are living in a detention setting while the "private" attorney fails to adequately represent the child;
- (3) when children are provided with a "free" alternative to an incompetent attorney, the child will inevitably choose an attorney who they trust and who can handle their cases as expeditiously as possible.
- (4) attorneys often are the smuggler's link to the child. Children often do not even know the attorney that is representing them. "Smuggler" attorneys help the smugglers track the child after release because the attorney is notified where the child is detained and when the child will be released.

THE DISTRICT DIRECTOR SHOULD NOT DETERMINE WHETHER THE STATE COURTS HAVE  
JURISDICTION OVER DETAINED ABUSED, ABANDONED, NEGLECTED CHILDREN

Currently, the INS District Director determines whether abused, abandoned and neglected children in its custody can become wards of the state. The District Director of Phoenix INS has never granted consent on any case where the child is detained in Arizona. As a result, the child must file a mandamus action in federal court if they want access to the state foster care system. This places an enormous burden on the child.

The District Director defines her role in this process as being a threshold adjudicator of whether the child qualifies for Special Immigrant Juvenile Visas. If she believes the child is not credible or state court proceedings would not be in the child's best interest, she "sits" on the consent request. The District Director is in any every sense making a preadjudication of the child's case. The District Director has no training in child welfare, in child abuse or child psychology. The consent adjudication process should be in the hands of an independent decision-maker who has specialized training in child welfare. The inquiry of whether the child should become a ward of the state, should be left in the hands of the state court judge.

**Statement of Bob Glaves, Chair, Legislative Committee, Chicago Bar  
Association, Chicago, Illinois**

Mr. Chairman Kennedy and Members of the Immigration Subcommittee:  
My name is Bob Glaves and I am the Chair of the Chicago Bar Association's Legislative Committee. The Chicago Bar Association (CBA) is the over 22,000 member voice of the Chicago area legal community, and I submit this testimony today to un-

derscore the CBA's strong support for the Unaccompanied Alien Child Protection Act of 2001 (S. 121). This critical legislation would begin to correct a major injustice in our country by insuring that unaccompanied immigrant children fleeing persecution and terror in their home countries are treated humanely as children and afforded basic due process rights.

Each year, about 5,000 children arrive in the U.S. (many in the Chicago area) without appropriate documentation and without a parent or guardian to care for them, and at that point the Immigration and Naturalization Service (INS) takes the children into custody. These "unaccompanied children" may be fleeing any number of dangerous circumstances, including smugglers; parental abuse or neglect; war; child prostitution; female genital mutilation; forced labor; and forced recruitment as child soldiers.

More than anyone, these children need the due process protections that are the backbone of our country. Yet in too many cases, they are forced to proceed with no legal representation and no guarantee that will be treated fairly and humanely or afforded even the most basic due process rights.

Under the current system, there is an inherent conflict in the role of the INS. The INS is responsible for the care and custody of these children and also is charged with prosecuting their removal proceedings, which includes trying to disprove their claim for asylum or other immigration status. Individuals are eligible for asylum if they can prove that they have a wellfounded fear of persecution based on their race, religion, nationality, political opinion or membership in a particular social group. The standard for children seeking asylum is the same as for adults, which means the burden of proof lies on the children who, lacking familiarity with the U.S. legal system and often with the English language itself, must prove their claims in adversarial court proceedings. Their opponent, in contrast, is a highly trained, educated legal staff with virtually unlimited resources.

The existing system governing unaccompanied immigrant children runs completely contrary to the well-established principles that govern other cases involving the status of vulnerable children in the United States. In all other cases, our legal system is designed so that every effort is made to protect the best interests of the children. For instance, in proceedings involving allegations of child abuse or neglect in Illinois, during the pendency of the proceedings children are:

- (1) Placed with a responsible caretaker,
- (2) Evaluated by experts in child welfare and provided with necessary services, and
- (3) Monitored by a private social services agency to insure proper care.

In other legal proceedings, children always are represented by an independent attorney and a guardian ad litem is appointed to advocate for the children's best interests. In addition, in more complex cases, a court appointed special advocate is assigned to thoroughly monitor the child's wellbeing throughout the proceedings. This system insures that the children receive safe and proper care while the case is pending and that there is a full and fair hearing of the merits before the judge renders a decision.

Unaccompanied immigrant children, in contrast, are guaranteed none of these statutory protections we take for granted in all other cases involving children. Specifically,

- As noted above, the party responsible for their care (the INS) is also the party charged with prosecuting their removal proceedings, an inherent conflict of interest.
- While the locked facility where these children are housed in Chicago is considered a model, in other parts of the country children often are housed in juvenile correctional facilities without access to appropriate services.
- The children do not have a guardian or other party to look out for their best interests.
- There is no guarantee that these children will have legal representation in the adversarial removal proceedings and they too often do not. The CBA continues to work with the American Bar Association (ABA) and the nationally acclaimed Midwest Immigrant and Human Rights Center (MIRHC) to recruit and train top attorneys from throughout the legal community to represent these children on a pro bono basis, and the ABA is coordinating similar efforts throughout the country. In fact, pro bono attorneys throughout the country already handle hundreds of cases for these children. Despite these efforts, however, 50% of the children go unrepresented in these cases due to the inherent flaws in the structure of the current system.

- Children are often asked by the INS to sign documents they cannot read or understand without legal representation or are summarily transferred without notice to their legal counsel.

The lack of these basic due process protections would be bad enough for adults familiar with our country, but it is absolutely devastating for traumatized children unfamiliar with the language and culture who find themselves forced to navigate the complex immigration system alone. The system must be changed.

The proposed legislation would go a long way towards remedying these problems by, among other things, separating the custodial and prosecutorial responsibilities of the INS, appointing independent parties with expertise in child welfare as guardians, and guaranteeing that children in these proceedings are represented by independent legal counsel. The bill would not expand the remedies available under current immigration law. While S. 121 will require some amendments to clarify the guardian ad litem and attorney representation provisions, we believe this bill is a critical and necessary first step towards creating a fair and appropriate procedural framework for cases involving unaccompanied immigrant minor children.

Contrary to the claims of the INS, internal restructuring of the INS is not a valid substitute for this legislation. While the INS commitment to undertake internal reforms regarding their treatment of children is laudable, it cannot solve the inherent INS conflict in these cases (i.e., the INS serving as both caretaker and prosecutor), nor can it possibly insure basic due process protections for these children. Only a system of checks and balances, with independent legal counsel and guardians, can insure these protections.

The inherent conflict of the INS in these cases is illustrated well by recent events in Chicago. Until recently, children held in detention here were regularly and proficiently given basic "Know Your Rights" presentations by MIRHC and its pro bono legal counsel in the Chicago area. However, the INS recently has barred these presentations, and local advocates have informed us that the local INS Juvenile Coordinator is now giving these presentations.

It doesn't require a lawyer to recognize that in taking this action, the INS has turned our entire justice system on its head. Imagine a detained adult prisoner (let alone a child) asking to consult with an attorney and then getting a visit from the State's attorney who will prosecute him to explain his rights. That of course is unfathomable in our country, yet that is exactly what is happening to detained unaccompanied immigrant children right now. And the existing system allows the INS to do it, with absolutely no recourse for the minors, which underscores why this proposed legislation is so necessary.

In short, legislation to provide fundamental protections for these children is more necessary than ever. We strongly support the core principles of S. 121, which goes to the heart of what our nation of immigrants is built upon, and we hope you will do so too. Thank you for your consideration.

#### **Statement of Hon. Orrin Hatch, a U.S. Senator from the State of Utah**

I am pleased that our attention is focused today on the plight of children who lack lawful immigration status in the United States. In the aftermath of September 11, 2001, we have, in a very bipartisan manner, tightened some of the immigration laws and procedures that have left us vulnerable to those who would seek to do us harm and we will continue to do so. Accordingly, it is my sincere hope that the Senate will quickly pass the Enhanced Border Security and Visa Entry Reform Act of 2001, which the House passed last year. That bill, which is a measure of true bipartisan support, is a product of many hours of hard work and is desperately needed. However, we must also remember our humanitarian legacy when it comes to special consideration of the immigration status of particularly vulnerable classes of people.

Sadly, more than a few foreign-born children arrive in the United States each year without parents or legal guardians. In 1999, for instance, more than 4,600 such children entered the country. Some children are rented—yes, you heard me correctly, rented—to unscrupulous smugglers, who then use the children to perpetuate the fraudulent entry of others who either lack a valid visa or have no intention of abiding by the terms of the same. Other children come in hopes of escaping desperate circumstances and persecution in their home countries. Whatever the case, unaccompanied minor children are often victims in the truest sense of the word.

Once here, these children, who usually speak little or no English, face a very complex legal process. In addition, the INS must determine where to place the children pending the oftentimes lengthy ordeal. All too often, these children have been un-

necessarily placed in highly-secured facilities, co-mingled with violent juvenile offenders.

Today, I am very interested in the discussion of S. 121. Particularly, I would appreciate the comments of the witnesses regarding (1) the need for legal counsel and guardians ad litem to assist unaccompanied children and (2) the proposed change to transfer custody of unaccompanied minor children from the INS to a separate office within the Justice Department, and why it is suggested that both are necessary.

However, before I end, I would also like to briefly discuss an equally important and related issue: that of a slightly different class of children—those being long-term illegally resident children. That is, minor children who were illegally brought to and remain in the United States through no fault of their own. Long-term illegally resident children often are not even aware of their illegal status in the United States. They are, by law, accorded the right to education through high school. However, they are provided no independent ability, no matter what their individual accomplishments, to become lawful permanent residents. That is why I have introduced student adjustment measures. I should also recognize and commend a similar, but different approach to this issue sponsored by my good friend, Senator Durbin. We recognize that although the parents of long-term illegally resident children knowingly remain in the United States in violation of the law, their children are assimilated into American culture; they attend school, participate in extracurricular activities, and earn scholarships to college. They are largely intent on being contributors to society, and want to better themselves. Current law provides a disincentive for that to happen. They lack the right to work. It is very difficult for them to obtain the college degrees so many of them desire. For instance, under current law, individual states are not permitted to allow long-term illegally resident children to pay in-state tuition despite having what would normally be resident status for tuition purposes.

To illustrate, allow me to briefly mention the moving story of one of my constituents, Danny. When he was 6 years old, Danny's mother illegally brought him into the United States. After a very difficult 8 years, Danny was finally abandoned and left to roam the streets of Salt Lake City. While Danny had been attending school, he dropped out so he could earn enough money to survive on his own. Finally, Danny met Kevin King, the owner of a Utah landscape company, who agreed to hire him. Discovering that Danny had no home, Kevin invited Danny to live with him in what he believed would be a temporary arrangement. In a recent letter to me, Kevin mentions that, "The first couple of months together I learned a great deal about Danny. I learned that one of the things he missed most was being able to go to school." Kevin then made the necessary legal arrangements for Danny to resume his education. Although Danny had a full year of classes to make up, he did so under Kevin's care by attending night and summer school, and even taking some correspondence home study courses.

On September 25, 2001, Kevin adopted Danny as his son. However, because of the date of the adoption, Danny is ineligible to become a lawful resident of the United States. Instead, he lives in legal limbo, ever-fearful that the INS may take steps to remove him from the only true family he has ever known. He cannot legally work, and securing a college degree is proving difficult and costly. However, that has not stopped Danny. He is now in his third semester of college at the University of Utah and I am proud of him.

Again, I quote from Danny's father's letter. "Danny is exactly what our country needs more of. He is a natural born leader with charisma and intelligence and a drive that will take him wherever he wants to go. But this will not be possible if Danny is unable to obtain permanent residency." Danny also writes and states, "My father gave me the gift of feeling . . . and the opportunity to dream."

Danny's story is one of thousands. The student adjustment bill I introduced last year, called the Dream Act (S. 1291), can remedy this grave situation. It provides for earned or incentivized adjustment. *It does not grant amnesty.* Qualified children must be long-term illegal residents of the United States, meaning those who entered the United States only recently are ineligible for adjustment of status under the bill. Further, the child must have good moral character ensuring that we do not extend any benefit to those who do not deserve it.

In short, I am very pleased that we are discussing these issues today and commend the chair and Senator Kennedy for their leadership and for holding this hearing.

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**Statement of Hon. Patrick J. Leahy, a U.S. Senator from the State of Vermont**

First, let me thank Senator Kennedy for holding this hearing about a most vulnerable population—unaccompanied minors entering the United States. I would also like to praise Senator Feinstein for her consistent attention to this important issue. I remember that while this Committee and others in Congress were debating the fate of Elian Gonzalez, Senator Feinstein sought to have us focus on all the children who arrived here as Elian Gonzalez did. Early last year, she introduced the Unaccompanied Alien Child Protection Act.

Senator Feinstein's bipartisan bill would establish an Office of Children's Services to coordinate the government's treatment of unaccompanied minor aliens. That office would be responsible for taking care of unaccompanied alien children while their immigration claims were heard. The bill would forbid detaining these children in facilities for adults or delinquent children and ensure that all such children would have counsel and a guardian ad litem. It would also create a special immigrant juvenile visa.

We will hear today from strong proponents of S. 121, and we will also hear from the INS and the Justice Department about its concerns. I know that Commissioner Ziglar is committed to improving conditions for children in the immigration system, and I appreciate his involvement in this process. I would hope we can work with the INS and with the Justice Department to do something this year to protect children. Senator Feinstein's bill does many important things, and deserves the full consideration of this committee.

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**Statement of Hussein Sadruddin, Soros Postgraduate Justice Fellow, Lawyers' Committee for Civil Rights Under Law of Texas, San Antonio, Texas**

Mr. Chairman Kennedy and Members of the Immigration Subcommittee:

My name is Hussein Sadruddin and I am a Soros Postgraduate Justice Fellow with the Lawyers' Committee for Civil Rights Under Law of Texas, Immigrant & Refugee Rights Project ("Texas Lawyers' Committee"). The Texas Lawyers' Committee is the only statewide organization dedicated to defending the rights of immigrants and refugees in the state of Texas. I submit this testimony today to highlight serious concerns about the treatment of minors in INS custody. I have had the opportunity visit various juvenile detention facilities and have provided assistance to many minors who are in INS custody. The Texas Lawyers' Committee also assists in providing "Legal Rights" presentations to minors in Liberty County Juvenile Detention Facility in Liberty, Texas as well with legal assistance to minors in El Paso, Dallas and San Antonio, Texas.

I would like to bring to your attention three cases which highlight the treatment of unaccompanied minors in Texas.

(A) Case of I.A.F.-P: This thirteen (13) year old minor was placed in a secured juvenile detention facility in Liberty Texas for nearly a year and a half. After conducting a rights presentation, we found the child to have a credible fear of returning back to his home country. His pro bono counsel filed an appeal in his case but prior to his appeal, the Service unlawfully removed the child back to Honduras. Furthermore, the child was never turned over to the mother by the Honduran authorities and is now missing.

(B) Case of C.D.: The Immigration & Naturalization Service placed this sixteen-year-old Chinese national in a secured juvenile facility for nearly two-years. Nearly 3 months ago, his pro-bono counsel noticed a change in his behavior. The child refused to eat or talk to anyone. He refused to take his medication. Despite several requests from the pro bono counsel as well as other non-profit organizations, INS did not provide mental health assistance to the minor for months. Once such assistance was eventually provided, it was revealed that the child was suffering from severe psychosis and needed immediate hospitalization. His mental condition was severely worsened by his lengthy stay in the secured facility. Furthermore, INS initially refused to transfer the child to a non-secure hospital recommended by INS's own physicians. Eventually, upon requests from various non-profit advocacy organizations as well as faith-based groups, INS finally transferred the



child to a hospital nearly 3 months after the request for mental health evaluation was made.

(C) Case of N.E.K.: This is a sixteen year old child from Burundi who came to the United States as a stowaway after both his parents were brutally murdered in Burundi. Despite the lack of any criminal record or behavioral problems, he was placed immediately in a secured juvenile facility. Although the child was detained in the San Antonio INS District, the Houston INS District was processing his case. No nonprofit agency was ever notified of this child until a sympathetic jailer contacted an organization requesting assistance for a child who has been "crying continuously for a week". Two weeks later, he was transferred to an adult facility after a faulty dental examination revealed that he was over the age of eighteen. A thorough evaluation of the dental exam revealed that the exam was incorrect and the child was re-transferred to secured juvenile facility after spending nearly a week in an adult facility.

The cases listed above merely shed a light on a larger problem that the advocates face daily. The unaccompanied children are constantly placed in facilities that are designed to hold criminal juveniles. The non-profit organizations dedicated to providing assistance to minors in INS custody are routinely not notified of where the minors are being held. The unaccompanied minors in Texas are routinely placed in locations that are far away from cities and away from agencies that maybe able to provide assistance to them. In many facilities, minors are only allowed to contact organizations by calling them collect.

The treatment of many of these unaccompanied minors is abhorrent. In one secured facility, minors who were considered "flight risk" or "behavioral problems" were routinely stripped naked and placed in solitary confinement as punishment. In another facility, unaccompanied minors were continuously placed in chains and shackles.

Our office has represented numerous unaccompanied minors and has assisted many non-profit organizations and pro bono attorneys in their representation of unaccompanied minors. Unfortunately the tales of physical and verbal abuse and lack of compassion for the treatment of these minors are neither unique nor scattered.

While S 121 is a step in the right direction, we request that the committee take a hard look at the treatment of unaccompanied minors in this country. The Immigration & Naturalization Service has continuously shown that their interest lies in detaining and removing the minors rather than looking out for the child's "best interest." A change in the process by which unaccompanied minors are treated in this country is overdue.

Lastly, I would like to thank the committee for giving me an opportunity to share my thoughts and concerns about the unaccompanied minors with you. I am at your disposal if you need any further information.

