Testimony of

Ms. Wendy Young

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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. 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' 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.

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.

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 care. 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 counterintuitive, 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.

? 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 to the relative. It adheres to this policy even when other relatives, responsible adults, or licensed placements are available and willing to accept the child. 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." 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.

However, we believe that the INS's proposal will not got 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.

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. 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.

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." 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. 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.

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 possible that is appropriate to the child's age and special needs. 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. 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. Any child placed in a medium secure or secure facility must also be provided a written notice of the reasons why.

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.

However, at least until recently, INS compliance with Flores has remained almost entirely self-initiated and self-monitored. 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. 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[illegible]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[illegible].So I'm not going to allow release to a non-relative when we know that there are relatives in the United States."

The district court judge then responded:

"I am outraged that someone would have made up his mind before hearing any evidence whatsoever[illegible].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.'"

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:

? 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. In 2000, non-delinquent children accounted for 1,569 of the 1,933 instances of secure detention. 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 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.

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. 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. 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. 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.

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.

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 Chinese 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."

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 entrance 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. 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.

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. 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."

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 radiograph 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 exact judgement based on radiographs of whether an individual is above or below the age of 18." Other experts have echoed Dr. Frommer's concerns.

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.

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 asylum seekers are 4-6 times more likely to win their asylum cases. 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 retur