Testimony of

Ms. Julianne Duncan

February 28, 2002

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 unaccompanied 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." 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;

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 esnhrine 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 ad 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 ad litem 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."

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. 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."

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 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.

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 suspersede 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 ad 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 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."

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. 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 occured in which non-delinquent children were commingled with delinquent children.

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 facilties 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.

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 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 wold visit me and prepare me for court. She was very great. After 10 months in the shelter, I got asylum."

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. 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 ad 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 ad 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 ad 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.

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 ad 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 ad 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. 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. 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."

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 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 ad 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.

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. 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.

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 unaccompaned 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.