

Testimony of
Mr. Stuart Anderson

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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. Reno*, 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 develop 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.

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 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.

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.