WOMEN'S REFUGEE COMMISSION

ORRICK

HALFWAY HOME: Unaccompanied Children in Immigration Custody

Women's Refugee Commission
Orrick Herrington & Sutcliffe LLP

February 2009

The Women's Refugee Commission works to improve the lives and defend the rights of refugee and internally displaced women and children. The Women's Refugee Commission is legally part of the International Rescue Committee (IRC), a non-profit 501(c)(3) organization. It receives no direct financial support from the IRC.

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AUTHORS' NOTE

The research and writing of this report took place over two years. We are happy to report that during the final drafting and review process, and possibly as a result of our discussions with them, the Office of Refugee Resettlement, Immigration and Customs Enforcement (ICE) and Border Patrol have begun initiatives to address some of the concerns we raise herein.

The Department of Homeland Security (DHS) Office of Civil Rights and Civil Liberties has informed us that Border Patrol has initiated a new training program for agents and a new hold room policy, and now requires agents to carry wallet cards to assist them in the identification of trafficking victims. We circulated a draft of this report to Civil Rights and Civil Liberties, ICE Juvenile and Family Residential Management Unit and Border Patrol headquarters for comment and clarification of specific issues. We were looking forward to their response, but were informed that the agencies would not be providing comments at this time.

The Division of Unaccompanied Children's Services (DUCS) has taken broad steps to improve placement, monitoring and therapeutic care. The division created a new child welfare specialist position at headquarters. According to advocates, DUCS has also become more proactive in responding to concerns, including closing facilities when services do not meet program standards. DUCS has been responsive to our requests for clarification and information throughout this process. We circulated a draft of this report to DUCS and the Office of Refugee Resettlement (ORR). ORR did not meet our initial deadline to provide comments and clarification, but requested additional time. To the extent that ORR has provided us with details about these initiatives, we have referenced them in the body of this document.

In addition, in December 2008, Congress passed and the President signed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).[1] This legislation requires the agencies involved in providing services to unaccompanied children to implement several of our recommendations.

We welcome these developments and the efforts being taken by DHS and the Department of Health and Human Services (HHS) to improve the treatment of unaccompanied children. We look forward to continuing to work with the agencies to further improve conditions and access to protection for vulnerable children. We hope that this report is helpful in guiding these efforts.

Please note that the all of the names and some identifying characteristics of the children quoted and referenced in this report have been changed to protect their anonymity and ensure confidentiality.

February 2009

ACRONYMS AND ABBREVIATIONS

ACF	Administration for Children and Families
ATD	Alternatives to Detention
BRYCS	Bridging Refugee Youth and Children's Services
CBP	Customs and Border Protection
CRCL	Office for Civil Rights and Civil Liberties
DHS	Department of Homeland Security
DFC	DUCS Field Coordinator
DUCS	Division of Unaccompanied Children's Services
DUCS Manual	DUCS Policies and Procedures Manual (draft)
EOIR	Executive Office for Immigration Review
FFS	Federal Field Specialist
Flores Settlement	*Flores v. Reno* Settlement Agreement
FOIA	Freedom of Information Act
HHS	Department of Health and Human Services
HSA	Homeland Security Act of 2002
ICAP	Immigrant Children's Advocacy Project
ICE	Immigration and Customs Enforcement
INS	Immigration and Naturalization Service
JOM	Joint Operations Manual
JFRMU	Juvenile and Family Residential Management Unit
JPM	Juvenile Protocol Manual
KYR	Know Your Rights
LHI	Latino Health Institute
LIRS	Lutheran Immigration and Refugee Service
LOP	Legal Orientation Program
OIG	Office of Inspector General
ORR	Office of Refugee Resettlement
PO	Program Officer
SIR	Serious Incident Report
TVPRA	Trafficking Victims Protection Reauthorization Act of 2008
UAC	Unaccompanied Alien Children
USCCB	United States Council of Catholic Bishops

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EXECUTIVE SUMMARY

"I didn't think I would ever find a place like this. But I did. They are taking care of me and I have the things I need." [2]

"I am frustrated from being locked up for almost a year. I really can't stand being locked up anymore. I don't need therapy. I need to go home. I haven't spoken to my mother in months. Her phone is cut off." [3]

Thousands of children migrate to the United States each year. Many of these children come fleeing war, violence, abuse or natural disaster; others come to reunite with family members already here, or to seek better lives for themselves. They undertake difficult journeys, often across numerous international borders, and often alone. Unaccompanied children are some of the most vulnerable migrants who cross our borders, and are in need of special protections appropriate for their situation. Yet they face additional hurdles upon arrival. They are placed in custody while their immigration cases proceed through the courts, and they must undergo adversarial immigration proceedings, often without the help of a lawyer or guardian.

In March 2003, the Homeland Security Act (HSA) transferred custody of unaccompanied alien children from the former Immigration and Naturalization Service (INS) to the Office of Refugee Resettlement (ORR).[4] ORR, a division of the Department of Health and Human Services (HHS) created the Division of Unaccompanied Children's Services (DUCS) to provide care and services to this population.

In an effort to assess the effectiveness of the transfer, the Women's Refugee Commission* and the law firm of Orrick, Herrington & Sutcliffe LLP (Orrick) embarked on a landmark study of the conditions of care and confinement for children in immigration proceedings without a parent or guardian. We visited 30 DUCS programs, three facilities where Immigration and Customs Enforcement (ICE) detains children and three Border Patrol stations. In addition, we interviewed staff, attorneys, advocates, social workers and more than 200 children. In this report, we provide an overview of what life is like for children in DUCS, Border Patrol and ICE custody.

In general, we found that the treatment of most unaccompanied children has greatly improved with the transfer of custody to DUCS. The majority of children are eventually released to parents, relatives or sponsors and a good number of those not eligible for release are held in child-friendly shelter facilities or foster home placements. DUCS has made significant improvements in the quality of medical care, has identified children in need of protection and has created a mechanism to better ensure that children are released to safe environments. In addition, DUCS has created pilot programs to provide legal assistance and guardians *ad litem* to some children. The recent passage of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) should further enhance protections for children. We conclude that HHS is the most appropriate entity to provide care and custody for unaccompanied children.

However, while important improvements have been made and children are better cared for, the Women's Refugee Commission found that significant child protection challenges remain under the current system. Border Patrol and ICE, which are agencies of the Department of Homeland Security (DHS), continue to detain children in inappropriate facilities. In addition, the DUCS program was based in large part on the old INS model of care and has suffered from growing pains and significant challenges as a result. The transfer of custody to DUCS has shifted service provision away from a criminal justice culture and injected social services into the system; however, the intent of the transfer, which was to decouple prosecution from care, has not been fully realized. The roles of prosecutor and caretaker continue to be interwoven in a manner that interferes with the best interest of children. As a result, today's system of care is in many ways a friendlier face superimposed on the old INS model. In essence, we found that the transfer of custody was incomplete because:

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* *Formerly the Women's Commission for Refugee Women and Children*

- DHS still serves as the gatekeeper in deciding which children will be transferred to DUCS, and when.
- DHS inappropriately retains custody of some children whom we consider to be unaccompanied.
- DUCS continues in some cases to rely on an institutional model of care that lacks appropriate monitoring and oversight and that fails to protect confidentiality or provide adequate services to all children consistent with child welfare principles.

As a result:

- DHS exerts significant influence over care and custody of unaccompanied children despite the fact that DUCS is the legal custodian for this population.
- Not all unaccompanied children are transferred to DUCS custody, and many who are transferred are not transferred within 72 hours, as mandated by the *Flores* Settlement (see Appendix I).
- Conditions at Border Patrol and ICE facilities remain inappropriate for children.
- Services are compromised by the concentration of DUCS programs in rural areas.
- DUCS inappropriately shares children's information with DHS, undermining children's access to reunification and relief.
- Children's ability to access protection is limited by a lack of legal representation and lack of access to guardians *ad litem*.
- Despite clear procedures, DUCS does not have effective or adequate monitoring practices.

Michelle Brané (left), director of the Women's Refugee Commission's detention and asylum program, interviews a girl held at the Fort Brown (Texas) Border Patrol station.

- DUCS does not place all children in the least restrictive setting appropriate for their needs. It has recently been increasing the number of children placed in staff-secure and secure facilities and has few therapeutic programs.

Key Recommendations

Based upon our findings, we recommend the following:

Complete the Transfer of Custody

- The Department of Homeland Security, the Department of Health and Human Services, the Department of Justice and the Department of State must implement all provisions of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). Congress must provide them with adequate resources to enable this implementation.
- ICE, Border Patrol and ORR must clarify the definition of unaccompanied alien child and age determination techniques so that no child, regardless of criminal history, remains in ICE or Border Patrol custody for more than 72 hours unless in the physical company of a parent. Children who are detained or apprehended with their parents should be released or placed into alternatives as a family unit.
- Border Patrol and ICE must provide all information collected about children in their custody to DUCS so that DUCS can maintain a database of all children in federal custody.

Reform DHS Policies with Respect to Children

- Border Patrol must improve conditions for children at all stations and holding facilities.
- DHS should ensure that Border Patrol agents, Border Patrol juvenile officers and ICE officers are properly trained to interview children and to recognize potential victims of trafficking and children who fear return to their native country.
- DHS should institute policies to ensure that children they release are released into safe and appropriate settings.
- ICE should utilize child-friendly, shelter-type facilities for holding children pending transfer to DUCS or who have been transferred from DUCS

to ICE pending removal. Under no circumstances should these children be held in facilities intended for juvenile offenders or commingled with adults or youth offenders.

Reform DUCS

- An independent agency or organization with expertise in child welfare service delivery should conduct an analysis of the DUCS program and structure, and issue recommendations for a service delivery model that brings the program fully into line with recognized child welfare practices.
- DUCS should standardize the provision of services to comply with the best interest principle and general child welfare practices, including: ensuring that children are placed in the least restrictive setting possible; expanding the use of foster care and small, group-home settings; and establishing additional therapeutic residential facilities.
- Secure facilities should *only* be used to house children who are a threat to themselves or others.
- DUCS should protect the confidentiality of information in children's files and should not share case file information with ICE, other than providing the name and address of the parent, guardian or sponsor whom a child is reunified with or released to.
- DUCS programs should be located in urban areas where there is greater access to pro bono services, law school clinical programs and medical and mental health care.
- Congress should enact legislation that provides guardians or advocates to all children in immigration proceedings and government-funded counsel to children in immigration proceedings in cases where the child lacks paid or pro bono legal representation.
- DUCS should institute a more effective and comprehensive grievance and monitoring system. This should include monitoring by an independent body and the development of an ombudsperson's office.

For a full list of recommendations, see page 36.

INTRODUCTION

Since 1997, the Women's Refugee Commission has worked to improve conditions of confinement for unaccompanied alien children[5] seeking asylum and other forms of immigration relief in the United States.

Unaccompanied children come to the United States from around the world, though primarily from Central and South America. While the majority of unaccompanied children are boys between the ages of 15 and 17, unaccompanied children are of both genders and some are only in their infancy. Many of these children come to the United States fleeing war, violence, abuse or natural disaster; others come to reunite with family members already here or to seek a better life for themselves. They undertake difficult journeys, often across numerous international borders, and often alone. An increasing number of these children become victims of traffickers and smugglers. All these children, but especially adolescent girls, are highly susceptible to rape and assault along the way.

Unaccompanied children are some of the most vulnerable migrants who cross our borders, and are in need of special protections appropriate for their situation. Yet they face additional hurdles upon arrival. They are held in custody while their immigration cases proceed through the courts, and they must undergo adversarial immigration proceedings, usually without the help of a lawyer or guardian. A primary focus of the Women's Refugee Commission's Detention and Asylum program has been to monitor the treatment of these children and to advocate for humane and appropriate policies and practices that safeguard their best interests.

In the 2002 report *Prison Guard or Parent?: INS Treatment of Unaccompanied Refugee Children,* the Women's Refugee Commission highlighted the inappropriate conditions in which unaccompanied children were being detained by the Immigration and Naturalization Service (INS). Prior to 2003, children were held in INS custody pending a resolution of their legal case. Conditions of confinement were wholly inappropriate and one-third of these children were held in juvenile detention facilities intended for the incarceration of youth offenders.[6] Many children were commingled with the delinquent population, subject to handcuffing and shackling, forced to wear

prison uniforms, and locked in prison cells. Many were *de facto* denied access to legal and social services critical to their pursuit of asylum or other forms of relief because they were housed in remote facilities far from available services. In addition to the inadequacy of services provided, the fact that the same agency was responsible for both care and enforcement created a significant conflict of interest.

The Homeland Security Act (HSA) of 2002 transferred responsibility for the care and custody of unaccompanied children from the INS to the Office of Refugee Resettlement (ORR).[7] ORR created the Division of Unaccompanied Children's Services (DUCS) in March 2003. Under the terms of the HSA, the newly created Department of Homeland Security (DHS) retained enforcement and prosecutorial authority related to unaccompanied children, while ORR was given responsibility for all placement decisions, as well as for the provision of children's care. However, the transfer of custody and division of responsibility remain incomplete. There is no comprehensive oversight of services related to unaccompanied children. The agencies involved[8] often misinterpret the definition of unaccompanied child and their responsibilities under the law. In addition, the system of transfer and care is inefficient, and children's basic rights and best interest sometimes suffer. Because of these shortcomings, unaccompanied children continue to be some of the most hidden and vulnerable migrants in the U.S. immigration system.

Today, most unaccompanied children in immigration proceedings are in the custody of DUCS and are housed in youth facilities operated by private entities. As immigration enforcement has increased, the number of unaccompanied children has also increased. In 2002, INS apprehended and detained approximately 5,000 unaccompanied alien children a year. In 2007, more than 8,300 children were transferred from DHS to DUCS custody.[9] However, this number does not reflect the total number of migrant children in government custody. DHS retains custody of some children who are detained with their parents[10] as well as some children who are not detained with their parents, but whom the agency may consider to be "accompanied" and therefore not eligible for transfer to DUCS. Despite our efforts to obtain information about this latter group of children, their numbers and whereabouts are unclear.[11]

What follows is an examination of the conditions facing unaccompanied children five years after the transfer of care, based on visits to 30 DUCS-funded facilities, three Immigration and Customs Enforcement (ICE) facilities, three Border Patrol stations, as well as interviews with DUCS, ICE, Border Patrol, facility staff, advocates and more than 200 children. (See Appendix B for list of facilities visited.) While this report is not a systematic review[12] of all facilities that hold unaccompanied children, our research provides an overview of the government programs charged with their care and custody. Our findings demonstrate that while the transfer to DUCS was a positive step, the speed with which the program was created and the drastic increase in the number of children apprehended did not allow for full implementation of a structure that appropriately meets the needs of children. As a result:

- DHS still serves as the gatekeeper in deciding which children will be transferred to DUCS, and when.
- DHS inappropriately retains custody of some children whom we consider to be unaccompanied.
- DUCS continues to rely on an institutional model of care that lacks appropriate monitoring and oversight and that fails to protect confidentiality or provide adequate services to all children consistent with child welfare principles.

While DUCS has made an effort to address some of our findings since the inception of this project and drafting of this report, DUCS must go further in implementing a program that truly embodies child welfare norms and the best interest principle. In addition, ICE and Border Patrol must relinquish and DUCS must accept custody of all children who are being detained without a parent or guardian.

STANDARDS OF CARE AND CUSTODY FOR UNACCOMPANIED CHILDREN

There are various standards, guidelines and procedures that apply to the care of unaccompanied children. Under the HSA, the terms of the *Flores v. Reno* Settlement Agreement (*Flores* Settlement–Appendix I)[13] now apply to children in the custody of both DUCS and DHS. DUCS facilities are also governed by the draft DUCS Policies and Procedures Manual (DUCS Manual),[14] the terms of cooperative agreements between DUCS facilities and DUCS headquarters and state regulations and guidelines. For children who remain in DHS custody, ICE juvenile operations are governed by the Juvenile Protocol Manual (JPM).[15] However, the JPM has not been updated since the transfer of custody to ORR and upon inquiry, DHS employees in the Juvenile and Family Residential Management Unit were unfamiliar with its content. There is no consistent enforcement of any of these standards and guidelines.

As will be detailed below, many problems related to custody and care can be traced to an unclear articulation of the different roles and responsibilities of ORR and DHS. Although the Departments entered into a "Statement of Principles" (SOP) in 2004, the SOP clearly stipulates that "[t]his document does not resolve all outstanding issues."[16] A full five years after the transfer of custody, DHS and HHS are still at work on a Joint Operations Manual (JOM), which should establish each agency's roles and responsibilities related to the care of children. As of this writing, we have not been given an opportunity to review a draft of the manual. Consequently, it is impossible to assess whether improved coordination and a clear articulation of responsibilities will resolve the problems we uncovered in the course of our research.

DHS AS GATEKEEPER

DHS acts as the gatekeeper in deciding which children are actually placed in DUCS custody. The agency plays a key role in apprehending, repatriating and screening apprehended individuals, conducting age determinations, classifying children as unaccompanied, transferring children to DUCS and, at times, reunifying children with their families. Furthermore, the agency retained prosecutorial authority over unaccompanied children when custody transferred to ORR on March 1, 2003. Children's initial contact with DHS can occur in various ways. ICE or Border Patrol may apprehend the child along the border or through an interior enforcement activity, or law enforcement may make the initial contact with a child and then refer that child to ICE. Before children can be transferred into ORR custody, they must be processed by DHS, and DHS must determine that transfer is appropriate.[17] (See box below.) That is, DHS must decide whether a child is under the age of 18 and meets the definition of "unaccompanied" laid out in the HSA.

Border Patrol

Border Patrol, a branch of Customs and Border Patrol (CBP), apprehended an estimated 90,000 children along the southern U.S. border in 2007.[18] Border Patrol determines during initial intake whether an unaccompanied child is a national of a contiguous country[19] and is willing to accept voluntary return. If so, that child can be repatriated without ever being placed in immigration proceedings, assuming he or she does not express a fear of return.[20] If a child is determined to be unaccompanied and cannot be repatriated because of nationality, refusal to accept voluntary return or fear of return, DHS should transfer him or her to DUCS within 72 hours of identification as an unaccompanied child.[21] Practically speaking, most of these 90,000 children were repatriated immediately and without screening as Border Patrol currently lacks an effective screening mechanism to identify trafficking victims or other children who may be in need of protection.[22] However, the Trafficking Victims Protection Reauthorization Act (TVPRA)[23] includes provisions that would enhance the screening of all children prior to repatriation.

Intake

Processing begins with intake, where critical information is gathered. Intake procedures include collecting information regarding name, age, legal status, medical history or health, locations of immediate family members, locations and phone numbers of any friends or relatives in the United States, names and phone numbers of the person or persons in the United States with whom the child was in contact and, if smuggled, the arrangements that were made.[24] Information gathered in intake is an important tool in providing services for unaccompanied children, as it can later help establish the suitability of reunification with a parent or guardian and help in assessing the child's needs while in custody.

However, DUCS facilities consistently reported that they received little, if any, of this background information from ICE, and that this failure to share information can compromise care. Facility staff told us that they often receive only date of birth, age and nationality and that ICE is hesitant to provide them with detailed information about a child's apprehension.[25] In these circumstances, information critical to the family reunification process, including contact information for family members who might be able to serve as sponsors, may be lost because children forget telephone numbers and other information by the time they get to DUCS. In addition, staff at DUCS facilities told us that ICE sometimes fails to pass on medical information. ICE has not explained why they do not consistently share this information. Absent a clear and reasonable explanation, all the information gathered at apprehension and during DHS custody should be shared with DUCS.

Age determination

Upon apprehending an individual who claims to be or is suspected of being under 18, DHS is responsible for making an age determination.[26] Age determination is the first formal step in the complex process of identifying an unaccompanied child and a necessary precursor to such child's transfer to DUCS. Unfortunately, DHS does not have expertise in child welfare and often makes determinations using a sole technique, usually a dental exam or radiograph, methods that experts have found to be unreliable.[27] In addition to the use of a flawed technique, age determination can be complicated by a lack of reliable identity documents, lack of specific knowledge of birth date on the part of the apprehended individual or misinformation provided by the apprehended individual.[28] As a result, some children have been improperly determined to be adults and placed in adult detention facilities, sometimes for years at a time. These facilities are based on a model intended for adult criminals and are entirely inappropriate for children. Errors in age determination could be avoided through the use of multiple determination methods, including behavioral assessments. At the time of this writing, DHS does not use behavioral assessments in making age determinations. The TVPRA will reduce the likelihood of errors by requiring that age determination procedures take into account multiple forms of evidence. However, there is still no formal process by which an erroneous age determination can be appealed.

Classification as unaccompanied

Once DHS has determined that an individual is under the age of 18, it must then determine whether he or she meets the definition of an unaccompanied child. These determinations can be plagued with problems related to disagreement and confusion over the definition of "unaccompanied child."

There appears to be confusion over how the statutory definition of "unaccompanied child" translates into practice. We believe that it was the intent of the HSA to transfer to ORR all children in immigration proceedings who are not detained with, or released to, a parent or guardian. Under this interpretation, ICE should not have custody of any children other

Department of Homeland Security Office for Civil Rights and Civil Liberties (CRCL)

We are grateful to CRCL for facilitating access to interviews with Border Patrol headquarters. While we are not aware of the specific actions taken, CRCL has worked with Border Patrol and ICE in an attempt to address some of the issues we have raised in this report. The Office for Civil Rights and Civil Liberties is a division of the Department of Homeland Security that provides assistance to departmental leadership on civil rights and civil liberties issues, investigates and resolves complaints filed by members of the public, and serves as an information and communication channel with the public.

Children detained by Border Patrol

Felix, a 17-year-old from Honduras, was detained by Border Patrol at the Arizona/Mexico border. He was first held in a county jail in Tucson, and then transferred to an adult jail in Tucson, where he was held for 17 more days. During this time, he had no bed, and was given only sheets and blankets. Showers were infrequent and meals were sporadic, consisting of juice, beans and cookies. Felix was finally identified as an unaccompanied child and transferred to a DUCS facility in Seattle, Washington.[29]

ICE detained Dario, a 17-year-old from Guatemala, in a county detention facility for one week before transferring him to DUCS. During this time, Dario slept on the floor, did not have the opportunity to take a bath and was in a facility with adults. He received no medical screening, no counseling and was not given recreational opportunities.[30]

Defining "Unaccompanied"

The Homeland Security Act of 2002 (HSA) defines an unaccompanied alien child as a child who "has no lawful immigration status in the United States; has not attained 18 years of age; and with respect to whom there is no parent or legal guardian in the United States; or no parent or legal guardian in the United States is available to provide care and physical custody."[31]

ICE informed us that "unaccompanied" means a child has arrived in the United States without a parent or other lawful guardian and that there is no adult in the United States willing to serve as an approved sponsor for the child.[32]

than those in family detention, those who have been ordered removed (and whom ICE is in the process of removing) or those whom ICE is transferring within 72 hours.[33] However, we met children who were in the custody of ICE, but who did not fall into these categories.[34]

We have asked ICE, on numerous occasions, to explain who these children are and why the agency has retained custody. ICE has given us contradictory responses and has failed to respond to our requests for clarifications of these contradictions. ICE stated that beginning as early as mid-2007, the agency was devoting more resources and enhancing its commitment to the *Flores* Settlement standards, and ultimately sought to eliminate its role in detaining children.[35] Despite this laudable goal, and an apparent decrease in the number of children they detain, ICE still retains custody of some children and does not have consistent transparent procedures in place to ensure that all children who cannot be released are transferred to DUCS.

ICE has told us on some occasions that they retain custody of accompanied children other than those in family detention.[36] However on other occasions, they have told us that they do not have custody of any unaccompanied or accompanied children.[37] While the HSA defines "unaccompanied child," there is no definition for "accompanied" child. Therefore we are left to speculate as to who these possible children are and whether ICE may retain custody because they consider them to be "accompanied." The confusion over these definitions and a lack of consistent and transparent procedures play out in a variety of ways.

It appears that at times, ICE classifies children who have family members in the United States as "accompanied" even if they are not willing to release the child to that family.[38] In doing so, ICE is actually rendering these children unaccompanied by preventing the parent from retaining custody and providing care. We have learned that in some of these cases, ICE has attempted to transfer these children to DUCS and DUCS has refused to accept them unless ICE demonstrates that the child has no family that is willing or able to care for them.[39] As a result, a child who has a parent in the United States but whose parent is unwilling to pick him or her up[40] might be deemed to be unaccompanied and transferred to DUCS,[41] while a child whose parents are willing and able to pick him or her up but whom ICE does not want to release would be considered accompanied and inappropriately remain in ICE custody.[42] The situation is further confused because in some cases it appears that ICE does transfer, and DUCS accepts, children who have parents in the United States for DUCS to undertake the reunification process.[43]

It appears that ICE also sometimes retains "criminal" children in their custody. We have confirmed that at least some of the children who remain in ICE contract facilities have criminal convictions and may have lived in the United States for many years.[44] However, there is no exception in the HSA for children who have crim-

Boys held in a cell at the Border Patrol's Fort Brown (Texas) station.

inal backgrounds that would justify ICE's retention of custody over these children.[45] Custody of unaccompanied children with criminal convictions was further clarified by the TVPRA, which provides that unaccompanied children charged with having committed a criminal offense should be in DUCS custody, and may be placed in a secure DUCS facility.

Another way in which ICE creates unaccompanied children is when the agency separates children from parents or guardians when a family is detained. When a family is detained, ICE continues, on some occasions, to physically separate children from their parents instead of releasing the family or placing them in a family facility.[46] This may be because a parent or child has a criminal history and cannot be placed in any of the existing ICE family detention facilities[47] or ICE does not want to release the family or place them in an "Alternatives to Detention" [48] program.

It is apparent that both ICE and DUCS are inconsistently and, at times, incorrectly interpreting the definition of unaccompanied. As a result, some children remain in ICE facilities where they are housed in inappropriate conditions and are deprived of even the limited access to legal and mental health services and reunification and case management benefits provided by DUCS. All children in immigration proceedings who are not in the actual custody of their parents or who do not have a parent or sponsor willing and able to care for them should be transferred to DUCS.[49] A consistent and transparent definition and procedure is necessary to ensure that this occurs. ICE must relinquish and DUCS must accept responsibility for all children who cannot be or are not released or reunified.

Release or reunification by ICE

In some cases, DHS attempts to release a child to a family member rather than detain him or her in ICE custody or transfer him or her to DUCS.[50] DHS has the authority to release a child it deems to be accompanied by a parent or guardian directly to such parent or guardian. However, DHS procedures for family reunification lack clear guidelines. Officials at ICE headquarters indicated that there is an agency protocol for determining the appropriateness of release, which requires an affidavit of support; proper identification, including background checks on sponsor (though no fingerprinting); and an interview. However it is unclear whether the process required in the DUCS Manual is actually followed since the Border Patrol officers we interviewed in the field were unaware of its existence.[51] Specifically, the Border Patrol officers we interviewed were not aware of any policies or procedures governing the release of children. Even if DHS has clear and consistent protocols and communicates them to the field, it is unclear whether Border Patrol or ICE agents have the qualifications necessary to determine whether a child will be released to a safe environment and, in particular, to ensure that they are not released to traffickers.[52] We suggest they coordinate with DUCS for advice on reunification techniques and that children be transferred to DUCS in cases where the safety of the child or identity of the adult is in question.

In practice, DHS does not often succeed in reunifying children because many family members or other suitable sponsors are undocumented and do not want to risk being detained by ICE if they come forward. These fears are not unfounded. In some areas of the country, ICE agents sometimes use children as "bait" and arrest undocumented individuals coming to pick up unaccompanied alien children. The Women's Refugee Commission is aware of families detained at the T. Don Hutto facility in Texas that were apprehended in Miami after being told by ICE agents that they need not worry about their immigration status when picking up their children.[53] There are also instances in which children and their parents

Boy re-detained by DHS after release from ORR custody

DHS detained Luz, a woman from Ecuador, with her 15-year-old son after her son was released from DUCS custody. "I have been living in the United States for more than four years. I have a U.S. citizen daughter who is now almost two years old. I sent for my son who is 15. He came across the border from Mexico, but he was detained. I received a call to come and pick him up, so I left my daughter with my friend who lived next door, and took a bus to Arizona to get him. I picked up my son and we went straight to the bus. At the bus station, I was approached by some officers and they detained both of us. I have been here for nine months without seeing my baby girl. She was only one year old when I left her with my friend. I don't know what is happening with her."[55]

were apprehended shortly after leaving a DUCS facility following reunification.[54] (See box above.)

Transfer to ORR/DUCS

The *Flores* Settlement requires that DHS transfer unaccompanied children to DUCS custody within 72 hours of identification, except in some very limited circumstances.[56] However, significant numbers of the children we interviewed at DUCS facilities consistently reported being detained by ICE and Border Patrol for much longer than 72 hours. According to the U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG), 84 percent of unaccompanied children are admitted to DUCS facilities within three days.[57] It is not entirely clear why the remaining 16 percent of children remain in DHS custody beyond the 72 hour limit. Some children are never transferred, for the reasons described above. DHS claims that some transfers are delayed because of long travel distances between the point of apprehension and the DUCS facility where a child has been placed.[58] Also, in the past, some transfers have been delayed because of a lack of available bed space in DUCS facilities. However, according to DUCS, this problem has been resolved and as of early August 2008 there were no bed shortages.[59] While bed shortages and lengthy travel times may account for brief delays, these explanations do not explain why some unaccompanied children are held at Border Patrol stations or county jails for up to several weeks.

These delays are particularly troublesome because children and caseworkers at DUCS facilities across the country recount stories of Border Patrol detention conditions that fall far short of the standards mandated by the *Flores* Settlement.[60] Children interviewed in the course of this research universally described their experiences with Border Patrol as the worst part of their experience in United States custody. They do not know what is happening to them during this time or where they are going, and they are confused and terrified. Most described the Border Patrol facilities as *"hielera,"* their slang for prison.

Conditions at Border Patrol stations

During the course of our research we visited three Border Patrol stations: El Paso, Ft. Brown (two visits) and Harlingen. At each site we toured the facility, and at some sites we were permitted to speak with children. In addition, when we interviewed children at DUCS facilities, we asked them about their experience in Border Patrol custody. We found that children in Border Patrol custody are held in stark and wholly inappropriate conditions, sometimes for longer than is permitted under the *Flores* Settlement.

Children in Border Patrol custody are held in large, open cells that afford no rest or privacy. The cells consist of an open concrete room with concrete benches built into the wall. There is a half wall separating the main room from the toilet facilities. The front of the cell has a window, though which agents can watch the children held inside. The facilities we visited were exceedingly cold. On our second visit to Ft. Brown, the temperature seemed cold but not exceedingly cold. The children with whom we spoke told us that the temperature was much warmer on the day of our pre-scheduled visit than on previous days. A Border Patrol agent acknowledged that the facilities are intentionally kept cold to keep the detainees "docile."[61]

Cells are often crowded and children may be commingled with non-relative adults. On the days of our visits, children were held in separate cells from adults and the girls were separated from the boys. However, children we interviewed in DUCS custody reported being held with adults, in one case for up to 10 days.[62] Girls also reported being held in cells with adult males.[63]

Children held at the Fort Brown Border Patrol facility sleep on cold floors, with minimal bedding.

There are no appropriate sleeping accommodations for children in Border Patrol stations. Like adults, children sleep on cold floors, thin mats, plastic sheets, cement benches, newspaper or plastic "boat beds." At El Paso and Ft. Brown, most children are provided with blankets, but at the Harlingen substation children received no blankets at all. When we asked why they had none, agents told us that the station used to provide them, but that the blankets became infested with bugs because the children were so dirty. The blankets were discarded.[64] Children at stations where blankets are provided confirmed that the blankets were dirty; one child stated that she did not use the blanket she was given because it had bugs on it.[65]

Nutrition provided to children during their time in Border Patrol stations is not appropriate for children's physical condition or cultural norms. Border Patrol agents told us that the children are fed sandwiches or frozen snacks. Children confirmed this, but many also told us that they were often very hungry and were not given enough food or water. One 17-year-old girl reported being held in a Border Patrol station for an entire day with no food.[66] Another child reported being held for an entire day with no water.[67] A 17-year-old boy said he was held for three days and only received juice and one apple.[68] We observed that each cell had a cooler that agents said was filled with Gatorade or water. However, some of the children reported that these were often empty by mid-afternoon and were not refilled until the following morning. In addition to insufficient food and water, many children find the food that is provided unfamiliar and inedible. They also reported that it made them sick after having gone for so many days in the desert without food or water.

There are no shower facilities or clean clothes available to children while they are in Border Patrol custody. Border Patrol agents told us that children are taken to nearby DUCS facilities for showers and a change of clothes. However, our observations and interviews with children contradict this statement. The children we spoke with at all three stations were dirty and had clearly not showered or bathed in several days. Children generally told us that they had not left the facility since their arrival. Some children we spoke with in DUCS custody did confirm that they had been taken to a shelter where they were treated well, fed, given showers and clean clothes, but these services appeared to only be provided when a child is en route to a DUCS placement. At the El Paso station, hospital gowns are used for children whose clothes are no longer wearable. In Brownsville, clean clothes are generally not available, regardless of the condition of children's own clothing, unless employees bring in donations. Agents at one Border Patrol facility told us that they used to supply children who arrived wet with dry clothes, but that is no longer their practice because it was considered a health hazard. No children are provided with toothbrushes during their stay at Border Patrol stations.

We did not observe any recreational activities for children in Border Patrol stations. Border Patrol agents told us that children are taken outside for recreation every day. At Fort Brown they showed us a basketball hoop inside a closed concrete area and told us that they take children outside to play there. However, most of the children with whom we spoke at that facility told us they had not gone out at all since their arrival. A few children who had been at the station for longer periods told us that they had been taken out to play basketball a few days prior to our visit. Agents at Fort Brown also informed us that

they occasionally show the children movies in a back room. They showed us a collection of DVDs and videotapes. However, none of the children we spoke to reported having seen a movie.

Telephone access is also problematic at Border Patrol stations. Border Patrol headquarters informed us that all children who are apprehended are given the opportunity to call their consulate, but they could not guarantee that the call went through or was answered.[69] Some of the children we spoke with reported not being permitted to call their parents and almost all reported that they had not been given the opportunity to call their consulates.

Another concern is the manner in which care is provided for children in Border Patrol custody. Agents assured us that medical care is provided if a child was injured during his or her journey or experiences a medical emergency while at the station. However, anecdotal accounts contradict this assertion. In one case, DUCS facility staff told us that they were unable to obtain any records or other information from Border Patrol regarding emergency medical care supposedly provided to a child in their custody.[70] One boy with asthma told us that Border Patrol agents took away his inhaler and he later had an asthma attack.[71] We heard other accounts in which Border Patrol waited until a situation developed into an emergency before providing appropriate care.

The treatment of the children in Border Patrol custody indicates additional training is needed. Although some of the agents seem to genuinely care about the children, there is a pervasive law enforcement perspective among Border Patrol agents that results in children being treated as criminals and sometimes abused. Examples include:

- One girl claimed to be thrown to the ground and accused of being a drug smuggler.[73]
- One boy said he was hit on the back and shoulder with an object.[74]
- A boy with a broken shoulder said that when he could not raise his arm as demanded by a Border Patrol agent, the agent twisted his arm and cursed at him. He said his shoulder hurt for some time after that.[75]
- A girl reported that Border Patrol agents showed her brother a knife to scare him. Another agent told her she had no rights.[76]
- A child told us that Border Patrol agents become angry when the children ask for more food.[77]
- Several children in a DUCS facility reported that Border Patrol agents would shout to wake them up at night, calling them dogs, spitting and giving them food the children described as moldy.[78]
- A child reported being transported in vans with dogs.[79]
- Both children and DUCS facility staff reported that children arrive at DUCS facilities in handcuffs.[80]

Baby left in cold cell with wet clothes until hospitalization required

Carmen was apprehended by Border Patrol crossing the river with her five-month-old daughter Lily. She was placed into a cell with no dry clothes or blankets for her or the baby. Carmen requested something to keep the baby warm since it was so cold in the cell and all she had was wet clothing. The agents refused. By morning Lily was turning blue. Carmen begged the agents for help. Finally they looked at baby Lily and took her to the emergency room. Carmen was placed in shackles. Doctors at the emergency room said that Lily was suffering from hypothermia and that she had contracted pneumonia. They gave her antibiotics and kept her in the hospital for 24 hours. During that time Carmen was shackled and nurses were not allowed to give her any food.[72]

DHS CUSTODY OF CHILDREN

We believe that DHS should only have custody of children in the following circumstances:

1. If they are apprehended with and are detained with their parent (the Women's Refugee Commission believes that families should only be detained in the rare cases in which is it necessary, but acknowledges that DHS has the authority to do so);[81]
2. Between the time they are apprehended and the time they are transferred to DUCS;
3. When children receive a final order of removal and are transferred back to DHS so that DHS can effect physical removal; or
4. If the child is classified as a national security risk under the Patriot Act.

In addition, when children "age out" (are no longer children) they are transferred back to DHS for placement in adult facilities.

However, as discussed above, there are some children who do not fall into any of these categories yet are never transferred to DUCS. These children may be wrongly determined to be 18 or over. Some children initially claim to be over the age of 18 and others are misidentified as adults. These children are placed in adult detention facilities. Of the four children interviewed in a shelter in Seattle, one had been transferred to ORR within 72 hours, one had spent nine and a half months in an adult jail in Arizona, another spent three weeks in two different adult jails in Arizona, and the fourth spent one month in a facility for both adults and juveniles, also in Arizona.[82] In some cases, these children continue to be held with adults after it becomes apparent that they may be children; in other cases, children are held in solitary confinement in order to separate them from the adult population. Other children who remain in DHS custody are under the age of 18, but are inappropriately deemed to be "accompanied" even though they are not detained with their parents (as detailed above).

Because DHS has not shared with us details about the numbers of children in their custody, information about children who are not transferred to DUCS is largely unknown. According to the agency's response to a Freedom of Information Act (FOIA) request we filed, ICE has no record of how many children it has detained for more than 72 hours. (See Appendix C.) In addition, the agency failed to provide any records regarding the numbers of children who remain in ICE custody.[83] ICE repeatedly told us that they did not have a list of facilities where children are held. Finally, in response to a FOIA request, ICE provided a list of 31 facilities they use to hold children in immigration proceedings.[84] Eleven of these facilities are operated by ICE and include ICE Field Office hold rooms or staging facilities; two are hotels used as needed; four are self described as shelters; and the remaining 14 are juvenile facilities or youth centers that detain children adjudicated as criminals or delinquents. It should be noted that even after we received the list through a FOIA request, the ICE Juvenile and Family Residential Management Unit (JFRMU) requested the list from us, stating that they did not have it.[85] It concerns us that the unit responsible for juveniles in the ICE system did not have this information.

Conditions at ICE Contract Facilities

In addition to hearing from attorneys and children's advocates of these cases of children who remain in ICE custody,[86] we encountered children in ICE custody ourselves at one of the facilities we visited. We specifically requested to visit sites where ICE detains children.[87] While ICE granted us access to two facilities, one in Albany, New York, and the other in Globe, Arizona,[88] neither had children in ICE custody at the time of our visit. However, the Women's Refugee Commission visited the Berks County Youth Center, where we were able to meet with children.[89]

The three facilities were starkly different. The Equinox Youth Center in Albany, operating primarily as a shelter for domestic children, was very impressive. Clients sleep in rooms with one, two or three beds. All of the rooms are large, clean and colorful and have their own bathroom suite and large windows with good light. The shelter is also equipped to house a single mother and infant child in a nursery that is set up with an attractive wood crib. In the common living areas, children have use of computers, an art area with significant supplies, a modern television and a large kitchen. The staff appeared to be extremely interested in the welfare of the children and in ensuring their success, both while residing at the facility and following their discharge. However, since 2002, the facility has housed no more than 20

children under the control of ICE, and none of them for more than a few hours or possibly a long weekend. Facility staff reported that children are generally dropped off by ICE at 10:00 p.m. and picked up at 4:00 a.m. the next morning, presumably to go to the airport for a 6:00 a.m. flight from Albany airport.[90] Accordingly, the facility had no records regarding the background of the unaccompanied alien children who have resided there.

In contrast, the facility in Globe, Arizona, is primarily for juvenile delinquents. It is a stark and barren detention center. ICE stated that it mainly uses the facility for unaccompanied alien children who are in the process of being transferred to DUCS or are in the process of being deported.[91] Between October 2006 and October 2007, 471 unaccompanied alien children (both boys and girls) were housed at the facility. ICE and facility staff stated that none of the children stayed for more than 48 hours.[92] However, local legal advocates told us that according to the children they have met with, ICE frequently detains children at Globe for much longer periods, sometimes without ever transferring them to DUCS.[93] Most of the children who are housed there are housed over the summer because the influx of the children is seasonal, particularly in the Phoenix/Tucson area.

The Women's Refugee Commission visited the Berks County Youth Center, located in Leesport, Pennsylvania, in October 2006. Facility officials and the ICE Field Office Director conducted a tour of the site and the Women's Refugee Commission was able to speak with three immigrant children in ICE custody. The center is a juvenile delinquency facility run by Berks County. It reserves between 10 and 12 beds for ICE and can provide up to 78 if needed and available. The facility staff told us that they usually had 11 to 12 ICE children at any given time.[94] The children we interviewed had been there from two weeks to three months. We found the facility to be particularly punitive. Children were made to walk on lines marked on the floor, with their hands at their sides at all times. They were not allowed to look up unless directed to do so. The children interviewed stated that they were often locked in their single rooms for up to 22 hours a day.[95] They received only three hours of education per day. While in their rooms, children were allowed to wear only shorts and a t-shirt; shoes and pants had to be left outside the door. Children were not allowed personal belongings and were permitted only one book in their room at any given time. The rooms each had one long thin window, but they were not allowed to look out the windows. At the time of our visit, a child was scolded for doing so. The reason given for this rule was that the parking lot for staff was located outside the window and there was concern that children would memorize staff license plates and retaliate when they were released.[96] We later met two of the boys we interviewed, aged 12 and 13, at the DUCS Vincennes facility. They had been held at the Berks County Juvenile facility for seven months before their attorney managed to inform DUCS of their detention and DUCS requested a transfer from ICE.[97] When we initially interviewed these children in late 2006, ICE informed us that because their parents were in the United States the agency considered them to be "accompanied" even though the parents could not serve as sponsor.[98] However, when we presented this case to ICE a second time in 2008, ICE claimed that it did not have custody or control over any "accompanied" children,[99] directly contradicting its previous statement. It remains unclear why ICE retained custody of these children.

We are particularly concerned about children in ICE custody because they are not receiving adequate services. They have no systematic access to legal representation or rights presentations, have minimal or no mental health services, no case management services and often have no guardian or advocate defending their rights or best interest. Border Patrol provides children with a list of free legal services at the point of apprehension. However, the Border Patrol lists are not very useful since children do not remain in their custody and often leave the area where they were apprehended. ICE claims that they also provide a list of free legal services to all the children in their facilities. We received from ICE the list of legal providers given to children at the Albany facility we visited. We called all of the numbers on the list and none had ever provided services for a child in ICE custody. In addition, most were not in the immediate vicinity and did not provide services in detention or for children generally. We requested copies of the lists provided to children at other facilities, but we never received them from ICE.

The incomplete transfer of custody means that some children are falling through the cracks and not receiving essential services. All children in immigration proceedings who are not accompanied by a parent or legal guardian must be transferred to DUCS within 72 hours.

DUCS IN NEED OF REFORM: RIGHT PLACE, WRONG MODEL

The transfer of custody from INS to ORR was a positive move towards better protections for unaccompanied children. However, the speed with which the DUCS program was created and the drastic increase in the number of children apprehended made the development of a new program model based entirely on child welfare principles unrealistic. The former INS was resistant to hand over information and money to ORR and, as a result, the transfer faced many obstacles. Furthermore, ORR is not accustomed to implementing an operational program responsible for the actual care and custody of children and this has led to some obstacles in effective implementation. While the situation has improved over the last five years, vestiges of these past tensions remain and our recommendations are strikingly similar to those detailed in our 2002 report.[101] Most children are much better off in the DUCS program than they were under the INS. The DUCS model is softer and has added some child welfare components, including social workers and case workers at the field level. Since the 2003 transfer, ORR has dramatically increased the use of foster care, added staff-secure and residential treatment center options, and ended contracts and agreements with most of the secure facilities used by the former INS. Yet the incomplete remodeling of the program perpetuated the old INS model that viewed children as a security or flight risk, which confuses the role of prosecutor and caretaker. This has affected the location of facilities; encouraged institutionalization, making the facilities more impersonal and prison-like; led to the sharing of children's information between agencies; discouraged the provision of legal representation; and contributed to the absence of an effective oversight process.

Location of Facilities

DHS pressures ORR to place DUCS facilities in border areas to make the transfer of children easier for DHS.[102] As a result, many facilities are located in rural areas that lack access to services. According to the DUCS Manual, DUCS is supposed to consider proximity to point of referral from DHS, as well as the needs of the child when determining placement.[103] Because many rural areas near the border lack services, this creates obvious tensions between convenience and care. In making placement decisions, DUCS has allowed some DHS interests to take precedence over the best interests of the child; some children lack access to adequate medical, mental health care and legal services as a result.

Office of Refugee Resettlement, Division of Unaccompanied Children's Services

The Office of Refugee Resettlement, Division of Unaccompanied Children's Services (DUCS) is housed within the Administration for Children and Families under the U.S. Department of Health and Human Services. DUCS was created in March 2003 and began with seven staff members and a budget of approximately $35 million. Since that time, the number of children in its care has risen by 225 percent[100] and the program has grown to 18 headquarters staff, 11 field staff and a projected budget of $132.6 million for fiscal year 2008. DUCS is responsible, among other things, for the care and placement of unaccompanied alien children in federal custody for immigration reasons; developing a plan to ensure timely appointment of legal representation for children in its custody; compiling state by state information about guardian and attorney availability; and maintaining relevant statistics across departments. The agency has few employees in the field. Instead it contracts with private facilities for the care and custody of children and, accordingly, all care is provided by local facility staff who are not DUCS employees. Federal field specialists are DUCS employees who work with DUCS facilities to ensure that children receive needed services and that facilities and field coordinators are correctly interpreting and following DUCS policies and procedures. Field coordinators are employees of Lutheran Immigration and Refugee Service (LIRS), a voluntary agency that contracts with DUCS to advocate on behalf of the children and work with facilities to ensure that children receive needed services. Both federal field specialists and field coordinators are located throughout the country and are assigned to work with facilities within a particular geographic region.

Trend Towards Institutionalization

Following the transfer, DUCS took steps to deinstitutionalize the INS model, with limited success. The agency discontinued agreements with 31 secure juvenile detention facilities, began placing some children in foster care, increased reunification efforts and took steps to introduce social work principles by hiring social workers at both headquarters and in the field. However, much of the fundamental structure of the program remained the same. While the great majority of children are released or placed in foster care or shelters (see Appendix E), over time there has been a move toward re-institutionalization and in some cases criminalization. Some facilities have become too large to adequately serve children's needs. Some children are inappropriately placed in secure facilities, in part because of a lack of mental health services. This is at least partially resolved by the recently enacted TVPRA.[104] In addition, a child's best interest can be compromised by problems related to suitability assessment, reunification and follow-up.

Facilities too large to adequately serve children

Despite the fact that small, homelike settings are better equipped to meet the physical and emotional needs of children, some DUCS facilities have become larger and more impersonal in recent years.[105] This trend toward the use of large facilities may be due in part to the rapid increase in the number of unaccompanied children crossing the border, and to DUCS' difficulty in finding enough facilities to house children. However, larger facilities necessarily rely on greater institutionalization as a means of maintaining control, have a higher staff to child ratio and are less able to adapt services to the unique needs of individual children. Even lower security shelters have begun adding more security, including more cameras and bars on doors and windows, because it is difficult for staff to monitor the large numbers of children housed in them. Both care and safety are compromised by this reliance on large facilities, as it is difficult for staff to give children the individualized attention necessary given their high level of trauma and vulnerability.

At the time of our visit to the South West Key (Mesa) staff-secure facility, the director and staff expressed concern that they had been unable to adequately care for the 26 children in residence before the recent hiring of additional staff.[106] Unfortunately, within a few months of our visit, DUCS was expected to place an additional 15 children at this facility, once again making it difficult for staff to meet children's needs.[107]

The problem of these larger, more impersonal facilities and their impact on safety and care is particularly pronounced in staff-secure and secure facilities. (See Appendix F for definition of secure and staff-secure facilities.) In the year we conducted most of our field research,[108] DUCS opened new secure and staff-secure facilities. In part this was a response to the growing number of children referred to DHS from law enforcement.[109] However, DUCS increasingly places children with behavioral and mental health problems in staff-secure and secure facilities, rather than therapeutic programs. Many of these facilities do not yet have adequate staffing in place to handle the increased population, prompting concerns from staff and attorneys about the facilities' ability to meet the complex needs of the children.[110] At the time of our visit to the Northern Virginia Juvenile Detention Home (NOVA) in Alexandria, Virginia, the facility had no daily staff members on site who were trained in DUCS policies and procedures.[111] Rapid population growth seems to have contributed to abuses that developed at both the

A bedroom at the Southwest Indiana Regional Youth Village (Vincennes), Indiana, is reminiscent of a prison cell.

Away From Home Texas
Sheltered Care Facility (Nixon), in Nixon, Texas, and the Southwest Indiana Regional Youth Village (Vincennes) in Vincennes, Indiana.[112] Namely, staff at Vincennes expressed their concern that the population had grown too quickly in the middle of 2007 after several children were transferred there following the closure of Nixon.[113]

Problems related to providing care and safety in increasingly large facilities are likely to deepen as apprehensions continue to increase, unless DUCS begins to rely on smaller, more homelike facilities with better staff-to-child ratios.

Lack of mental health care

Mental health care in the DUCS program is an improvement from the former INS system, but the needs of these children are great. Mental health and medical care in the DUCS system is not equipped for the high level of trauma present among unaccompanied children and focuses more on controlling the symptoms of children's problems than on treating the causes of trauma in individual children. (See Appendix F regarding medical and mental health care.) Caseworkers, field officers and DUCS staff consistently reported that while levels of mental health needs may vary, all of the children in DUCS custody have undergone traumatic events, often before their journey began and almost certainly during their travels to the United States. Facility staff estimated that between 30 and 50 percent of children need mental health services.[114] Facilities reported that very high percentages of up to 50 percent of children were on psychiatric medications,[115] including percentages of between 5 percent and 40 percent on psychotropic drugs.[116] In addition, some facilities, including Vincennes, reported that more than half of the children were on prescription sleeping pills.[117] Furthermore, there is a significant risk of suicide at some of the facilities. At one facility, a case manager estimated that approximately 10 percent of children were suicidal.[118] Another reported that they encounter suicide attempts or suicidal ideation on a weekly basis.[119]

While mental health services are more readily available in DUCS facilities than in the former INS or those facilities currently run by ICE, at the time of our visits, not all children in DUCS facilities were receiving adequate mental health screening and service plans.[121] Access to mental health care is limited at DUCS facilities throughout the country, particularly in more remote areas. In many rural areas, there are not enough psychologists and psychiatrists to diagnose and treat mental illness and related conditions, and mental health care often falls to medical staff and case workers, who do not have the time or necessary skills to provide therapeutic services.

In addition, there is no uniformity among facilities with respect to the quality of mental health care provided or the educational requirements for individuals that provide such care.[122] As a result, procedures to identify mental health issues, and corresponding medical problems vary among facilities and are sometimes insufficient.[123] Clinicians frequently miss, or misunderstand, physical or behavioral manifestations of trauma and stress. Staff acknowledged these frequent failures to identify children who have suffered trauma and expressed concerns that children are inappropriately or overly medicated.

The lack of sufficient mental health care can contribute to the institutionalization and criminalization of children, most notably through the inappropriate placement of children without criminal or other safety concerns in staff-secure and secure facilities. Children with mental health issues, including most suicidal patients, are routinely placed in staff-secure or even secure facilities because of behavioral problems that may be directly attributable to the lack of

Human smuggling takes a toll on children

According to DUCS officials, human smuggling through criminal organizations has become especially troublesome because of the physical and psychological effects it has upon children. Increasingly, children have become targets for physical and sexual abuse by traffickers on their journey to the United States. According to DUCS officials, it is not uncommon for children to arrive in the United States with special needs requiring professional services. These special needs cover a wide range of issues, but include teenage pregnancy, acute mental illness, severe depression, and other physical illnesses. Also, the physical and psychological damage caused to children by human smuggling may be compounded by the fact that some children have experienced trauma or domestic abuse in their country of origin.[120]

proper therapeutic treatment at prior DUCS facilities.[124] In these facilities they are even less likely to receive therapeutic care and the institutional environment can compound emotional stress. Such placements can intensify mental health problems and suicidal thoughts.

Staff in secure and staff-secure facilities expressed deep concern that many of the children placed with them were there because of mental health issues and required more mental health services than the facility was equipped to provide.[125] Secure facilities in particular are run like correctional institutions rather than social service institutions, and as such do not provide sufficient, if any, counseling. Some do not have on-site mental health specialists. Visiting psychiatrists spend very limited time at these facilities, often as little as a few hours a week, and usually address only the most pressing issues facing the population.[126] Staff at staff-secure facilities expressed concern that they are responsible for providing care for children with severe psychological issues, but are not provided with adequate funds or training.[127]

There is a substantial need for "therapeutic shelters" with enhanced mental health care for children who need more concentrated services but whose conditions are not severe enough to require placement in a more restrictive environment.[128] At the time of our research and review, such shelters did not exist in the DUCS care network. However, since we completed our research, DUCS has made a concerted effort to address this shortfall. In 2008, DUCS awarded a $1.8 million grant to the Latino Health Institute (LHI) to implement the Trauma Initiative, a 30-month project to improve the capacity of DUCS shelter staff to provide trauma-informed services to youth under their care. The Trauma Initiative is intended to train facility staff in methods that help improve the capacity of unaccompanied children to recognize and regulate complex emotions, and to train staff in the management of the various effects of trauma.[129] DUCS has also indicated that they have funded a 15-bed therapeutic group home in Des Plaines, Illinois, through Heartland Alliance in Chicago. This facility was originally expected to begin serving children in mid-October 2008, but actually opened on December 29, 2008. In addition, Children's Village, in Dobbs Ferry, New York, was expected to begin providing six therapeutic bilingual short-term and four bilingual long-term foster care beds for DUCS children in October 2008. Furthermore, ORR has informed us that it is in the process of contracting with a mental health facility in Miami, Florida, for those with a more serious diagnosis. It is also using the bilingual psychiatric services of a hospital in Houston, Texas, and exploring another residential treatment center outside of Houston for less acute psychiatric diagnoses. Additional therapeutic facilities and a more appropriate approach to serving children's mental health care needs are necessary. This is a good beginning and we look forward to seeing these plans implemented.

Despite the shortcomings detailed above, there are also countless examples in which abuse and evidence of trafficking have been uncovered by DUCS-funded program staff. Two young girls picked up in an immigration raid at a restaurant were transferred to DUCS custody. The shelter clinician noted that the girls were more withdrawn and seemed much more distressed than the average minor in their circumstances. Eventually, with proper care, one of the girls revealed that she was recruited by a relative of the restaurant owner, was forced to work at the restaurant even though other work had been promised, had been pressured sexually and endured conditions of debt bondage. Through interviews with the other girl's mother in the home country, DUCS program staff learned that she had described to her mother conditions of debt bondage and sexual pres-

DUCS facilities an improvement

Some treatment programs do exist and in some cases DUCS secure facilities provide better care and conditions than facilities traditionally used by the former INS and currently used by ICE. For example, at the Southwest Indiana Youth Village in Vincennes, Indiana, there is a sex offender program, a substance abuse treatment program and a volunteer community service program. These programs are not specifically designed for the immigrant child population, but DUCS has placed children in these programs when it is in the best interest of the child and space is available. In July 2007, the Women's Refugee Commission met with two boys at the Vincennes facility whom we had interviewed six months prior, in November 2006, while they were in ICE custody at the Berks Youth Center in Pennsylvania. They had been transferred to DUCS custody after six months in ICE custody and had been placed into one of these treatment programs. The children's mental and physical state was visibly improved.[130]

sure at the restaurant, and that for reasons unknown to the mother, the girl felt terrified to return home.[131] Some of the restaurant operators have since pled guilty to trafficking and others were awaiting trial. We applaud program staff for their efforts to support these children.

Unfortunately, NGO partners on the ground and local case workers fear that there are many cases of abuse or trafficking that are not identified and are sometimes frustrated that their recommendations are not followed. Since the original research for this report, DUCS has presented seven workshops on "Identifying Victims of Child Trafficking," which trained more than 200 participants. ORR claims that the workshops improved the rate of linking child trafficking victims identified in DUCS shelters to the benefits and services for which they are eligible.[132] There is much potential in the DUCS programs for identifying and protecting children who have suffered from trauma and abuse and we hope efforts continue. Facilities need to be located in areas with appropriate mental health resources, and the program structure and services need to be better calibrated to the unique needs of unaccompanied children. Local caseworkers and NGO partners must be empowered to make decisions that are in the best interest of the children since they have the most direct contact with those children and are in the best position to be familiar with their individual circumstances.

Overuse of Staff-secure and Secure Facilities

DUCS uses a range of facilities from foster care, to group homes, shelters, staff-secure and secure facilities for the placement of children. (See Appendix F for additional information.) While DUCS has expanded the use of foster care and decreased the use of secure facilities (discontinuing agreements with 31 secure acilities used by the former INS),[133] a lack of clarity and consistency in placement decisions has sometimes resulted in an overuse of staff-secure and secure facilities. Some staff-secure and, particularly, secure facilities are, or closely resemble, juvenile correctional facilities, and are characterized by constant observation from staff and increased structural security. Staff-secure and secure facilities are wholly inappropriate for most[134] unaccompanied children because they are based on a correctional, not a child-welfare, service model and

A bedroom at the Baptist Child and Family Services (BCFS) shelter, an ORR facility, in San Antonio, Texas, has a more dorm-like feel.

feature a high degree of institutionalization. However with the recent increase in enforcement operations, DUCS has increased bed-space in staff-secure and secure facilities. Between early 2007 and early 2008, DUCS contracted with an additional four secure and two staff-secure facilities.[135]

Currently, many of the children placed in these facilities are referred to ICE by law enforcement and subsequently placed at staff-secure or secure sites based solely on this referral, and not on an assessment of how the children came into contact with law enforcement, or of the child's particular needs. As noted in the section above, placement in staff-secure and secure facilities can at times be misguided. In addition, there is little review of the appropriateness of the placement decision. The TVPRA will reduce the inappropriate use of secure facilities and creates a mechanism for regular review of children's placement at secure sites. However, it does not place restrictions on DUCS' ability to place children in staff-secure programs and therefore is unlikely to halt the increasing use of such facilities.

The DUCS Manual states that all children placed in secure and staff-secure facilities will be provided a *Notice of Placement in Secure and Staff-Secure* form,[136] outlining the reasons for placement in that type of facility and written in a language the child understands.[137] The Manual also states that secure and staff-secure care providers should "regularly assess" the child for appropriateness of transfer to a less re-

strictive environment.[138] Despite these requirements, children at the facilities we visited were not regularly assessed to determine whether they could be transferred to less restrictive sites. Facility staff and children consistently stated that they did not understand the rationale for placement decisions.[139] At some facilities we heard from children who not only did not understand why they were at the facility, but did not even receive a facility handbook, a written copy of the rules or a tour of the facility. As a result, children described feeling confused and lost. Many also believed that they were in a jail.

> *"I found my way over time. When I got here I thought I was in a jail or some kind of detention center"*[140]

Since concluding our research, we have communicated to DUCS our concern regarding the lack of an effective system for determining placement to DUCS, and recommended that the agency consult with experts, such as the Vera Institute of Justice, to resolve this issue. As of the time of this writing, DUCS has begun to research the development of such a process.[141]

Lack of Focus on Best Interest of Individual Children: Suitability, Release and Follow-Up

While the DUCS program has been an important and significant step forward in regard to the protection of the best interest of all unaccompanied children, there is still a need for improvement, particularly when it comes to protecting the best interest of individual children in its care. At the time of our research, DUCS did not conduct suitability assessments for enough children prior to release and did not provide follow-up services to the majority of children released to parents or guardians.

Suitability assessments and home studies

There has been some tension regarding DUCS' use of suitability assessments and home studies. Family reunification and release decisions are made by federal field specialists after consultation with LIRS field coordinators.[142] Documentation and background checks are conducted on every potential sponsor and a suitability assessment of the potential sponsor's home may be conducted. However, suitability assessments and home studies are not conducted in all cases and generally only when there is reason to believe there may be a problem with a placement.[143] A special case management team at DUCS headquarters makes referrals for suitability assessments and the assessments are carried out by suitability assessment specific staff at United States Catholic Conference of Bishops (USCCB) or LIRS. Individuals we interviewed expressed concern that requests or recommendations for suitability assessments and home studies are sometimes rejected; consequently, children are sometimes released to risky or dangerous situations.[144]

Home studies can help avoid traumatic experiences

The case of a 16-year-old girl from Guatemala who was initially detained in DUCS custody shows the need for suitability assessments and home studies. She was later released to her adult sister's custody, but a home study of the sister was never conducted. Her sister forced her to work as a waitress and stripper at a local bar. Three months after her release, local police conducted a raid at the bar, identified the girl as a potential trafficking victim and sent her back into DUCS custody. A home study and assessment of her situation or post-reunification follow-up could have helped her avoid this deeply traumatic experience.

DUCS has recently broadened the criteria for assessments to further encourage discretionary suitability assessments for any case with a concern for the safety or well-being of an unaccompanied child.[145] At the time of this writing we have not had the opportunity to assess the impact of these new criteria, but they are a positive development that we hope address our concerns. At the same time, some attorneys expressed concerns that sponsors may be unfairly rejected as a result of these evaluations. These are difficult situations to manage and these contradictions exemplify the frequent tension between attorneys and social workers, who are both advocating for the child from their respective roles. However, greater communication with attorneys,[146] continued jurisdiction over children after release and more assessments would alleviate some of these tensions.[147] The TVPRA requires that DUCS verify the suitability of potential sponsors prior to reunification, expands the use of home studies for the most

vulnerable children and mandates follow-up services for all children who receive a home study.

Reunification

While DUCS has the ultimate responsibility for protecting the children in its custody, the system is so large and resources so diffuse that there is a lack of consideration paid to the needs of individual children. *Flores* stipulates a preference for release whenever possible. DUCS reports that approximately 60 percent of children transferred to its custody are ultimately reunified with a parent, relative or sponsor.[148] This is a marked increase over reunification rates under INS and is indicative of the agency's concerted efforts to pursue reunification whenever possible. However, some attorneys complain that there is a lack of transparency when reunification is denied, and a tendency towards paternalism in the DUCS reunification process. Provided that there are no safety concerns and reunification is an option, children should be reunited with their parents and parents should have the right to decide what is best for their child. However, DUCS has instituted a new policy that prohibits reunification with a parent or sponsor who has a removal order. This is of concern, since assuming there is no reason to suspect otherwise, parents should be given the opportunity to make the decision about what is in the best interest of their child. The child may have his or her own grounds for relief and the parent may be in a position to arrange for that child's care in the United States. Also, departure from the U.S. with a parent is not necessarily contrary to the child's best interest. If the parent is to return to his or her country, he or she should be able to take the child, absent exigent circumstances that indicate otherwise.

Follow-up Services

As noted above and as recognized by DUCS, in some circumstances an increase in release and reunification is only a positive change to the degree that children are released to safe environments. While children are not necessarily unsafe with parents who have removal orders, follow-up services are helpful in ensuring that children who are released or reunified are safe. Most children do not benefit from follow-up services once they have been released from DUCS or DHS custody, and most children face a dearth of support services. Except in the rare cases where post-reunification follow up is approved, DUCS asserts that it has no jurisdiction over children who are released from its custody.[149] This legal interpretation results in a gap in services and oversight for these children.[150] If the reunification or release turns out to be problematic, the only way for a child to come back into the system is for DHS to re-detain them. Many children who are released do not appear for their immigration hearing and no one is tracking their whereabouts. Some provisions of the TVPRA attempt to address this problem.[151] These children are particularly vulnerable to trafficking and abuse. In addition, children who are released usually leave the area where they were detained and immigration judges sometimes refuse to grant continuances.[152] Children must often find a new attorney, or find an attorney in the first instance. Many must file a change of venue request to a court closer to their new residence. DUCS should accept responsibility for facilitating access to continued services and coordinate with the Executive Office for Immigration Review to ensure that children who are released or reunified are granted appropriate continuances and access to representation. The TVPRA mandates follow-up services for children with mental health or other needs.

Sharing of Confidential Information

DUCS' policy of sharing information from children's files with DHS allows DHS' immigration enforcement and prosecution to take precedence over the protection of the best interest of the child. This is contrary to standard child welfare and mental health practice where files remain strictly confidential except in exigent circumstances related to public safety (much like attorney client privilege and medical files). Federal field specialists provide sensitive information to DHS during the process of family reunification. In addition, DUCS shares information from children's case files with DHS trial attorneys in the context of a child's legal case.

> *"I know that I am allowed to have visitors but I have no one to visit me. My parents don't have papers so they will not come to get me."*[153]

The DUCS Manual clearly states that undocumented parents or relatives are encouraged to come

forward and further notes that a sponsor's immigration status does not preclude reunification.[154] However, according to the DUCS Manual, DUCS federal field specialists must share critical information from both reunification packets and transfer requests with DHS.[155] In the case of reunification packets, this information includes the sponsor's name, address, immigration status, social security number and place of employment.[156] It appears that similar information about other individuals residing in the sponsor's household may be shared with DHS as well. Once this information has been provided, DUCS has no control over what actions ICE will take with regard to undocumented sponsors. In cases of reunification, ICE can use this information to re-detain the child along with the parent, sponsor and other undocumented individuals in the household.

In addition, when ICE knows that a child is scheduled to be released, it can be on the alert for undocumented parents or guardians who come to pick up the child. The Women's Refugee Commission has met with families who were detained shortly after going to pick their child up from DUCS custody.[157] While many of these cases currently result from random checkpoints, it is clear that ICE is willing to detain families, and that it is conducting home raids. ICE has also made public its plans to open new family residential facilities. There is every reason to believe that ICE may use this information to expand its practice of re-detaining children released from custody and their parents.

Some facility staff warn children and relatives that it is unsafe for an undocumented parent or other relative to sponsor the child and many children are afraid to disclose information that may assist in reunifying them with family members.[158] While DUCS may not intend to contribute to the apprehension of families, the current practice of sharing information with ICE facilitates ICE's practice of using children as bait.[159] This information-sharing practice also undermines the preference for release stipulated in the *Flores* Settlement and reduces the number of children who are reunited with their families. Many of the children we spoke with told us that their parents could not come get them out of DUCS custody because they were undocumented.

Information sharing also adversely impacts children's legal defense. Children's case files may include information regarding contact with relatives overseas and accounts of personal experiences. Caseworkers gather this information from children because it is relevant to the child's mental state and individual service plan. However, DUCS headquarters has a policy of sharing with ICE case file information when ICE requests the information.[160] ICE can use such information to challenge the child's credibility and incriminate him or her in court. [161]

Misuse of confidential information

Alberto is a Mexican boy who was seeking Special Immigrant Juvenile Status while in DUCS custody. Alberto claimed that he suffered severe abuse by his parents in Mexico and that he feared return. While he was at the DUCS shelter, Alberto made several attempts to call his parents. ICE denied consent based on this information, which they obtained from his DUCS file. Without ever having directly spoken with Alberto, either in person or by phone, ICE determined that his attempts to call his parents were evidence that he was not afraid of them and could return to their care.[162]

As a result of ICE's sharing of information, some caseworkers and attorneys discourage children from sharing sensitive information with caseworkers.[163] This places the burden of determining what information is relevant for care and relief on children, who are not able to competently make such decisions. In addition, when sensitive information is disclosed, many caseworkers are hesitant to include it in children's files.[164] The HHS OIG report noted a lack of documentation in case files,[165] which may be in part attributable to this practice. These arbitrary determinations of what should be included in a case file and what it is safe for a child to discuss mean that information about a child's medical or mental health needs, background or other critical sensitive information may not be available and compromises the ability to fully and appropriately provide for the child's medical, social and psychological needs. This practice reflects the conflict implicit in DUCS' role as both part of a federal agency and custodian.

Insufficient Legal Representation

The majority of unaccompanied children are unrepresented and navigate the complex legal system alone. Children in custody, however, are significantly more likely to be represented than released children.[166] Unaccompanied children, like all individuals in immigration proceedings, have the right to an attorney only if it is at no expense to the government.[167] The availability of quality pro bono legal services varies widely across DUCS facilities and geographic regions. Many children are housed in DUCS facilities in remote locations where there are no immigration legal service organizations and pro bono recruitment is difficult.[168] Even in more urban areas, pro bono representation is limited and it is difficult to match a child with counsel because so many will be reunited with family in areas far from where they were detained. In addition to these geographic constraints, children are sometimes transferred between DUCS facilities, making the coordination of legal representation difficult.[169]

Immigration law provides almost no carve-out protections or special standards for children.[170] Children are subject to the same evidentiary and prosecutorial standards as adults in immigration proceedings. U.S. immigration courts had no specific guidelines for the adjudication of cases involving children until the release of guidelines in 2004.[171]

The Homeland Security Act required that ORR develop a plan to "ensure that qualified and legal counsel is timely appointed to represent the interests of each child, consistent with the law."[172] The DUCS Manual underscores the legal rights granted to children and the TVPRA reaffirms DUCS' responsibilities in regard to facilitating the provision of pro bono counsel. Caseworkers are required to "make *reasonable efforts* to contact legal service providers in their area to request that they provide legal screenings of [unaccompanied alien children] "Know Your Rights" ("KYR") presentations and representation for [children] in their care."[173] However, more substantial legal services are limited. In 2005, DUCS launched the pilot "Unaccompanied Children Pro Bono Project" to increase representation of unaccompanied children. This program, administered by the Vera Institute of Justice, a nonprofit organization that contracts with the federal government, provides KYR presentations in 12 cities across the country. In these presentations, an attorney, paralegal or law student provides children with general information about the court system and the legal options that may be available. The presenter then interviews each child individually to determine if he or she is a candidate for some form of relief. If relief is available, the organization tries to assign a pro bono attorney to the case. However, if a child is likely to be reunified or released to a sponsor (about 60% of the children in custody eventually are), an attorney is not generally assigned.[174] At the time of our research this project did not operate at all DUCS program sites. In FY 2008 the project was expanded with an increase in funding of $5 million to ensure that all facilities have a legal service organization assigned to their unaccompanied child population and to help facilitate the continuation of services once the child is released.

Choosing an attorney

When asked how they had chosen their attorneys, most of the children reported that the attorneys had chosen them or that they had no attorney.[175]

There are two additional projects that provide representation for some children. The National Children's Center, a program of the U.S. Committee for Refugees and Immigrants, uses a pro bono model to secure representation for about 30 percent of the children who have been released to a sponsor (not a parent).[176] Kids in Need of Defense (KIND) is a new initiative launched in fall 2008 that eventually hopes to secure pro bono representation for all children in immigration proceedings beginning with initial sites in the Northeast Corridor, Los Angeles, Houston and Seattle. However at the time of this writing, it is just beginning operations. Caseworkers and other facility staff at locations without formal programs try to recruit local nongovernmental organizations and immigration attorneys to represent children. Some non-profit organizations engage in legal service activities, up to and including interviewing children to assess availability of relief; recruiting pro bono counsel; training volunteer attorneys; and providing follow-up services. However, there is no well-coordinated, well-funded program that is able to operate on a national level to cover all areas where children are detained or need representation.[177]

As a result, at least 25 percent of children who remain in DUCS custody throughout their proceedings

do not have an attorney. The approximately 60 percent of children who are expected to be released or reunified are not generally assigned attorneys while in custody. At least 70 percent of children released from custody to a sponsor do not have an attorney and must appear before an immigration judge by themselves.[178] Children who are released to parents and most children who are in foster care are not eligible for representation under any of the programs described above. We estimate that at least 60 percent of all children in immigration proceedings are not represented by an attorney and must appear before an immigration judge by themselves.

The impact of the lack of legal representation was evident in our interviews with children. Few children understood the status of their legal case, even at sites that have pro bono programs. Even in locations where pro bono programs are in effect, children were unaware of their legal options, unable to differentiate between lawyers and other care providers (e.g., caseworkers and teachers) and were often confused about whether or not they were even represented by counsel. Most children's understanding of their legal case was that they should ask the judge for more time so that they could be released–an interpretation that is not necessarily accurate. As a result, although many children are fleeing conflict and abuse in their home country, and have legitimate claims to protection in the United States, many become frustrated by the legal process and ultimately accept deportation even if they previously expressed a fear of return.

Representation is as important in protecting children's rights as it is in ensuring appearance in court. Children who do not have a competent attorney are less likely to appear for court, more likely to receive *in absentia* orders and remain extremely vulnerable because they are less aware of their legal rights and remedies.

Our findings regarding the impact of representation on both children and the administration of proceedings indicate the need for system-wide legal representation for children. Reliance on pro bono representation and the use of pro se models like KYR is not sufficient given the individualized needs of children and children's developmental capacity and is not an effective mechanism for ensuring the representation of all children in custody.[179] Children should have assigned legal counsel, and in cases where pro bono or other counsel cannot be obtained without expense to the government, Congress must provide funding for representation at government expense. In addition, the importance of counsel reinforces the need to locate DUCS facilities in urban areas, where it is less difficult to recruit pro bono attorneys.

Guardianship

Unlike U.S. citizen children in the child welfare system, most unaccompanied children do not have a guardian *ad litem*[181] to help them navigate the complexities of the legal and social services system. This can make it even more difficult to protect children's best interest.

A child's ability to make decisions about the best course of action can be complicated by the sometimes conflicting priorities of attorneys and DUCS facility staff. While both entities seek to protect the child, the ways in which they go about doing so can come into conflict. Ethical rules of professional con-

The role of guardians *ad litem*

Leroy was 16 years old when he arrived as a stowaway from North Africa and was apprehended by U.S. immigration authorities. When first interviewed by the authorities, Leroy said that he could return safely to his home country. He continued to deny any fear of returning to his country when interviewed by a DUCS shelter staff member and an attorney in Chicago. After several visits with Leroy, a guardian *ad litem,* an immigrant who spoke the same native dialect, discovered Leroy had been living on the streets in North Africa, abandoned by his family, and subject to almost daily torment by the police. Leroy resisted telling anyone about his life because, if deported, he was afraid he would be punished for having criticized the government. The advocate encouraged Leroy to tell his story to his attorney, who sought a second interview with immigration authorities. This time, accompanied by his guardian *ad litem,* Leroy recounted what had happened and was found to have a credible fear of returning to his home country. The guardian *ad litem* served as an interpreter, bridged the cultural gap between the client and the attorney, addressed the emotional needs of the child, and also performed research on child abandonment in North Africa, helping Leroy articulate the suffering he experienced and helping his attorney understand the country from which he fled.[180]

duct require that an attorney advocate the child's wishes regardless of age, capacity or what a social worker may consider to be in the best interest of the child.[182] The child's best interest can be lost in the tension between these adults with good intentions but discordant perspectives.

The need for assistance from an independent adult is particularly important because of the adversarial nature of immigration proceedings and the complicated circumstances unaccompanied children face. Children come into contact with an endless number of adults, all demanding information, and all with different roles.[183] Children in immigration proceedings often fail to understand how their experiences relate to a possible application for asylum or other legal protections to which they may be entitled. Many children have been told repeatedly by adults, family or traffickers to keep their stories secret. Further, children have no tangible way to exercise their rights under the *Flores* Settlement absent the assistance of an advocate.

Guardians are also the adult most likely to continue a relationship with the children after release or transfer to another venue. The National Children's Center has acknowledged the important role that guardians who have continued their relationship with the children can play in helping the Center assist a child through changing venues and counsel. Often a child's guardian is the only adult who has had a continuous relationship with the child and is familiar with his or her history and needs.

A guardian *ad litem* helps ensure more appropriate placement

A guardian *ad litem* represented Randy, a child in secure custody at the Southwest Indiana Regional Youth Village in Vincennes, Indiana, where he complained of being kept in his cell for 23 hours per day. He was not given reading material, the staff did not support him and he complained of being extremely depressed and bored. Because the child had no criminal record, and was being detained under harsh and unnecessary conditions, the guardian *ad litem* worked on the child's behalf to argue that he was not being kept in the least restrictive setting appropriate as mandated under the Flores Settlement. Fortunately, and because of his guardian *ad litem*, Randy was stepped down to a less restrictive staff-secure placement within the facility. After the transfer, the guardian *ad litem* reported that the child's mental health and outlook had improved significantly.[184]

A guardian *ad litem* ensures proper care for pregnant girl

A guardian *ad litem* described Adana, a 16-year-old female from Honduras, whom the guardian met when Adana was seven months pregnant. Adana had received no prior medical treatment for her pregnancy because, in part, she was embarrassed to ask for such care as her pregnancy was the result of a sexual assault which occurred while she made her way from her home country to the United States. The guardian *ad litem* was able to convince Adana to seek prenatal care for her baby, and ultimately postnatal care as well, but only after spending a significant amount of time with Adana and gaining her trust.[185]

The original intent of the field coordinator position was that these individuals would function in a guardian-type role. As child welfare experts, field coordinators are well situated to serve as impartial child welfare experts responsible for the well-being of individual children. However, large case loads and limitations placed on the independence of field coordinators by DUCS headquarters have undermined their ability to function in this capacity. DUCS has taken steps towards addressing the need for an effective independent advocate by allocating funding for the Immigrant Children's Advocacy Project (ICAP), a pilot project housed at the International Children's Center (ICC) in Chicago, Illinois (see box, p. 25). However, ICAP provides guardians *ad litem* for only a small number of unaccompanied children in federal custody each year.[186] The TVPRA authorizes HHS to appoint independent advocates for child trafficking victims and other vulnerable unaccompanied children, but not for all children in DUCS custody. Regardless of the model ultimately selected, there must be a system-wide mechanism for ensuring that all unaccompanied children are assisted by an independent adult whose sole responsibility is to determine and advocate for their best interest.

Lack of Effective Oversight

An ineffective grievance and monitoring system has prevented DUCS from identifying facility noncompliance with policies and procedures, as well as warning signs of problems and incidents of abuse. As a result, service delivery is inconsistent and in

ICAP: A model program

The Immigrant Children's Advocacy Project (ICAP) serves up to 70 children at any one time at a yearly cost of approximately $145,000. Guardians *ad litem* in the ICAP pilot program are volunteers who are responsible for protecting a child's best interest while they are in immigration proceedings. The guardian *ad litem* is an independent voice intended to be the child's primary advocate, and is not an employee of DHS, ORR or DOJ. Under the program, guardians undergo an intensive and comprehensive training regimen where they receive training in child welfare matters and the nature of problems encountered by unaccompanied children. Once assigned to a child, a guardian meets with that child regularly to discuss the child's case and to ensure that the child's physical and mental needs are being met. While the ICAP program currently only exists in Chicago, training has been offered on how to start a child advocate program in other locations where DUCS has shelters.

some instances avoidable situations have escalated. We found conditions and compliance with policies and procedures at DUCS facilities to be inconsistent. While facilities generally seemed appropriate, followed policies and procedures and complied with the *Flores* Settlement requirements, others were dreary, harsh, violated standards and/or were overly restrictive.

Education

DUCS facilities provide a variety of educational programming; however, the quality of educational services varies. We found most programs to be generally satisfactory given the challenges of short-term stays, diverse backgrounds and the wide range of knowledge, languages and ages of the children. However, problems exist. Children in long-term foster care may attend local public schools where appropriate but access to education is limited or non-existent for many children in short-term foster care placements. This appears to be due to budget and logistical constraints. Some facilities do not provide enough hours of educational instruction per day. Some facilities provide vocational and "life skills" training, which is very popular with the children and appears to have the advantage of being practical with a diverse population. However, as with many other benefits and services, staff-secure and secure facilities do not generally provide life skills training or vocational training. Many of the children expressed a desire for more English language instruction. In addition, most facilities lacked age-appropriate books or magazines for children in their native languages.

The quality—and quantity—of education varies between DUCS program sites. Here, children study at the Abraxas Hector Garza Center in San Antonio, Texas.

Recreation

Recreation policies at facilities generally seem to comply with the DUCS Manual; however, there are problems at staff-secure and secure sites and inconsistencies in foster care settings. The DUCS Manual requires that residential facilities provide an adequate indoor and outdoor playing area available on a daily basis. Children are supposed to have at least one hour a day of active, preferably outdoor, recreation and three hours on the weekends. Most of the facilities we visited provided several hours of recreation a day and usually more on weekends. Field trips to playgrounds, museums, the zoo and local pools are available at many of the shelters—including foster care programs and group homes. However, such activities did not appear to occur at many of the staff-secure or secure facilities. At some facilities, outdoor recreational space was limited, and at others, children received only 30 minutes of outdoor recreation. Some facilities suspend recreation as a disciplinary tactic and at the Abraxas Hector Garza Center, children told us that staff had suspended all outdoor activity a few weeks prior to our visit. In addition, the provision of recreation in foster

Boys play at the Baptist Child and Family Services (BCFS) shelter in San Antonio, Texas.

care settings is dependent on the level of engagement and resources available to individual families.

> *"It would be very nice if we could go outside and get a little sun."*[187]

> *"I get bored. That is the hardest part. They usually do our laundry, but we get bored so we ask if we can do it. They usually let us."*[188]

At many of the facilities, children complained of being bored and said they sleep a lot as a result. The facilities generally had very few books, particularly books in the children's native languages. At least one facility had no books available at all.

Religion

Most children were satisfied with access to religious services and accommodations; however, we identified some issues during our visits. Many children stated they would like to attend church, speak to a religious counselor or keep a Bible, but had not been offered the opportunity. When asked if they had been denied this access, the children almost unanimously responded that they had not asked. It is important to note that these are children who are very concerned about their status and often fearful of being seen as causing trouble. Facilities should be more proactive in offering services to children. We did encounter a few instances in which Muslim children did not receive appropriate accommodations during Ramadan and where head coverings were not permitted.

> *"I was only allowed to fast for four days during Ramadan and they did not let me keep my prayer roll. I had to use my towel, the same one I use for my shower."*[189]

> *"I would like to attend a Catholic Mass sometime but I have not gone. I have not asked my foster parents for permission to go."*[190]

> *"I've asked for a Christian service but they only offer Catholic service that I do not believe in."*[191]
> *"No pastor has come to see me and no one has invited me to go to Mass. I would like to go but I do not know where is the neighborhood to go for Mass."*[192]

Telephone access

While we did not identify any major issues regarding telephone access, we found inconsistencies in access and privacy. The DUCS Manual mandates that children shall be allowed to make two 20-minute telephone calls to their parent or sponsor per week regardless of whether the parent or sponsor is in the U.S. or abroad. Exceptions and special procedures exist for children with special safety concerns–particularly Chinese and Indian children for whom there is a high rate of trafficking–and smuggling-related safety concerns. In order to ensure children's safety, care providers create a list of approved and prohibited persons for telephone contact for all children in their care. Calls are prohibited when the staff can document valid reasons for substantial concern, such as a suspected smuggler or trafficker posing as a relative. The Manual states that care providers shall make all attempts to provide reasonable privacy for children's phone conversations.[193] At the facilities we visited we found overall compliance with the DUCS Manual in terms of appropriate number of calls, although some facilities seemed to limit calls to 10 or 15 minutes rather than the 20 mandated by DUCS. Many facilities monitored or listened in on the children's telephone conversations. Monitoring of calls–both listening in and keeping careful lists of

approved persons—is a much more common practice at facilities located near the border than in other parts of the country and seems to be in direct correlation to the likelihood or awareness of trafficking and smuggling dangers. We found that in some instances the lack of privacy seemed excessive and was a blanket policy rather than an individual assessment of safety. The children are allowed unlimited private phone calls to their attorneys of record.

Discipline and abuse

Many facilities have individual disciplinary policies that appear to comply with DUCS policies and emphasize incentive- based, positive reinforcement and other non-restraining forms of behavior management. However, some gaps were identified. At a few facilities, both staff-secure and secure, children reported that they were denied access to telephones, recreation time and access to visitors as a result of bad behavior, despite written rules to the contrary.[194] We also found that children were placed into "reflection" for several days at a time for behavioral issues. At the Vincennes facility, children are placed into isolation for periods of over 24 hours and sometimes for up to five days.[195] A period of days is inappropriate and contrary to standard social work practices that acknowledge that excessively long time-outs, restraining times or reflection periods are counterproductive.[196]

DUCS does not allow the use of physical restraints (soft or hard); however, we found that they are used in some facilities. The use of restraints is more common in staff-secure and secure facilities but we also received reports of their use in shelters and group homes. In one case a child described the use of wrist handcuffs and restraint chairs, which fully immobilize the person sitting in them.[197] One child in a secure facility stated that he had been subjected to the restraint chair on more than one occasion for approximately five hours each time.[198] Children indicated that use of these measures was overly harsh, arbitrary, unpredictable and unfair.[199] Many facilities indicated that their staff used a system referred to as the "handle with care" method and explained this as a physical restraining technique that is used after verbal warnings fail or if the child is hurting himself. It involves placing a staff member's arms underneath the child's arms from behind and clasping the hands behind the child's neck. The child is then pushed face first into a wall. If the child is still violent then the staff member may "take the child down."[200] "Handle with care" is an accepted child welfare-based behavior management system intended to reduce institutional violence and the need for restraints through the use of preventative actions. However, it appears that in some cases and regularly in at least one facility we visited, these methods are used incorrectly, or too often and with excessive force.[201]

In some instances overuse of disciplinary measures may be attributable to the size of the facility. It is very difficult to maintain individual merit systems when shelters house more than 50 to 60, and even more than 100 children, unless they are organized into smaller units or houses. Collective or excessive punishment may be due to an overwhelmed and overworked staff, insufficiently equipped to handle such large numbers of children or unable to develop more individualized familiarity with the children and their needs.[202]

While we did not uncover widespread abuse of disciplinary procedures, we are concerned that during the time this study was conducted, serious allegations of abuse occurred at four DUCS facilities. In two cases, facility staff was found to have sexually abused children in their care, and two cases involved excessive use of force.

Away From Home, Texas Sheltered Care Facility (Nixon)

Prior to its closing, the Texas Sheltered Care Facility (Nixon), located in Nixon, Texas, was a 136-bed shelter operated by Away From Home, Inc., a private Texas company. There were allegations of repeated sexual, physical and emotional abuse of children at this facility and a staff member was arrested for sexual misconduct involving a child at the facility. DUCS terminated its contract with Away From Home, Inc. and, in March 2007, moved all children remaining in their care to other facilities. The staff member who was arrested was subsequently convicted of sexual assault in connection with that incident. The termination of the contract and transfer of children was an appropriate response for which DUCS should be commended. However, advocates at both the local and national level told us that warning signs had been ignored for over a year, during which time their efforts to express concern to DUCS went unheeded.[203] DUCS reported to the

Women's Refugee Commission that no reports of suspicious or inappropriate activity had been made and that DUCS headquarters was initially alerted to the abuse by a new federal field specialist who noted inappropriate responses to children who were running away.[204] DUCS' claim that they had not received any warnings or indication that abuse was occurring, coupled with claims from advocates and others interviewed by the Women's Refugee Commission that complaints were made, is indicative of a lack of formal procedures through which abuses or concerns can be raised. There is currently a lawsuit pending against ORR regarding this facility.

Southwest Indiana Regional Youth Village (Vincennes)

The Southwest Indiana Regional Youth Village (referred to herein as "Vincennes") is a secure facility located in Vincennes, Indiana, that remains open despite allegations of serious abuse. According to government and ACLU of Indiana records, on May 7, 2007, 12 children detained at Vincennes demanded a meeting with the facility's Director of Detention and Security to discuss facility conditions, including lack of prompt and proper medical care, access to counseling, sufficient recreational time and telephone usage.[205] The children were permitted to meet with the director, but facility staff stated that after the meeting the children refused to return to their units. The facility issued a "code blue" and called the Sheriff's Office Emergency Response.[206] The police arrived in full riot gear including nightsticks, shields, helmets and handcuffs and accompanied by at least one dog.[207] Children were hit with nightsticks and their hands and feet were bound.[208] They were dragged to their cells, where they remained physically bound for hours, and were then left in isolation for days.[209]

After intervention from advocates and the ACLU of Indiana, DUCS directed the facility to develop an action plan to address the situation. The action plan laid out 33 "corrective actions" to deal with the issues identified through a post-incident investigation by DUCS. The corrective action plan is an appropriate response by DUCS and covers many of the issues we identified in our visit to the facility. There is some concern among advocates, however, that their complaints of the facility's noncompliance with DUCS' policies were repeatedly ignored and that DUCS only responded after the situation at the facility had escalated to a point where local police had to be called and the ACLU became involved.

Abraxas Hector Garza Center

We visited the Abraxas Hector Garza Center (Hector Garza) in February 2007 in response to concerns raised by advocates and attorneys representing children at the facility.[210] All the children we interviewed expressed concern and fear regarding what they described as excessive physical restraining techniques and the use of physical force.[211] One of the children specifically corroborated an incident involving the abuse of his roommate, which had been previously recounted to us by the roommate's attorney.[212] All the children interviewed clearly expressed fear of retaliation and stated that there was no one at the facility to whom they could appeal for protection or with whom they could file a complaint.

> *"Who would I tell? They all know that this happens."*[213]

> *"I have never been punished too severely but I am very nervous about it. They don't let you do anything here. They use physical punishment a lot, but not with me yet. I am nervous because I see them do it to others. I have never seen that at other places. They might put you in a room or time out—but never hit. Here they hit people and throw them to the ground."*[214]

> *"I made a bad comment and the guy, he took my arm and twisted it around my back, he threw me onto the ground. I hit my head and scraped my face on the rug. It was bleeding and I had to go to the nurse. She told me these things shouldn't be happening. She said it was not okay for me to have this happen. She cleaned up my face and gave me a bandage. Another time they threw me down and I hit the back of my head on a table."*[215]

Upon hearing these accounts, we immediately

DUCS Draft Policies and Procedures Manual

(not updated to include any changes made since summer 2008)

2.14 Grievances

Policy

Care providers shall have written internal grievance policies and procedures that enable UAC [unaccompanied alien children] in care to express their views and grievances with regard to matters that affect them. The policies and procedures shall give specific examples [1] of the type of grievances the child could report.

Grievance policies and procedures are to be written in a way that is easily understandable by children and shall be written in the languages of the majority of UAC in care. All staff shall be trained on the grievance policy and procedures.

The grievance policy and procedures shall be initially addressed during program orientation and each UAC shall receive a copy. Grievance policies and procedures shall be periodically addressed at community meetings.

Procedures

- During the program orientation, the UAC receives a copy of the Grievance policies and procedures with an explanation of the process.
- The UAC signs the copy. The signed copy is kept in the child's case file.
- The care provider shall post grievance procedures conspicuously throughout the facility.
- The grievance procedure must clearly explain:
- Process for initiating a grievance;
- How and by whom the grievance will be addressed;
- Procedure to follow if the grievance is not addressed in a satisfactory manner.
- A grievance is prepared in writing by the UAC with assistance, if needed, by a staff member, [2] the DFC [DUCS Field Coordinator], or the child's legal representative.
- Copies of written grievances and their final resolutions shall be maintained in the UAC's case file.
- All grievances shall be reported to the PO [Program Officer] and FFS [Federal Field Specialist].

[1] Examples of grievances may include, but are not limited to, the following: complaints of services denied/not being provided to the UAC; forceful religious observation; unresolved complaints regarding shelter environment/living conditions; breach of confidentiality by staff; staff place UAC at risk of harm; unnecessary monitoring of mail/phone call; etc.

[2] The program director shall ensure that the staff member assisting the UAC with the writing of the grievance will not be biased or have a conflict of interest that may prejudice follow-up actions to address the UAC's grievance.

notified DUCS and the Texas Department of Family and Protective Services. DUCS quickly responded to this information by instructing the director of the facility to suspend the staff members who had been specifically named by the children in our interviews.[216] Despite our requests that they take measures to protect these children from retaliation, we are not aware of any such measures on the part of DUCS or the facility.[217] An investigation by the Child Care Licensing Division of the Texas Department of Family and Protective Services followed, per Texas state procedure,[218] and DUCS sent a team from headquarters to conduct follow-up interviews with the facility's staff. Following this investigation, the Texas licensing agency reported that they could not corroborate any specific incidents of abuse at Hector Garza.

In addition to the allegations of abuse, we found that the children at Hector Garza did not receive the level of mental health treatment suggested by DUCS classification of this facility.[219] Since our visit, DUCS' investigation and the Texas state investigation determined that Hector Garza lacked appropriate services. DUCS instructed the facility to remedy its deficiencies. DUCS terminated its contract with the facility, citing many reasons including inadequate services. There is currently a lawsuit pending against this facility and ORR.

DUCS' post-incident investigation found key indicators that the level of services provided to the children held at Hector Garza were not sufficient to meet the needs of the population detained there. The facility's program manager was acting as assistant program director despite his lack of qualifications for that position. Clinical services were not provided at the therapeutic level required under DUCS' contract, recreation and vocational training were marginal and the school program was very weak.[220] Compounding these inappropriate services and staffing levels, many of the children at Hector Garza had chronic conduct disorders and were transferred to the facility after having been removed from other facilities for behavioral issues because DUCS believed that therapeutic services were being provided by Hector Garza. We believe that the situation may not have escalated to this degree if DUCS had a more effective, formal and transparent grievance procedure and monitoring system in place to address these problems as they arose.

* * *

Common threads in these cases are ineffective monitoring and the lack of a clear and transparent system by which complaints are raised and addressed. We received inconsistent reports regarding DUCS' awareness of these problems that reflect a lack of communication and documentation. We acknowledge that regardless of extensive procedures to monitor and prevent abuses, it may not be possible to avoid any wrongdoing or serious incidents from occurring. DUCS cannot control the actions of everyone charged with caring for the children in their custody. However, in these cases it is essential that an appropriate and timely response be carried out in accordance with child welfare principles.

As evidenced in the cases described above at Nixon, Vincennes and Hector Garza, DUCS has taken some appropriate steps such as closing facilities and requiring corrective actions, but has not gone far enough in responding to serious incidents of abuse and has sometimes not done so in a timely fashion.

The Crittenton facility in California, however, is an excellent example of how an appropriate response should be carried out. After an unfortunate incident in which a case worker at the facility was found to have sexually abused one of the children in their care, the facility took immediate action. Notably, in addition to addressing the needs of the child in question and cooperating fully in the criminal investigation, the facility instituted an immediate plan to address the situation and prevent further incidents from occurring. (See box, p. 31.)

Grievance Procedures

Effective grievance policies and practices are critical to early identification of problems and effective response. Despite a clear articulation of the importance of grievance procedures in the DUCS Manual, at the time of our research and visits, the DUCS system lacked a formalized, effective checks and balances process for recognizing and addressing grievances beyond the facility level.[221] Because of the complex structure of the DUCS program, children and advocates may have grievances against facilities themselves, against DUCS field staff and policies, or against the DUCS program as a whole. However, it appears from our findings that many grievances or complaints against DUCS facilities or policies go unaddressed either because complainants are unaware

Therapeutic Services for Youth at Crittenton: Facility Plan

The two main therapists lead two groups—one with the children affected by the investigation, and one with all of the kids—to educate them about their rights in the shelter setting (e.g., right to speak with family members, right to seek reunification), appropriate behavior to expect from staff and what recourse they have if they feel uncomfortable with a staff member's behavior. The kids were told they could speak with the therapists individually if they did not want to speak in the group setting.

The therapists provided ongoing support to the children involved in the investigation.

All children involved in the allegations will receive continued counseling services upon release from Crittenton.

Safety planning & abuse prevention

Safety concerns: windows were installed in all of the doors of the administrative offices, which is where the case managers are housed.

No single staff member—either floor staff or case management staff—will be in a situation in which they are alone with any of the children. For example, for the case managers, they will only be able to meet with their clients if there are other staff members in the building.

All transport (e.g., to court, or foster care) will involve two staff members instead of one.

Internal staff support

The program director did a debriefing and processing session with her staff. She provided support, discussed the changes that would be put in place and reinforced the need for staff to have professional boundaries with clients.

A counselor came out to the shelter to do a critical incident stress debriefing with the staff, as they displayed many post-trauma symptoms (not sleeping well, difficulty concentrating, depressed mood).

Youth empowerment/Know your rights

As part of the intake process, all unaccompanied children will be educated around their right to receive services without fear of coercion or exploitation. They will be educated around who to contact if a staff member makes them feel uncomfortable.

A comment box was set up in the facility so if a minor doesn't feel comfortable approaching a staff member with his concerns, he could leave a comment anonymously.

The case managers will lead a weekly presentation for recently arrived unaccompanied children in which they discuss the minors' rights while in care and set expectations around appropriate behavior from staff.

ORR

Affidavits were submitted to ORR identifying each of the possible victims, with recommended steps (legal re-screenings, therapy around the abuse).

Notification procedures were reviewed with Crittenton staff.

ORR came out to interview staff, review hiring procedures and evaluate staff needs.

Ongoing child abuse training for staff

USCCB's Bringing Refugee Youth and Children's Services (BRYCS) did a child abuse training for all staff members of the shelter.

of how to file a complaint or because there is no clear procedure in place for documenting and responding to complaints or concerns. It is essential that there be a clear procedure, and a timely and appropriate response to grievances. After the research for this report had been conducted, DUCS claims that they have now developed a more formal grievance procedure for all of their facilities. We have not yet had the opportunity to determine whether this more formal procedure is effective but we are very pleased that steps have been taken to address these concerns and look forward to seeing the results.

Grievances against facility staff and policies

Children and advocates may have grievances regarding facility staff or policies that could be resolved through action of the facility director. The DUCS Manual states "care providers shall have written internal grievance policies and procedures that enable [children] to express their views and grievances with regard to matters that affect them."[222] The grievance procedure must "clearly explain the process for initiating a grievance, how and by whom the grievance will be addressed and the procedure to follow if the grievance is not addressed in a satisfactory manner." However, the agency does not mandate that facilities follow a *specific* internal grievance process.[223] DUCS sites are left to establish their own procedures.

> *"I am afraid to tell if something happens. I was hit by a person who works here and he is still here."* [224]

> *"The people here tell me not to cause trouble by going through that procedure"*[225]

> *"I complained once that I was hungry and asked for more food. He yelled at me. I also asked for extra clothing but they ignored me."*[226]

Grievance procedures may not work as intended for a variety of reasons. Language and culture, as well as the simple vulnerability of these children, may play a role in discouraging children from filing grievances. Some children we interviewed felt there were staff members they could go to with grievances or concerns and did not fear retaliation for expressing their grievances. However, many children we spoke with were hesitant to make complaints. They expressed a strong fear that reporting grievances would lead to retaliation by staff members,[227] that staff members would be angry with them for "snitching" on other staff members[228] and that their complaints would not be taken seriously and were therefore not worth voicing.[229] These children stated that they consequently did not report their grievances or concerns.

It should be noted, nonetheless, that some facilities have implemented creative and effective mechanisms for addressing grievances. In certain facilities,[230] children are permitted to organize governments or councils consisting of children who work with staff members to address concerns and effectuate changes. These governments and councils are

Transfers of children must be transparent

An attorney was told that his client, Vicente, who brought public attention to the unlawful conduct at the Nixon facility, would be transferred. When the Nixon facility was closed, Vicente was sent to the Selma R. Carson Home located in Tacoma, Washington. When Vicente finally made contact with his legal counsel after being sent to Tacoma, he was again transferred to another facility, this time to Vincennes, Indiana. After another attorney visited him in Vincennes, he was transferred to the Hector Garza Center. Subsequently, he was transferred yet again to the Guadalupe County Juvenile Supervision and Detention facility, a secure facility, where he remained even after termination of his immigration proceedings.

The closing of a facility where children's safety cannot be assured is desirable and will require that children be transferred, sometimes long distances. Transfer may also be in the best interest of the child in cases where abuse is alleged. Attorneys must understand this logistical necessity. However, lack of transparent procedures when closing a facility, relocating or transferring children, and responding to complaints can lead to suspicion, confusion and misunderstandings. It can also interfere with associated prosecutions and the legal representation in the child's immigration case. ORR should establish more transparent procedures and work with attorneys to resolve these issues.

viewed very positively by the children because they provide the children with a comfortable forum in which to express their concerns. These grievance mechanisms should be replicated at other facilities.

Grievances against facility management

Children and advocates may also have grievances against facility management, the resolution of which depends on DUCS monitoring and intervention. There is no clear, established and effective process for filing complaints about facility management. DUCS states that complaints can be addressed to headquarters or federal field specialists. However, children, advocates and attorneys consistently reported that they either did not know where or how to file complaints, or that their complaints went unaddressed.[231]

Grievances against DUCS policies and action

Finally, children, advocates and attorneys may have grievances against DUCS staff, policy or actions. There is no formal grievance process through which concerns can be raised about DUCS policy and practice to either DUCS or ORR. The lack of a formal procedure creates confusion and misunderstanding. Attorneys and their clients often feel that children are transferred as retaliation for complaints.[232] When combined with a lack of oversight, the inconsistency and ineffectiveness of the grievance process can lead to serious violations of children's safety.

Monitoring

DUCS has extensive policies and a system for monitoring facilities with which it contracts, including: state licensing requirements, program officers at headquarters, federal field specialists and self evaluation. However, at the time of our research, the system was ineffective because it was understaffed and unsophisticated. Since the original drafting of this report, DUCS has taken steps to improve its monitoring and has developed a 35-page monitoring protocol that they follow for annual monitoring. We have not yet reviewed this protocol and not enough time has passed to assess its effectiveness at this time. However, we look forward to learning more about the protocol and hope it addresses the concerns expressed below.

All DUCS facilities are required to be licensed by the state in which they are located. DUCS monitors review state agency monitoring reports on a regular basis and follow up on the state's recommendations during DUCS annual monitoring visits. However, state licensing bodies are responsible for oversight and annual monitoring and auditing of compliance with state licensing requirements only. Furthermore, there is resentment within the state monitoring and licensing agencies about being required and relied upon to monitor what they see as a federal facility housing children in federal custody, and about the added expense that comes from monitoring these facilities. The Texas licensing office told us that they have grave concerns that DUCS relies on them to function as its monitoring agency.[233] The licensing office does not evaluate overall conditions and appropriateness of DUCS facilities[234] and clearly stated that DUCS should institute its own separate monitoring system.[235] The fact that DUCS has a monitoring system of which the state licensing office is unaware is indicative of the system's weaknesses.

DUCS monitoring procedures call for headquarters-based program officers to conduct yearly on-site monitoring of facilities and more frequent desk monitoring through phone calls and monthly data reports.[236] Program officers identify areas of concern and, if issues of non-compliance arise, communicate their concerns and a corrective action plan to the facility in writing. DUCS has a questionnaire form for interviewing children and staff and is supposed to meet with advocates and pro bono lawyers to discuss any issues or concerns it may have. However, it is unclear whether this is done routinely and how children, advocates and attorneys are identified. In our visits we found enormous discrepancies between facilities. While some facilities appeared to be complying very closely with DUCS policies, others were in clear violation of many of the provisions. Children, advocates and attorneys expressed concerns that their opinions were not solicited and that they did not have a mechanism for filing concerns. Our findings around monitoring are corroborated by several other independent entities. The report of the HHS Office of Inspector General (OIG) states that DUCS' monitoring of its facilities is inadequate to ensure that children's needs are being met and that facilities are operated in accordance with DUCS policies and procedures.[237] In addition, the report

noted that DUCS staff do not routinely meet with children to ensure that they are receiving the services required under the *Flores* Settlement.[238]

DUCS created federal field specialist positions to provide an additional layer of monitoring. Federal field specialists focus on capacity building and guidance, including helping facilities interpret and implement policies and procedures. If federal field specialists observe violations of policy, they are responsible for either correcting the action or reporting it to headquarters. However, the level of monitoring conducted by federal field specialists is inconsistent, unclear and does not appear to allow for substantive review.[239] Monitoring seems to rely heavily on information provided in facility self evaluation and serious incident reports (SIRs) (see box, right). While it appears that federal field specialists have the responsibility to review case files and interview children, the OIG found that only one federal field specialist reported conducting any oversight activities through audits of case files. Another federal field specialist stated that although she interacts with facilities regarding policy and oversight, she does not have authority in these interactions. These problems are likely exacerbated by a hiring freeze that further limits federal field specialists' ability to monitor effectively.[240]

In addition to program officers, and federal field specialists, DUCS monitoring relies heavily on a self evaluation component.[241] Facilities are required to conduct self-evaluations on a quarterly basis.[242] This self-evaluation of critical factors is ineffective. As in the case of DUCS' other monitoring practices, children, sponsors, partners and legal service providers are not surveyed on a regular basis. Even more significantly, in some cases, including those at Hector Garza, Nixon and Vincennes, advocates, partners and legal service providers had significant complaints and concerns that were either not heard or ignored . Self-evaluations may not reveal violations or inconsistencies with DUCS policies absent sufficient independent monitoring by DUCS.

Facilities are also required to file SIRs with DUCS for any serious incidents that occur at their site. This is another ineffective component of DUCS' monitoring program because it is overly reliant on facilities' willingness to report shortcomings to DUCS, which is their contracting agency. SIRs are an important monitoring tool; however, there must be additional mechanisms by which DUCS ensures that facilities are in compliance with policies and procedures and that children are safe.

Serious Incident Reports

DUCS policy is to ensure that all incidents that affect or involve unaccompanied children are properly documented, reported and provided with appropriate follow-up. All care providers shall adhere to written policies and procedures for handling incidents in accordance with State licensing, and shall ensure that program staff are well informed of their roles and responsibilities.[243]

Care providers shall have written policies and procedures, in accordance with State licensing, for the documentation of such incidents within their program. Significant incidents are incidents that have a significant impact on the safety and welfare of children, such as, the pregnancy of a child in DUCS custody, an attempt to run away or a runaway, incidents which result in isolation or restraint of a child, hospitalization, and abuse or neglect described under state law. When a significant incident occurs, the provider is supposed to immediately notify the DUCS Hotline. Local law enforcement, the ICE Juvenile Coordinator, and/or Child Protective Services must be informed where appropriate or required by State licensing procedures. All facilities must have written policies and procedures in accordance with State licensing for non-serious incidents. These incidents should be placed in a child's file but do not need to be reported to DUCS staff.[244]

It would be more effective to have DUCS staff collect input from outside parties and children in conducting their routine monitoring and to have an independent monitoring unit outside of DUCS conduct monitoring.[245]

Training

Over the course of our visits to DUCS facilities, staff members often asked for our impressions about what is working at other sites. Many program directors, caseworkers, nurses and clinicians were interested in hearing best practices from other facilities. We found that a significant indicator of a child's success and behavioral stability while in DUCS custody was the commitment and dedication of a facility's staff. For example, this was particularly evident at the Southwest Key facility in Phoenix, Arizona, and

the Baptist Child and Family Services (BCFS) facility in San Antonio, Texas. The staff at these facilities seemed extremely dedicated and described their approach as a "strength-based practice" with a focus on "soft skills," such as encouragement, child empowerment and the breaking down of preconceived notions of what these children may achieve. These techniques gave the facilities a warmer, less institutionalized feel for both children and staff.

DUCS should make training facility staff one of its top priorities. We believe that in addition to improved monitoring, better training for facility staff would improve facility compliance with DUCS policies and procedures. More structured opportunities are needed for sharing best practices through regular and required training programs; peer exchanges between shelters; peer cross-trainings; and the collection of best practices into written materials for wide distribution and for presentation at the DUCS conference.

Since the research for this report, ORR has expanded its training program. As mentioned above, it has conducted trainings on trafficking. It has also conducted abuse and neglect training, and training on DUCS policies and procedures. A two-year national training initiative on trauma-informed services will begin in 2009 and DUCS has contracted with BRYCS to carry out training sessions for all DUCS funded facilities on child maltreatment, including abuse and neglect. Continued training is being planned for 2009. In addition, ORR informs us that it is developing a training plan for standardized implementation of the DUCS Policies and Procedures Manual. We applaud these developments. Grantees, facilities, their staff and children, benefit from ongoing training, and DUCS should have its own training division for developing, coordinating and monitoring training activities.

CONCLUSION

On balance, the transfer of custody of unaccompanied children to ORR/DUCS was a critical first step towards improving the treatment of unaccompanied alien children in the custody of the U.S. government. The move decoupled prosecution from care, and centralized the provision of services within HHS, an agency far better suited than INS to administer an operational program with a social service mandate. The former INS used juvenile correctional facilities to detain most children. Today, only a fraction of children in DUCS custody are held in facilities that also house juvenile offenders. However, there are shortcomings. In part perhaps because of the expanding number of children in their custody, DUCS facilities have become increasingly impersonal and bureaucratic: children are sometimes inappropriately placed into facilities that are more secure than necessary and appropriate; DUCS shares children's confidential information with ICE; and a lack of effective grievance and monitoring procedures has led to inconsistent provision of services and at times failed to identify abuse. Despite these shortcomings, the conditions in most DUCS facilities are substantially better than those in Border Patrol stations and in facilities where ICE contracts bed space, and DUCS should be commended for its efforts to build an entirely new, operational program while responding to a rapid increase in the number of unaccompanied children.

In the five years since DUCS was created, the program has experienced significant growth in budget and staffing. Many of the problems we identified, including the increased institutionalization of facilities, inconsistent service delivery and insufficient incorporation of child welfare norms, may be in part indicative of growing pains. Regardless, it is crucial that the U.S. government provide for and protect these vulnerable children, and improvements are needed to ensure that the DUCS program serve the best interest of the children entrusted to its care. We recommend that an independent review be conducted to consider whether there is a more efficient and child friendly model of care for this vulnerable group of children. International models may be helpful in making this assessment. (See Appendix H.)

DUCS is badly in need of enhanced and independ-

ent oversight, including regular and effective monitoring and the development of effective grievance procedures to enable staff in the field and at headquarters to identify and respond to red flags before service delivery is compromised and before situations mushroom into abuse. In addition, the program needs to better assert its custodial role over unaccompanied children, including accepting its responsibility to provide care for children with criminal convictions and post-release, locating facilities in areas with greater access to services, protecting children's confidentiality and ensuring that placement decisions are based on the needs of children, instead of the preferences of DHS. DUCS also needs to take a more active role in fulfilling its responsibilities to ensure safe reunification and facilitate the provision of counsel.

The implementation of the TVPRA will be a critical component in enhancing DUCS' services to unaccompanied children. However, the agencies will need sufficient funding from Congress in order to make the changes mandated. Furthermore, the TVPRA is only a first step and there is more to be done. The confidentiality of children's social service records must be protected. Also, central among the needs not addressed by this legislation is the clarification of the definition of unaccompanied child. Such clarification is crucial to ensure that children do not fall through unintended cracks in the definition established by the Homeland Security Act that create confusion over which children DHS is permitted to retain custody of. At the same time, conditions in ICE and Border Patrol facilities must be improved, and standards of care for children in these settings (including those contained in *Flores*) must be codified to ensure that no children are subject to inappropriate treatment while in the custody of these agencies immediately following apprehension, or pending transfer or return.

RECOMMENDATIONS

Complete the Transfer of Custody

The Department of Homeland Security (DHS) exerts significant influence over care and custody of unaccompanied children despite the fact that DUCS is the legal custodian for this population and that custody was clearly transferred to DUCS in the Homeland Security Act. DHS is the gatekeeper in determining which children go to DUCS custody. Some children not in the company of a parent remain in DHS custody. DHS' concerns influence DUCS placement decisions and DHS has inappropriate access to information regarding children transferred to DUCS. DHS must relinquish control over matters involving children to the Department of Health and Human Services (HHS). In turn, HHS and the Administration for Children and Families (ACF), as the parent agencies of ORR/DUCS, must assert authority over decisions that impact the health and well-being of the children in its custody, as befits their role as the children's legal custodian, and not allow DHS to encroach upon DUCS' decision-making authority. ACF management/ORR management must continue to work with DHS to solve procedural and policy issues in a way that puts the health and well-being of the child first.

- DHS, HHS, DOJ and DOS must implement all provisions of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). Congress must provide adequate resources to enable this implementation.
- ORR, ICE and Customs and Border Patrol (CBP) must finalize the Joint Operations Manual to clarify the division of roles and responsibilities and to increase the transparency of their procedures.
- ICE, Border Patrol and ORR must clarify the definition of unaccompanied alien child so that no children remain in ICE or Border Patrol custody for more than 72 hours unless in the physical company of their parents. Children who are detained or apprehended with their parents should be released or placed into alternatives as a family unit.
- DHS, in partnership with HHS, should utilize age determination techniques that encompass multiple forms of evidence, including behavioral

evaluations, and that are developed by child welfare experts. *This is mandated by the TVPRA, which must be implemented expeditiously.*

- Congress must authorize an appeals process through which adverse findings regarding age determination can be appealed to HHS.
- Border Patrol must screen all children who are nationals of Mexico or Canada to determine whether they are a potential victim of trafficking or have a fear of persecution before they are repatriated. *This is mandated by the TVPRA, which must be implemented expeditiously.*
- Any federal agency that apprehends an unaccompanied alien child must transfer that child to DUCS custody as soon as possible and in less than 72 hours, regardless of criminal history. *This is mandated by the TVPRA, which must be implemented expeditiously.*
- ICE and Border Patrol must provide all information collected about an unaccompanied alien child to DUCS in a standardized, complete and consistent manner.
- DUCS should maintain a database of all alien children in federal custody, including those never transferred to DUCS by other federal agencies *and* all children in federal custody deemed accompanied.
- DUCS must stop sharing information from children's files with DHS.
- DHS should not use reunified children as bait for re-detaining them with their parents or guardians.

Reform DHS Policies with Respect to Children

DHS is a law enforcement agency that does not have policies, practices or the expertise to facilitate the appropriate treatment of children. The agency uses correctional-type facilities to detain children at the border and in the interior. Procedures to ensure the safety of children released directly from DHS custody are not applied. Training on recognizing trafficking victims and children with fear of return is inadequate.

- Border Patrol must improve conditions for children at all stations and holding facilities, including increasing temperature; providing clean clothing and blankets; providing adequate food and water; ensuring access to medication, showers and recreation; and permitting children to make phone calls to relatives and consulates.
- Border Patrol and ICE should under no circumstances hold a child in immigration custody in a cell with an unrelated adult or in a criminal or juvenile offender facility. Unaccompanied minor males and females should not be commingled.
- Border Patrol should create a new juvenile officer position at all Border Patrol stations to supervise children in their custody and monitor care provided to them. This individual should be specifically trained in child welfare principles.
- DHS should ensure that Border Patrol agents, Border Patrol juvenile officers and ICE officers are trained to interview children and to recognize potential victims of trafficking and children with a fear of return. *This is partially mandated by the TVPRA, which must be implemented expeditiously.*
- DHS should institute policies to ensure that children they release are released into safe and appropriate settings.
- ICE should utilize child-friendly, shelter-type facilities for holding children pending transfer to DUCS or who have been transferred from DUCS to ICE pending removal. Under no circumstances should these children be held in facilities intended for juvenile offenders or commingled with adults or youth offenders.
- ICE Juvenile and Family Residential Management Unit (JFRMU) personnel should not be selected from DOJ or DHS' enforcement personnel and the unit should not be housed in the Division of Detention and Removal Operations (DRO).
- ICE should work with child welfare agencies to develop plans for children who "age out" of DUCS custody instead of placing them in adult detention facilities. For cases where these young adults cannot remain in the community, ICE should develop a dedicated shelter care or group home setting in which youth between the ages of 18 and 21 can be housed. These young adults should not be housed with youth offenders or criminal adults unless there has been an individualized determination that they are a danger to the community.

- ICE should not commingle any individual suspected of being an unaccompanied child with adults. ICE should make every effort to transfer such an individual out of an adult housing unit within 12 hours. ICE must complete an age determination and effect transfer to DUCS (if the individual is found to be a child) as soon as possible and within 72 hours.
- DHS must create a database that includes all facilities where children and young adults between the ages of 18 and 21 may be held; who is held there; for how long they are held; and why they are held.

Reform DUCS

HHS is the federal entity best suited to maintain custody of children in immigration proceedings. Unaccompanied children have greatly benefited from the transfer of custody from the former INS to ORR. DUCS reunifies more children with their families or sponsors, takes steps to ensure that the most vulnerable unaccompanied children are safely reunified, has expanded the use of foster care and utilizes social workers in the field. However, the current structure is based upon the old INS model and does not allow for full and effective implementation of established child welfare principles. The system is institutional in nature and does not always fulfill the *Flores* Settlement mandate that children be housed in the least restrictive setting possible. DUCS shares confidential information from children's files with DHS, thus compromising their safety, access to services, relief and reunification. Ineffective grievance and monitoring procedures have led to inconsistency in the delivery of services and the failure to prevent and respond to abuse. Many of these shortcomings may be attributable to the newness of the DUCS program and its rapid expansion. A reassessment of the program structure and service model would be beneficial at this juncture.

- An independent agency or organization with expertise in child welfare service delivery should conduct an analysis of the DUCS program and structure, and issue recommendations for a service delivery model that brings the program into line with recognized child welfare practices.

In the meantime:

DUCS should standardize the provision of services to comply with the best interest principle and general child welfare practices.

- HHS should codify the *Flores* Settlement standards into regulations.
- DUCS should not be subject to hiring freezes. ORR should provide the program with the authority to hire appropriate federal and contracted staff and to allocate additional resources for training and monitoring facilities.
- DUCS should use recognized and proven tools to develop a transparent, fair and effective policy for making individualized placement determinations that ensure that children are placed in the least restrictive setting possible. DUCS should review placements for appropriateness individually and on a regular basis. *This is partially mandated by the TVPRA, which must be implemented expeditiously.*
- DUCS should expand the use of foster care and small, group-home settings.
- DUCS should establish additional therapeutic residential facilities for children who cannot be safely placed in shelter or foster care programs and who do not require secure or staff-secure placement.
- Secure facilities should only be used to house children who are a threat to themselves or others. *This is partially mandated by the TVPRA, which must be implemented expeditiously.*
- DUCS should allocate the necessary funds and training to ensure that facilities are providing adequate mental health services.
- DUCS should expand the provision of suitability assessments, home studies and follow-up services for children who are reunified or released. *This is partially mandated by the TVPRA, which must be implemented expeditiously.*
- DUCS should implement requirements to ensure that sponsors fully understand the importance of court appearances by requiring sponsors to attend a legal orientation presentation (LOP) or view an LOP video. *This is mandated by the TVPRA, which must be implemented expeditiously.*

- DUCS should protect the confidentiality of information in children's files and should not share case file information with ICE, other than providing the name and address of the parent, guardian or sponsor to whom a child is reunified or released.
- DUCS programs should be located in urban areas where there is greater access to pro bono services, law school clinical programs and medical and mental health care.
- Congress should enact legislation that provides government-funded counsel to children in immigration proceedings in cases in which the child lacks paid or pro bono legal representation. DUCS should make every effort to facilitate the identification of pro bono counsel. The Executive Office for Immigration Review (EOIR) should accommodate requests for continuances if necessary to secure legal representation.
- DUCS should ensure that advocates or guardians *ad litem* are available to all children to protect their best interest and to help them navigate the system. Congress should consider funding EOIR or ACF to implement this program to avoid the conflict of interest that may arise when DUCS funds guardian programs.

DUCS should improve oversight

- DUCS should ensure that all facility management and staff are fully trained to understand and implement DUCS' policies and procedures.
- DUCS facility program staff should provide children with a verbal orientation and a child-friendly written orientation packet in their native language upon their arrival that includes the name, job responsibilities and obligations of each staff position. DUCS facility staff should also explain the confidentiality rules verbally and in writing in the child's native language to each child upon arrival.
- DUCS should institute a more effective and comprehensive grievance system that includes a process for bringing grievances and concerns against DUCS facilities, facility staff, DUCS management and the DUCS program and policies. The system must include the ability for third parties (e.g., family members, attorneys, social workers) to file complaints and must clearly prohibit and protect children and advocates from retaliation.
- HHS should create an Office of the DUCS Ombudsperson within ORR or ACF to address grievances brought by children or third parties. ORR or ACF must create a mechanism by which grievances may be brought directly to the attention of the Ombudsperson or may be elevated to the Ombudsperson through an appeals process.
- The Ombudsperson and DUCS must ensure that all grievances are investigated and addressed in a timely manner. The Ombudsperson must provide complainants with written notice of how the situation was resolved.
- DUCS should contract with independent nongovernmental or professional organizations that have expertise in monitoring and evaluating residential youth programs to monitor facilities for compliance with DUCS policies and procedures and with the *Flores* Settlement. DUCS must ensure that such monitoring includes conversations with field coordinators, staff, advocates, attorneys and children in custody and does not rely solely on facility self-evaluation.
- ACF should ensure that at a minimum DUCS is held to the same standards as state child welfare programs.
- DUCS should establish a consistent crisis response policy to enable quick and effective resolution of adverse findings resulting from grievances, monitoring and oversight activities.

APPENDIX A
METHODOLOGY

Between April 2007 and February 2008, the Women's Refugee Commission,[246] in collaboration with the law firm of Orrick, Herrington & Sutcliffe LLP, undertook a project to review the current conditions of care and confinement for unaccompanied alien children in immigration proceedings. In so doing, we investigated the continuum of care from the moment of apprehension by Border Patrol or ICE to the custody and care of unaccompanied children by ICE and/or DUCS.

This report is based in large part on site visits to facilities used by Border Patrol, ICE and DUCS to detain children. Accordingly, at the outset of this project, we contacted each agency to gain their consent for research visits. DUCS was very receptive to our request to visit its facilities and evaluate its program. We were granted full access to DUCS facilities and were able to conduct private interviews with children and staff. Moreover, DUCS fully responded to our requests for documents and information and also made its senior management personnel at headquarters available for interviews. Between April 2007 and February 2008, we visited 30 facilities under DUCS' custody and control, and interviewed more than 200 children.[247]

However, Border Patrol and ICE were less amenable to our requests. Border Patrol headquarters did not officially respond to our requests to visit Border Patrol stations and we had to schedule our visits by contacting local Border Patrol officials. We ultimately visited three Border Patrol stations; however we were not able to interview children at all three. ICE only granted two official visits to facilities where they detain children, and both were facilities of the agency's choosing. We were not able to interview any children during these visits as none were at the facilities at the time our tours took place. Representatives of ICE's Juvenile and Family Residential Management Unit accompanied us on both visits. In addition to the two official visits arranged by ICE headquarters, Women's Refugee Commission staff received a tour of an additional facility from local authorities, and were permitted to speak with children at this site. Both agencies also granted meetings with us at the headquarters level.

APPENDIX B
FACILITIES VISITED

ORR Facilities Visited

	Facilities	Type of Facility	Facility Capacity	Date(s) Visited
1	Abraxas Hector Garza Center, San Antonio, Texas ("Abraxas") (DUCS agreement terminated since our visit)	Staff-Secure	[30]*	February 6, 2008
2	Baptist Child & Family Services (BCFS), San Antonio, Texas	Shelter	28	February 5, 2008
3	Casa de los Amigos, a Youth Care Shelter, Seattle, Washington	Shelter	4	October 16, 2007
4	Catholic Charities, Phoenix, Arizona	Foster Care	9	July 11, 2007
5	Catholic Community Services (CCS) International Foster Care Program, Tacoma, Washington	Foster Care	9	July 10-11, 2007
6	Crittenton Services for Children and Families, Fullerton, California	Shelter	50	August 14-15, 2007
7	Devereux Group Home Facility, Scottsdale, Arizona	Shelter	23	July 10, 2007
8	Guadalupe County Juvenile Supervision and Detention Facility, Seguin, Texas (new facility, but closed since our visit)	Secure	[50]	February 5, 2008
9	Harlingen Foster Program, Harlingen, Texas	Foster Care	42	July 19-20, 2007
10	International Educational Services (IES) Welcome Shelter, Harlingen, Texas	Shelter	80	July 19-20, 2007
11	International Educational Services (IES), Brownsville, Texas	Foster Care	53	July 11-13, 2007
12	International Educational Services (IES) Emergency Shelter (Los Fresnos), Harlingen, Texas	Shelter	160	July 19-20, 2007
13	Lutheran Social Services (LSS), El Paso, Texas	Foster Care	36	April 30-May 1, 2007
14	Marin County Staff-secure Facility, San Rafael, California	Secure	3	September 28, 2007
15	Miami Foster Care Facility (USCCB), Miami Springs, Florida	Foster Care		December 4, 2007
16	Northern Regional Corrections Facilities, The Dalles, Oregon (DUCS terminated contract since our visit)	Secure	7	September 6, 2007

** Figures in square brackets indicate total number of beds in a facility–DUCS and non-DUCS children.*

17	Northern Virginia Juvenile Detention Home ("NOVA"), Alexandria, Virginia	Secure	2	October 19, 2007
18	St. Michael's Home for Children: Unaccompanied Alien Children Program, Houston, Texas	Shelter	72	July 16-18, 2007
19	Selma R. Carson Home, Tacoma, Washington	Staff-Secure	20	September 5, 2007
20	South West Key Conroe Shelter, Conroe, Texas	Shelter	64	July 16-17, 2007
21	South West Key Mesa Facility, Houston, Texas	Staff-Secure	41	May 24-25, 2007
22	Southwest Indiana Regional Youth Village, Vincennes, Indiana	Staff-Secure and Secure	3	July 30-31, 2007
23	Southwest Key Facility (La Esparanza), Brownsville, Texas	Shelter	48	July 19-20, 2007
24	Southwest Key Program, Phoenix, Arizona	Shelter	128	July 9, 2007
25	Southwest Key Pleasant Hill Facility, Pleasant Hill, California	Shelter	24	November 8, 2007
26	Southwest Key Shelter, El Paso (Canutillo), Texas	Shelter	94	April 25-27, 2007
27	TRAC Program at Children's Village, Dobbs Ferry, New York	Shelter	[12]	August 13, 2007
28	TRAC Program at Children's Village, Flushing, Queens, New York	Shelter	24	August 16 & September 5, 2007
29	Tumbleweed Group Home Facility, Phoenix, Arizona	Shelter	10	July 10, 2007
30	Yolo County, Woodland, California	Secure	[90]	November 9, 2007

Border Patrol/Border Holding Facilities Visited

Facilities	Date(s) Visited
Border Patrol Holding Facility, El Paso Texas	April 25, 2007
Ft. Brown, Brownsville Border Patrol Holding Facility, Brownsville, Texas	December 6, 2006 & July 19, 2007
Harlingen Station, Harlingen, Texas	December 6, 2006

ICE Facilities Visited

Facilities	Date(s) Visited
Berks County Juvenile Facility, Leesport, Pennsylvania	October 27, 2006
Equinox Youth Shelter, Albany, New York	November 2, 2007
Gila County Juvenile Detention Center, Globe, Arizona	November 13, 2007

APPENDIX C

ICE FREEDOM OF INFORMATION ACT (FOIA) RESPONSE INCLUDING LIST OF ICE FACILITIES THAT HOLD JUVENILES AS OF NOVEMBER 2007

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536

U.S. Immigration and Customs Enforcement

November 27, 2007

Ms. Rene Kathawala
Orrick, Herrington & Sutcliffe LLP
666 Fifth Avenue
New York, NY 10103-0001

Re: **FOIA Case Number 07-FOIA-51676**

Dear Ms. Kathawala:

This is the final response to your Freedom of Information Act (FOIA) request to Immigration and Customs Enforcement (ICE), dated February 9, 2007, and received by this office on April 3, 2007. You have requested copies of the following information:

1. The names, locations and all other contact information for facilities used by the U.S. Immigration and Customs Enforcement (ICE), whether by contract, general agreement or other means, where children under the age of 18 are detained or have been detained, between the period January 1, 2005 and the present.
2. For each facility used by ICE, whether by contract, general agreement or other means, where children under the age of 18 are detained, provide the following information:
    a. Number of beds reserved for children
    b. Whether the facility holds children and adults or only children
    c. Whether the facility holds children who are charged or convicted of any crime, whether an misdemeanor or felony under either state or federal law between January 1, 2005 and the present
    d. Whether detainees held solely for immigration related reasons are co-mingled with detainees charged or convicted of any crime, whether state or federal.
3. Number of children detained at each facility used by ICE, whether by contract, general agreement or other means, where children under the age of 18 are detained, between the period of January 1, 2005 and the present.
4. Average length of stay for children in each facility used by ICE, whether by contract, general agreement or other means, where children under the age of 18 are detained, between the period January 1, 2005 and the present.
5. Average length of stay for children in each facility used by ICE, whether by contract, general agreement or other means, where children under the age of 18 are detained, for children who are never transferred from ICE to the Office of Refugee Resettlement under the Department of Health and Human Services (ORR), between the period of January 1, 2005 and the present.
6. Average length of stay for children in each facility used by ICE, whether by contract, general agreement or other means, where children under the age of 18 are detained, for children who are never transferred from ICE to ORR, between the period January 1, 2005 and the present.
7. A demographic breakdown of the children detained at each facility used by ICE, whether by contract, general agreement or other means, where children under the age of 18 are detained,

including age, gender, country of origin, and marital status, between the period January 1, 2005 and the present.

8. ICE's compliance with the stipulated settlement agreement in Flores v. Reno et al., Case Number CV 85-4544 (RJK)(Px)(C.D.Cal.), between the period January 1, 2005 and the present.
9. Number of children detained by ICE and who were not, according to Flores, placed in an appropriate juvenile facility within 3 days (73 hours) from when ICE assumed custody of the children, between January 1, 2005 and the present, and for each child, the reasons why this transfer did not occur.

Your request has been processed under the FOIA, 5 U.S.C. § 552. A search of the ICE Office of Detention and Removal Operations (DRO) for documents responsive to your items 1 and 2 of your request produced a total of 4 pages. After review, I have determined that the documents will be released to you in their entirety. Please be advised that the list of facilities has changed over time and a comprehensive list of facilities used during all of the requested fiscal years could not be found. The list being provided in response to items 1 and 2 of your request is for fiscal year 2007 and shows were ICE juveniles are held temporarily awaiting ORR placement if required.

In response to items 3 and 7 of your request, a search of DRO produced a total of 4 pages. After review, I have determined that the documents will be released to you in their entirety. Please be advised that the figures provided in these documents include all minors in ICE care to include all unaccompanied children that where transferred into ORR care. The totals may also account for any minors emancipated or adjudicated as adults.

In response to items 4, 5, 6, 8 and 9, a comprehensive search of files within the ICE Office of Detention and Removal Operations was conducted for records that would be responsive to your request. Unfortunately, we were unable to locate or identify any responsive records. Further, please be advised that the FOIA does not require federal agencies to answer inquiries, conduct research projects or create records in response to a FOIA request, but rather is limited to requiring agencies to provide access to reasonably described, nonexempt records. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 162 (1975); Zemansky v. EPA, 767 F.2d 569, 574 (9th Cir. 1985).

While an adequate search was conducted, you have the right to appeal this determination that no records exist within ICE that would be responsive to your request. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Provisions of the FOIA and Privacy Act allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the $14 minimum, there is no charge.[1]

If you need to contact our office about this matter, please refer to case number **07-FOIA-51676**. This office can be reached at (202) 732-0300 or (866) 633-1182.

Sincerely,

Catrina Pavlik-Keenan

Catrina M. Pavlik-Keenan
FOIA Officer

[1] 6 CFR § 5.11(d)(4).

www.ice.gov

Facility Name	Address	Type	# J-Beds	Delinquent Y/N	Adult Y/N	Juvenile Y/N	ICE "Only" Y/N	Mix w/ Delinquent
Anoka County Shelter	7555 4th Ave							
	Lino Lakes, MN 55014	IGSA	24	N	N	Y	N	N
Berks County Youth Ctr	1261 County Welfare Rd	IGSA	78	Y	N	Y	N	Y
	Leesport, PA 19533							
Carver County	600 East Fourth ST.	IGSA	6	Y	N	Y	N	Y
Juvenile Detention	Chaska, MN 55318							
Casey House Shelter	710 Cedar Ave	IGSA	12	N	N	Y	N	N
	Niagara Falls, NY 14301							
Compass House Shelter	370 Linwood Ave	IGSA	12	N	N	Y	N	N
	Buffalo, NY 14209							
Comfort Suites Hotel	3901 SW 117th Ave	Local	As Needed	Y	Y	Y	Y	N
	Miami, FL 33175							
Cowlitz County Juvenile	1725 1st Ave	IGSA	72	Y	N	Y	N	Y
	Longview, WA 98632							
Dallas Field Office Hold	8101 N. Stemmons FWY	ICE	0	Y	Y	Y	Y	N
	Dallas, TX 75247							
Department of Juvenile Corr	PO Box 3226	IGSA	54	Y	N	Y	N	Y
	Agana, Guam 96910							
East Regional Juvenile	7565 4th Ave	IGSA	36	Y	N	Y	N	Y
	Lino Lakes, MN 55014							

Facility Name	Address	Type	# J-Beds	Delinquent Y/N	Adult Y/N	Juvenile Y/N	ICE "Only" Y/N	Mix w/ Delinquent
Econolodge Motel	13910 Pacific Highway S	Local	As Needed	Y	Y	Y	Y	N
	Tukwila, WA 98168							
Equinox Youth Shelter	35 S. Ferry ST	IGSA	13	N	N	Y	N	N
	Albany, NY 12202							
Florence Staging Facility	3250 N. Pinal Parkway Ave.	ICE/JPATS	As needed	Y	Y	Y	Y	N
	Florence, AZ 85232							
Gila County Juvenile	1425 E. South ST.	IGSA	25	Y	N	Y	N	Y
	Globe, AZ 85501							
Grand Forks Juvenile Ctr	125 S. 15th ST	IGSA	16	Y	N	Y	N	Y
	Grand Forks, ND 58201							
Houston Hold Room	5520 Greens Rd.	ICE	As needed	Y	Y	Y	Y	N
	Houston, TX 77032							
McLaughlin Youth Ctr	2600 Providence Dr	IGSA	160	Y	N	Y	N	Y
	Anchorage, AK 99508							
Los Custody Case	300 N. Los Angeles ST. B-18	ICE	As needed	Y	Y	Y	Y	N
	San Pedro, CA 90731							
N. Oregon Juvenile	211 Weber Road	IGSA	32	Y	N	Y	N	Y
	The Dalles, OR 97058							
Nebraska Juvenile Service	120 Clara Davis Dr.	IGSA	34	Y	N	Y	N	Y
	Madison, NE 68748							

Facility Name	Address	Type	# J-Beds	Delinquent Y/N	Adult Y/N	Juvenile Y/N	ICE "Only" Y/N	Mix w/ Delinquent
NYC Field Office	26 Federal Plaza	ICE	As needed	Y	Y	Y	Y	N
	NYC, NY 10278							
Omaha Field Office	1717 Ave H	ICE	As needed	Y	Y	Y	Y	N
	Omaha, NE 68110							
Philadelphia Field Office	1600 Callowhill ST	ICE	As needed	Y	Y	Y	Y	N
	Philadelphia, PA 19130							
Phoenix Field Office	2035 N. Central Ave	ICE	As needed	Y	Y	Y	Y	N
	Phoenix, AZ 85004							
Shawnee County Juvenile	401 S.E. 8th Ave	IGSA	70	Y	N	Y	N	Y
	Topeka, KS 66607							
San Diego Staging	880 Front ST.	ICE	As needed	Y	Y	Y	Y	N
	San Diego, CA 92101							
Sarpy County Juvenile	1303 W. 6th ST	IGSA	36	Y	N	Y	N	Y
	Papillion, NE 68748							
Snake River Juvenile Facility	2515 Wright Ave	IGSA	27	Y	N	Y	N	Y
	Twin Falls, ID 83301							
ST. Paul Holding	2901 Metro Drive STE 100	ICE	As needed	Y	Y	Y	Y	N
	Bloomington, MN 55425							
Tucson BP Hold	6431 S. Country Club Road	CBP	As needed	Y	Y	Y	Y	N
	Tucson, AZ 85706							

Facility Name	Address	Type	# J-Beds	Delinquent Y/N	Adult Y/N	Juvenile Y/N	ICE "Only" Y/N	Mix w/ Delinquent
Washington County LEC Juv	15015 62nd St. N.	IGSA	10	Y	N	Y	N	Y
	Stillwater, MN 55082							

Any local facility is used on a case by case bases or is a referral case from another agency.
This data is from juveniles detained temporarily FY 08.

item 3 + 7

Re: *Freedom of Information Act Request 51676*

Question:
Number of children detained at each facility used by ICE, whether by contract, general agreement or other means, where children under the age of 18 are detained, between the period January 1, 2005 and the present.

Answer:
These numbers also include all minors in ICE care including all UACs that were transferred into ORR care. Totals may also account for any minors emancipated or adjudicated as adults.
FY 2005 -9,996 FY 2006 – 10, 647 FY 2007 – 9,586

Question:
A demographic breakdown of the children detained at each facility used by ICE, whether by contract, general agreement or other means, where children under the age of 18 are detained, including age, gender, country of origin, and marital status, between the period January 1, 2005 and the present.

Answer:
ICE FY 07 statistics are not available or readily available broken down into gender and age. Totals may also account for minors emancipated or adjudicated as adults.

a) Federal fiscal year

FY05	**FY06**	**FY 07**
9,996	10,647	9,586

b) Gender

	FY05	**FY06**
Male	7194	7896
Female	2802	2751

c) Age at arrival

	FY05	**FY06**
Between 1 day old and 6 months old:	29	15
Between 6 months old and 1 ½ yrs old:	57	85
Between 1 ½ and 2 ½ yrs old:	69	90
Between 2 ½ and 3 ½ yrs old:	71	109
Between 3 ½ and 4 ½ yrs old:	83	134
Between 4 ½ and 5 ½ yrs old:	109	125
Between 5 ½ and 6 ½ yrs old:	130	158
Between 6 ½ and 7 ½ yrs old:	142	157
Between 7 ½ and 8 ½ yrs old:	192	179
Between 8 ½ and 9 ½ yrs old:	180	198
Between 9 ½ and 10 ½ yrs old:	203	214

Between 10 ½ and 11 ½ yrs. old:	235	226
Between 11 ½ and 12 ½ yrs old:	248	263
Between 12 ½ and 13 ½ yrs old:	347	316
Between 13 ½ and 14 ½ yrs old:	454	463
Between 14 ½ and 15 ½ yrs old:	873	850
Between 15 ½ and 16 ½ yrs. old:	1741	1897
Between 16 ½ and less than 18 yrs old:	4833	5168

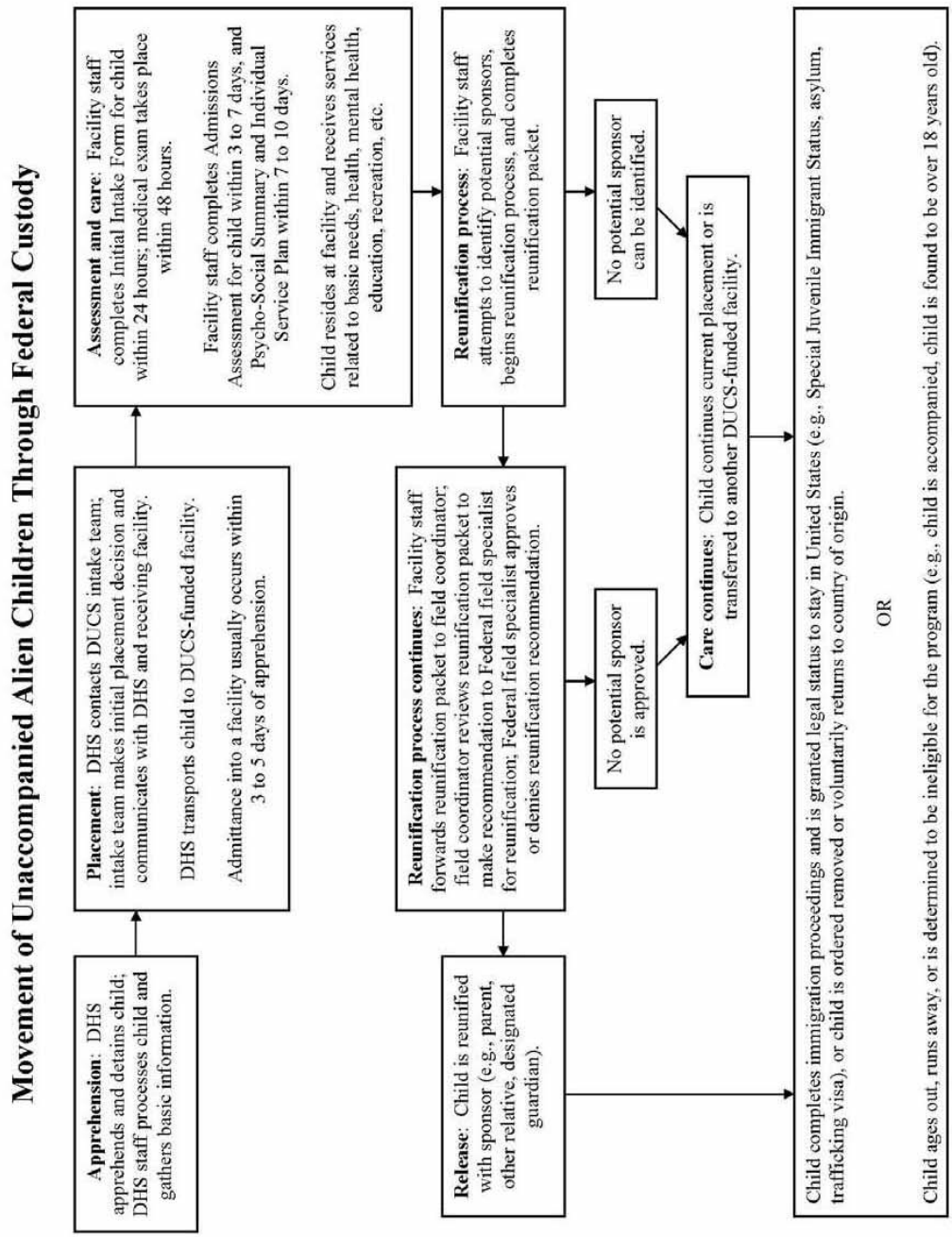
d) Nationality

	FY05	**FY06**
Afghanistan:	0	0
Albania:	23	8
Algeria:	0	0
Angola:	0	0
Antigua-Barbuda:	0	2
Argentina:	10	11
Armenia:	17	2
Bahamas:	1	2
Bangladesh:	3	4
Belarus:	2	0
Belgium:	0	0
Belize:	15	5
Bolivia:	19	33
Botswana:	5	0
Brazil:	291	77
Bulgaria:	2	1
Burma:	0	2
Cambodia:	2	0
Cameroon:	0	0
Canada:	8	1
Chile:	11	3
China:	209	111
Colombia:	36	68
Congo:	2	1
Costa Rica:	23	16
Cote d'Ivoire:	2	0
Cuba:	463	85
Czech Republic:	2	0
Dominican Republic:	59	58
Ecuador:	213	115
Egypt:	0	0
El Salvador:	1968	2746
Eritrea:	0	0
Ethiopia:	3	11
Fiji:	7	1

	FY05	FY06
France:	6	3
Gambia:	2	3
Georgia:	0	0
Germany:	4	4
Ghana:	6	1
Greece:	0	3
Guatemala:	2132	2683
Guyana:	21	30
Haiti:	32	60
Honduras:	2790	2670
Hong Kong:	2	0
Hungary:	2	7
India:	37	35
Indonesia:	3	7
Iran:	2	5
Iraq:	12	27
Ireland:	1	0
Israel:	2	2
Italy:	1	0
Jamaica:	15	6
Japan:	0	0
Jordan:	1	1
Kazakhstan:	0	1
Kenya:	1	2
Korea:	0	4
Lebanon:	0	0
Liberia:	1	0
Lithuania:	4	1
Macedonia:	3	0
Malaysia:	0	1
Mali:	2	0
Mexico:	1289	1467
Mongolia:	2	9
Morocco:	2	3
Nepal:	0	0
Netherlands:	1	1
Nicaragua:	72	106
Nigeria:	5	4
N. Korea:	1	0
Pakistan:	18	19
Panama:	3	7
Paraguay:	6	1
Peru:	22	31
Philippines:	2	5

	FY05	FY06
Poland:	11	2
Portugal:	2	0
Australia:	0	0
Romania:	7	7
Russia:	2	4
Rwanda:	0	0
S. Africa:	0	1
Saudi Arabia:	0	0
Senegal:	0	1
Serbia & Montenegro:	1	2
Sierra Leone:	0	4
Singapore:	4	0
S. Korea:	1	4
Somalia:	2	2
Spain:	4	3
Sri Lanka:	12	12
St. Kitts-Nevis:	0	0
St. Lucia:	0	0
Sweden:	1	2
Syria:	3	0
Taiwan:	2	2
Thailand:	0	0
Trinidad & Tobago:	5	3
Turkey:	1	2
Guinea:	1	1
United Kingdom:	3	4
Ukraine:	2	1
Unknown:	0	0
Uruguay:	5	9
Soviet Union:	0	0
Uzbekistan:	0	0
Venezuela:	17	7
Yemen:	8	2
Zimbabwe:	1	0

APPENDIX D
FLOWCHART ON PROCESSING OF UNACCOMPANIED CHILDREN



APPENDIX E
DUCS FACILITIES AS OF DECEMBER 2008

Central

IL	Heartland International Children's Center (HICC)	Shelter
IL	HIYC	Staff-Secure
IN	SW Youth Village (Vincennes)	Secure
IN	SW Youth Village (Vincennes)	Therapeutic Secure
TX	International Education Services (IES Brownsville)	Transitional Foster Care
TX	Southwest Key (SWK Brownsville–La Esperanza)	Shelter
TX	Southwest Key (SWK El Paso Canutillo)	Shelter
TX	Southwest Key (SWK Conroe Shelter)	Shelter
TX	Bokenkamp Children's Center	Shelter
TX	LSS El Paso	Transitional Foster Care
TX	Southwest Key (SWK El Paso Casita)	Shelter
TX	Children's Center (Galveston)	Shelter
TX	BCSS Emergency Welcome Center (BCSS Harlingen)	Shelter
TX	International Education Services (IES Harlingen FC)	Transitional Foster Care
TX	Catholic Charities ((St. Michael's Home, CC Houston)	Shelter
TX	Southwest Key (SWK Mesa - Houston)	Staff-Secure
TX	International Education Services (IES), Los Fresnos, (Harlingen)	Shelter
TX	Baptist Children's Center (BCFS San Antonio)	Shelter

Eastern

FL	Bay Point*	Staff-Secure
FL	Boystown	Shelter
FL	His House	Shelter
FL	Open Arms	Shelter
FL	Tampa Bay Academy (Tampa Bay)*	Residential Treatment
NY	Children's Village (Queens)	Shelter
VA	NOVA**	Secure

Western

AZ	Catholic Social Service (CC Phoenix)	Transitional Foster Care
AZ	Southwest Key (SWK Phoenix)	Shelter
AZ	Tumbleweed	Shelter
AZ	Devereux	Shelter
CA	Southwest Key (SWK Pleasant Hill)	Shelter
CA	Southwest Key (SWK El Cajon)	Shelter

CA	Crittenton	Shelter and long-term foster care capacity
CA	Southwest Key (SWK Lemon Grove)	Shelter
CA	Marin	Secure
CA	Yolo County	Secure
WA	Youth Care	Shelter
WA	Catholic Community Services (CCS Tacoma)	Transitional Foster Care
WA	Selma Carson	Staff-Secure

DUCS-Funded Foster Care

AZ	USCCB Phoenix	DUCS-Funded Foster Care
CA	Catholic Charities San Jose	DUCS-Funded Foster Care
FL	Open Arms DFFC	DUCS-Funded Foster Care
FL	USCCB Miami	DUCS-Funded Foster Care
MA	LIRS Newton	DUCS-Funded Foster Care
MI	LIRS Grand Rapids	DUCS-Funded Foster Care
MI	USCCB Grand Rapids	DUCS-Funded Foster Care
MI	LIRS Lansing	DUCS-Funded Foster Care
NY	USCCB Rochester	DUCS-Funded Foster Care
PA	LIRS Roslyn	DUCS-Funded Foster Care
TX	Galveston DFFC	DUCS-Funded Foster Care
TX	USCCB Galveston Houston	DUCS-Funded Foster Care
VA	USCCB Richmond	DUCS-Funded Foster Care
WA	LIRS Seattle	DUCS-Funded Foster Care
WA	USCCB Tacoma	DUCS-Funded Foster Care

* Facility closed

** Not taking new DUCS placements

APPENDIX F
DUCS PLACEMENT PROCEDURES AND CONDITIONS

Placement

Once DHS refers a child to DUCS for placement, placement determinations are made on the basis of procedures and criteria outlined in the DUCS Manual.

The *Flores* Settlement and the recently enacted TVPRA of 2008 mandates that children should be housed in the least restrictive setting possible and the DUCS continuum of care is reflective of this principle. This continuum ranges from short-term and long-term foster care, shelters and group homes, therapeutic foster care and residential treatment centers to staff-secure and secure facilities. DUCS generally uses less restrictive facilities than the former INS.

Family Reunification and Release

One of DUCS' primary goals, and in most cases the optimum placement, is reunification of unaccompanied children with their family or a sponsor. "ORR releases an unaccompanied alien child…to a sponsor when ORR determines that the detention of the child is not required either to secure the UAC's timely appearance before the DHS or the immigration courts, or to ensure the UAC's safety or the safety of others."[248] Reunification entails the release of a child to a parent, family member or non-relative sponsor such as a family friend.

A key step in reunification is the preparation of a "family reunification packet," which contains documents attesting to the identity of the sponsor or relative and demonstrating that the placement will be safe for the child. Reunification packets include a parent, relative or sponsor's government-issued photo identification; the child's birth certificate; a copy of a recent bill to establish address; a background check; an affidavit of support establishing that the parent, relative or sponsor can financially provide for the child; and proof of the parent, relative or sponsor's employment. Reunification packets are generally reviewed by a case manager, a field coordinator, and a DUCS federal field specialist, who makes the final determination as to whether or not the child can be safely reunified with sponsors or family members that come forward.

If there is reason to believe that there has been or could be abuse, is concern for the safety or well-being of a child or if a background check on the parent, relative, sponsor or other individual living at the address proposed for release yields a criminal "hit," a suitability assessment, and sometimes a home study, may be conducted prior to recommending release.

Foster care

If children cannot be reunified, the least restrictive custody placement is foster care with host families in local communities. Temporary (short-term) foster care is reserved primarily for children under the age of 12, pregnant and parenting teens and sibling groups. These children receive services through a DUCS-funded care provider but live in private homes. Special needs children with disabilities, medical or mental health concerns may be placed in therapeutic foster care. Long-term foster care is available as a secondary placement (transfer from another facility) for children who have been or are likely to be in custody for extended periods of time, such as children for whom reunification is not a possibility and whose immigration cases are not likely to be resolved quickly, such as asylum seekers.

Shelters and group homes

Shelters and group homes are the next least restrictive setting on the DUCS continuum of care. Children who cannot be released or placed in foster care but who do not need a higher level of supervision or services are placed in shelters or group homes. Shelters can vary widely in size. Group homes typically house 15 or fewer children and tend to be less restrictive. This is the optimum model when children must be placed in shelter care. However, many shelters house a large number of children and have a more institutional feel as a result. In the large shelters, there tend to be more restrictive measures in place in to maintain control.

Staff-secure facilities

Children are who are deemed to be high risk are placed in staff-secure facilities. According to the DUCS Manual, staff-secure placement is designated for children who require close supervision but who do not need placement in a secure facility. The DUCS Manual provides a list of criteria to consider in assessing the appropriateness of a staff-secure placement. These criteria include inappropriate sexual behavior, disruptive acts, such as destruction of property and non-specific threats to commit a violent act that do not involve a significant risk to harm another person. In practice, children with an offender history that is not serious, children who are flight risks and children who have displayed disruptive behavior in a shelter program are also considered for staff-secure placement. The DUCS Manual states that staff-secure facilities use staff supervision rather than architectural barriers, such as barred windows or locked doors[249] to control the children. However, we observed that at least in some cases, staff-secure facilities did utilize architectural barriers such as bars, fences and locked doors and in at least one case (Vincennes—now used only as a secure facility and not staff-secure), the staff-secure sections were physically indistinguishable from the secure sections of the facility.

While DUCS informs us that only 4.5 percent of children are in staff-secure facilities,[250] we found that placement in staff-secure facilities can at times be misguided. Many of the behaviors that can trigger staff-secure placement under the criteria provided in the DUCS Manual can also be indicative of mental health issues that should be addressed before placement in a staff-secure facility is considered. Many staff-secure facilities closely resemble or are not significantly different from juvenile correctional facilities and secure facilities. These placements can actually exacerbate the mental health conditions that underlie behavioral problems and prevent children from receiving the therapeutic care indicated by their behavior.

Secure facilities

Secure facilities are the highest level of restrictiveness in the DUCS placement continuum. The DUCS Manual considers secure placement to be appropriate for children (i) charged with or convicted of a crime or adjudicated as delinquent; (ii) who have committed or threatened acts of crime or violence while in DUCS custody; (iii) who have engaged in unacceptably disruptive acts; (iv) who are a flight risk; or (v) who need extra security for their own protection. *This placement criteria may be narrowed in the coming months as the TVPRA mandates that children should not be placed in secure facilities absent a determination that the child poses a danger to self or others or has been charged with a criminal offense.* Secure facilities are similar to prisons, with children having no opportunity to move freely without a guard's supervision.

While the former INS relied heavily on staff-secure and secure facilities, DUCS placed less than 4 percent of children in these facilities in 2007. However, we are concerned that in that same year, DUCS opened four new secure facilities and two new staff-secure facilities, primarily in response to increased internal enforcement of immigration laws that has resulted in an increase in the number of children in custody who have criminal or delinquency charges or convictions. As of December 11, 2008, 4.5 percent of children in DUCS custody are in secure facilities.[251]

Facility staff and children interviewed at all facilities consistently said that they did not understand the rationale for placement decisions, and we did not find that children had received this notification. This uncertainty and confusion among staff and children reflects a lack of clarity and consistency in placement decisions

Pursuant to the DUCS Manual, secure and staff-secure care providers should also "regularly assess" the child for appropriateness of transfer to a less restrictive environment. A child may be transferred to an alternate placement within the DUCS continuum of care, including "stepped down" from placement in a staff-secure or secure facility, on the basis of individual child welfare needs or changes in DUCS' capacity. We did not find that children were regularly assessed to determine appropriateness for transfer to less restrictive sites. Evaluation of the appropriateness of placement is likely to increase in the coming months. *Under the TVPRA, such reviews are now mandatory for children placed in secure facilities, as the legislation requires that placement of a child in a secure facility be reviewed on a monthly basis to determine if the placement continues to be appropriate.* Hopefully this new statutory criteria for determining placement will result in more children being appropriately placed in the least restrictive setting possible upon initial entry into DUCS custody and will subsequently reduce the need for transfers to less restrictive sites.

Conditions in DUCS Programs

Conditions in foster care programs

Foster care, both short-term and long-term, enables children in DUCS custody to benefit from the services of a DUCS program while residing in a community-based setting with a family. Children in short-term foster care typically receive services at a range of locations, including in the foster home, at the DUCS program sites and at counseling centers. Foster families are licensed according to the licensing regulations of the state in which they are located. Services and conditions vary depending on the foster care service provider and the individual foster family. Over all we found the foster families we interviewed to be very caring and the children to be happy. We had the opportunity to observe a child being reunified with his mother and the child cried when taken from the foster mother.

However, we found some inconsistencies in the delivery of services in foster care programs. At the time of our visits, some foster children under the age of ten and pregnant teens were not receiving educational services. Access to recreation was also inconsistent. Some families provided regular access. However, other children did not have any regular outdoor recreation because the frequency of access to outdoor recreation depends on the commitment and resources of the family. More training needs to be provided to ensure that opportunities for outdoor activities are provided. If families do not have safe access to outdoor yards or parks, the DUCS program should provide activities during the day.

Restraints and corporal punishment are not permitted in foster programs. In most programs, foster parents receive regular training on appropriate behavioral management techniques including the "basket hold," the use of positive re-enforcement, such as point systems, and mental health issues that require further assessment by facility care providers or a professional. However we note that the Miami program did not specify that behavior management training is regularly provided.

Conditions in shelters and group homes

"The aim of shelter care is to provide the least restrictive environment commensurate with the safety, emotional and physical needs of the child."[252] Conditions and practices in shelters and groups home vary depending on the size and location of the program. The shelters and group homes we visited were generally clean and well maintained. Some appeared dark or dreary but the children did not seem to mind and in many cases efforts were made to decorate with children's artwork. Children generally sleep in dorm-style rooms with several children per room. In some cases, children can move into more private rooms as a reward for good behavior. Bedrooms at one shelter we visited were locked at night and supervised by night staff. At another facility, doors were required to be left open so a case-worker could check all rooms every 15 minutes. Shelters generally have a kitchen, dining area and common living room area. Some of the shelters appeared to be overcrowded.

Children at some facilities are able to wear their own clothing but at others they are given uniform-like clothing that generally consisted of jeans or shorts, and polo or t-shirt. Incentive-based point systems are usually used to control behavior and discipline children. Restraints are permitted only in extreme cases where the child may harm himself or others. However, the "Handle with Care" method is also used.

The level of security in these facilities is far more stringent than in foster care programs. Children in shelters are generally supposed to have freedom of movement within the facility. However, they typically live and receive education and other services on-site and are not free to leave the facility unaccompanied by staff. Facilities are locked and surrounded by fences and in some facilities freedom of movement within the shelter is also limited, with children having to stay within sight of staff and not free to go in their bedrooms or outside at will. Many shelters and group homes are monitored by cameras 24 hours a day and many of the children we spoke with complained of having no privacy, even when they wanted time alone to cry or think.

Conditions in staff-secure facilities

Conditions of care in staff-secure facilities are institutional and do not consistently provide individualized attention to unaccompanied children in custody. The DUCS staff-secure facilities we visited were more restrictive than DUCS policy indicates. According to the DUCS Manual**,** Section 2.04, staff-secure facilities maintain a heightened level of

security measures such as staff supervision, communication and services to control problem behavior and prevent runaways. The DUCS Manual emphasizes that while they may have a secure perimeter, they should be distinguishable from secure facilities in that they are not equipped internally with major restraining structures (walls, bars, etc.) typically associated with correctional care facilities. However, on our visits we observed that some staff-secure facilities are more jail-like than the DUCS Manual permits.

The Vincennes staff-secure program was indistinguishable physically form the secure part of the facility except that children were able to have some limited personal items on the walls of their rooms or cells and have some canteen privileges. (DUCS has since terminated it agreement with Vincennes for staff-secure placements but continues with secure and therapeutic treatment programs). Even facilities that are less secure than Vincennes, and that were not designed as juvenile correctional facilities, were stark and barren, with concrete walls and almost no natural light. At the Southwest Key (Mesa) facility the bedrooms have no natural light at all. The majority of the beds were located in one large gymnasium-like room. The entire facility is surrounded by a high chain link fence, and the outdoor recreation area is concrete with no grass or trees within view.

Conditions in secure facilities

Children held in secure facilities reside in a wholly jail-like environment with little access to individualized or therapeutic services. Section 2.05 of the DUCS Manual states that caregivers must provide secure care while promoting children's safety and well-being. The DUCS Manual further states that the secure care facility should be a "full-service provider tailored to address the individual needs and underlying behavior necessitating the secure placement." Such facilities should have a "heightened level of staff supervision, communication and services to control problem behavior."[253]

Secure facilities, and some staff-secure facilities, are built around an enforcement model and tend to focus on protection of the staff, rather than on the needs of the children. While they exist, rehabilitation and mental health treatment are not prioritized. Secure facilities are usually located within larger juvenile correctional centers or are laid out like prisons in which children have little personal space, recreation or freedom of movement. The children we met with described these places as cold, harsh and depressing. Children at Vincennes sleep in prison-like cells that open into a common area. Florescent lights are kept on all night in order to facilitate the staff's ability to conduct 15-minute head counts. This practice is inconsistent with the DUCS Manual, and interferes with the children's sleep patterns. Many of the children we met in secure facilities complained that it was difficult to sleep with the lights on and requested sleeping pills.

Staff in these facilities expressed deep concern that many of the children placed with them were there because of mental health issues and required more mental health services than the facility was equipped to provide. At some facilities we heard from children that not only did they not understand why they were at the facility, they did not even receive a facility handbook, a written copy of the rules or a tour of the facility. As a result, children described feeling confused and lost. Many also believed that they were in a jail. Secure facilities are on balance wholly inappropriate for children and fail to address the unique needs of children in custody.

APPENDIX G
MEDICAL AND MENTAL HEALTH CARE

Medical Care

Until October 2007, all medical and mental health care for unaccompanied children was provided by the Division of Immigration Health Services (DIHS), at that time an agency of the Public Health Service that has received considerable negative attention for negligent care in adult detention facilities. Care provided to unaccompanied children under DIHS was uniformly insufficient and representatives of the facilities we visited were virtually unanimous in their criticism of the system. DIHS required facility medical staff to obtain prior approval for all medical care, with the exception of emergency procedures, routine care and the initial medical examination. The system was burdened by delays in obtaining approvals from headquarters for medical services and medications, as well as DUCS payments to outside medical care providers.

In October 2007, DUCS transferred responsibility for medical and mental health care to the Veterans Administration (VA) and services have improved greatly. Although it did not change the way in which pre-approved services are provided on a day-to-day basis, the transfer changed the way in which services requiring authorization are handled at the headquarters level. The agency has brought on a registered nurse who is responsible for reviewing and approving health services for children in custody. This person has the authority to approve non-routine medical care such as surgery or special treatment when necessary. Although most of our visits predated this administrative change, the limited feedback from the facilities visited since the change was extremely positive. For example, officials at the Selma R. Carson Home in Tacoma, Washington, and the Vincennes facility reported in early 2008 that the new VA-administered system is easier to work with, requests for non-routine care are acted upon more quickly and the system as a whole is more transparent. Only time will tell whether this new system will offer long-term improvements, but we commend DUCS for seeking out a new partner given the poor quality of the old system.

The availability and quality of medical and mental health care in DUCS facilities is determined to a large extent by the location of the facility. Children generally receive an initial medical screening within 48 hours of their arrival at a DUCS facility, in accordance with the DUCS Manual. All girls over the age of 10 are administered a pregnancy test and receive appropriate pre-natal care and counseling if they are pregnant. A facility staff member performs an admissions assessment of each child to gain a comprehensive overview of the child's medical history, including mental health, family and immigration status.

In the course of our research we found numerous examples of DUCS facility staff uncovering evidence of abuse and trafficking. However, the medical and mental health intake process does not appear to support the identification of such victims and needs to be redesigned to take into account the unique needs of this population. Many interviewees, including facility staff, indicated that procedures for evaluating medical and mental health issues are insufficient; particularly with regard to a population of children that has a high incidence of rape, abuse and trafficking. Staff acknowledged that the facilities' current procedures often fail to identify children who have suffered such abuses.

Mental Health Care

Mental health care for unaccompanied children must be expanded. Access to mental health care is limited at DUCS facilities throughout the country, particularly in more remote areas, and mental health services are insufficient to meet the significant needs of this particularly traumatized population. There is no uniformity among the facilities with respect to the quality of mental health care provided to the children or the educational requirements for individuals that provide such care. Mental health screenings are generally provided between three and seven days after a child arrives at a DUCS facility, in accordance with Section 3.07 of the DUCS Manual. As follow-up to this initial screening, most facilities reported that they complete a psycho-social and individual service plan for each child within seven to ten days of admission, as required by DUCS. However, while we did not review case files, interviews with staff indicated that

not all children receive adequate mental health screening and individualized service plans. This suspicion is confirmed by the findings in the HHS-OIG report.

Most facilities provide group counseling at least once per week. Group therapy varies across facilities but frequently consists of discussions on anger management and adapting to American culture. In addition, most shelters provide individual counseling once per week if a child is determined to have a need for one-on-one assistance. However, many secure facilities do not provide any counseling as these facilities are run more like correctional institutions than social service institutions. Many facilities do not have on-site mental health specialists. Visiting psychiatrists spend very limited time at the facilities, often as little as a few hours a week, and usually address only the most pressing issues facing the population. Significant improvements in mental health care are necessary to ensure that all children in DUCS custody are provided with individualized service plans, regular one-on-one counseling services and appropriate group therapy.

Since the drafting of this report, DUCS has contracted with mental health service providers to create stronger and more uniform services and training for facility staff. We applaud these efforts and look forward to seeing improved services as a result.

APPENDIX H

INTERNATIONAL MODELS FOR THE TREATMENT OF UNACCOMPANIED CHILDREN SEEKING ASYLUM

Norway

In 2008, almost 1,000 unaccompanied children entered Norway.[254] About 75 percent of unaccompanied children in Norway are male. Most enter the country with traffickers or smugglers.[255] All unaccompanied children in Norway live in specialized group homes for children.[256]

The Norwegian Directorate of Immigration is responsible for both providing care for unaccompanied children and for examining their asylum applications.[257] The agency has clear guidelines to prioritize the processing of applications from unaccompanied minor asylum seekers.[258] It usually takes the Directorate of Immigration about nine months to make a decision in a child's asylum case.[259] However, the country plans to tighten immigration policies in response to a doubling in the number of asylum seekers between 2007 and 2008.[260] It is not known what impact, if any, this will have on the treatment of unaccompanied children.

When unaccompanied children first enter Norway, they are placed in temporary transit housing. After a few days they are transferred to a group home for minors. These group homes are organized by the Directorate of Immigration. No unaccompanied children are placed with foster families. If relatives are found in the country and the agency believes it is in the child's best interest, the Directorate of Immigration tries to reunify the family.[261]

There are cameras and guards in the group homes, which is mainly for the protection of the children. The doors are not locked and the unaccompanied children can leave the premises whenever they want. There is an evening curfew, but children can stay away for weekends if they apply to do so.[262]

Only the unaccompanied children themselves, their guardians and the group home staff can enter the group homes, and everybody who enters must register. Because of these restrictions, Norway has not had many problems with traffickers or smugglers trying to take custody of the children.[263]

Unaccompanied children in Norway do not frequently try to escape from the group homes. If a child does escape, the Directorate of Immigration notifies the police and the police are responsible for locating the child. However, often children return voluntarily after a few weeks because they realize that the shelter provides a place to live and food.[264]

All unaccompanied children, even those between 18 and 20 years of age if they are seeking asylum, are assigned both a guardian and an attorney immediately after entering the system. This is organized by the Norwegian Directorate of Immigration. A nongovernmental organization (NGO) called NOAS[265] supports all asylum seekers in Norway during the asylum application process. Guardians are educated and prepared for their task through special courses organized by the Directorate of Immigration. Guardians fill the role of a parent, helping children where necessary and also orienting them to the neighborhood where they are living. The guardian also accompanies the child to the initial all-day interview at the Directorate of Immigration, which takes place two or three weeks after the child's arrival. The attorney does not accompany the child to this interview. Instead, he or she follows the case from his/her office and has regular meetings with the unaccompanied minor.[266]

If an unaccompanied child has a question concerning the asylum application process, he or she can seek help from both the attorney and the guardian. These individuals can contact the Directorate of Immigration for an answer.[267]

Sweden

In 2008, 1,510 unaccompanied children entered Sweden. About 75 percent of unaccompanied children in Sweden are male and most are between 16 and 18 years of age.[268]

Prior to July 2006, the Swedish Migration Board was responsible for both law enforcement and care of unaccompanied children.[269] This double role presented some difficulties. Since July 2006, the social service department of each *kommun* (municipality)[270] is responsible for accommodation and care of unaccompanied children. The *kommun*

receives financial compensation from the Swedish state.[271]

The Migration Board retains responsibility for enforcement. Special handling officers examine children's asylum applications and contact the Migration Board if an unaccompanied child has questions about financial support and/or returning to the home country. When the asylum application is examined by the Migration Board, the examination also takes the age, health and other circumstances of the unaccompanied child into consideration.[272]

When unaccompanied alien children enter the country, they are brought to temporary housing in one of the four entry-municipalities (see endnote 270). Because of their vulnerability, their application for asylum is prioritized. The unaccompanied children should only stay in the temporary housing for a maximum of one week.[273]

The Migration Board has contracts with many municipalities and decides where to place children. Depending on the number of unaccompanied children a municipality is responsible for, it might place the children in families or in a group home. Placement in families is often difficult because most of the unaccompanied children in Sweden are independent 16- to18-year-old boys who are difficult to place in family homes. As a result, group facilities are more common.[274] The social services department of the municipality examines whether the child has relatives in Sweden with whom the child could live and if the child needs any special care.[275]

Every unaccompanied child in Sweden receives both a guardian and an official legal advisor, usually an attorney. The guardian is responsible for educating the child about his or her rights. The guardian is both a juridical guardian and a custodian of the child. Unfortunately, not all guardians have been specifically trained for their task, so the level of expertise depends on the municipality.[276] Together with the attorney/legal advisor, the guardian assists the child with the asylum application. The legal advisor accompanies the child to the meeting with the officer at the Migration Board who handles the asylum application, and helps the child to complete the application.[277]

The guardian also supports the unaccompanied child with financial, educational, health care and social issues. Unaccompanied children attend public school and receive the same health care as other children. Various NGOs play an important role as well.[278] Red Cross volunteers are responsible for the social contacts of unaccompanied children and orient the children to their neighborhood and places where they can meet other young people their age.[279]

The Migration Board's aim is that the examination process of the asylum application of unaccompanied children should not take longer than three months. However the current average is six months.[280] Improving the quality of the examination process has been a focus of the Swedish Migration Board for the last 10 years. Improvements have been made in the methods for age determination of the applicants, and application interviews are conducted by people specifically trained to interview children.[281]

If unaccompanied children's asylum applications are rejected, the children are only allowed to stay in the group home until they are 18 years old.[282] Unaccompanied children who are approaching their 18th birthday sometimes escape and disappear. However, such disappearances are not frequent. Younger unaccompanied children who are placed in a group home or with a family in the countryside sometimes escape to the city. However, because they know that the municipalities care them for, they usually escape to the group house in the city, and do not just disappear.[283]

Hundreds of unaccompanied children, particularly children from Iraq, are expected to be rejected by the Swedish Migration Board within the next few years. To address this, the Board has started a project to locate the children's fami-

Reunification of refugee families in Sweden

More than a 100 unaccompanied children and teenagers will be sent back to their home countries after their asylum applications are rejected by the Swedish Migration Board. This has led the Migration Board to develop a project to locate the children's parents in their home country. Monica Brendler, a psychotherapist at Save the Children, who works with unaccompanied children, is critical of the project. "Most of them do not have parents to be sent back to and even if they do, the parents are often in a situation that prevents them from taking care of their children." The Board has started to collaborate with local trust lawyers in Iraq, Iran and East Africa. "Most of the youths will probably be sent back even it their parents are not located," says Kjell-Terje Torvik, who is the head of the project.
Sveriges Radio, December 14, 2008: www.sr.se/cgi-bin/ekot/artikel.asp?artikel=2505677

This article has been summarized and translated by the UNHCR Regional Office for Nordic and Baltic Countries: www.unhcr.no/Pdf/baltic_nordic_HL_2008/December_08.pdf

lies in their home country. There is much opposition to this project due to fears that children will be sent back even if their parent is not located or the child has a fear of return to the parent's house. In such cases, the project hopes to permanently place the unaccompanied children in children's homes in Sweden.[284]

Switzerland

Since 2004, the number of unaccompanied children entering Switzerland every year has decreased from 824 to 219.[285] Most of them are males between the ages of 16 and 18.[286]

When children apply for asylum at the border, the Swiss Migration Board interviews them to determine identity and age. Most children undergo the same interview process as adults. Specially trained interviewers are an exception, not a rule. If the Migration Board doubts the information provided, they conduct a radiographic or dental analysis to confirm age. However, these methods are imprecise and controversial.[287]

Unaccompanied children under the age of 12 are usually placed with a host family. In most *cantons,288 children* between 12 and 18 years of age live in special group housing or large centers that are run by either the *canton* or by an NGO under agreement with the *canton*. Centers and group houses provide children with translators.[289]

The *cantons* are responsible for determining whether an unaccompanied child has any relatives in Switzerland. Children can only be released to parents or legal guardians. If a relative is neither the parent nor the legal guardian, an unaccompanied minor can only be released to them in special cases. In these cases, the family will receive special coaching and guidance in their new duty.[290]

Regulations regarding the handling of asylum seekers in Switzerland differ by *canton.* Each *canton* is required by the code of civil law to provide unaccompanied children with a guardian. Unaccompanied children also receive legal support from a legal guardian or advisor during the asylum application process.[291]

Up to the age of 16, unaccompanied children attend Swiss public school. Public school is only mandatory up to the age of 16 in Switzerland, so educational programming for unaccompanied children between 16 and 18 years of age varies. Some centers and group homes for unaccompanied children have internal schools and others do not. Regardless, the group homes and centers are also responsible for providing the children with language lessons (German, French or Italian, depending on where in Switzerland the facility is located).[292]

As soon as the unaccompanied children enter Switzerland, they automatically receive the same basic health insurance that all Swiss residents have. The center or group home for unaccompanied children provides the children with health care.[293]

In Switzerland, no unaccompanied child under 15 can be detained during the examination process of the asylum application. However, if an unaccompanied child between the ages of 15 and 18 commits a criminal act, including disappearing and being caught, he or she could be detained.[294]

Information in this section was compiled through interviews with the following:

Norway

Norwegian Directorate of Immigration, Special Department for Minors

UNHCR Regional Office for Baltic and Nordic Countries

Sweden

Swedish Migration Board

Swedish Red Cross

UNHCR Regional Office for Baltic and Nordic Countries

Switzerland

SFH (Swiss Refugee Council)

AOZ (Asylum Organization Zurich)

And from the following resources

Child Rights Network Switzerland and Swiss Refugee Council, *Kinderrechte im Asylbereich* (Children's rights in asylum policy), 2007.

European Network of Masters in Children's Rights, Save the Children Sweden and Separated Children in Europe Programme, *Conference Report–Focus on Children in Migration*, 2007.

Inter-Agency (UNHCR Refworld), *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, 2004.

International detention coalition, *Children in Immigration Detention*, 2007.

Jesuit Refugee Service, *Alternatives to detention of asylum seekers*, 2008.

UN General Assembly (UNHCR Refworld), *Protection and assistance to unaccompanied and separated refugee children: Report of the Secretary-General*, 2001.

UNHCR, *UNHCR Guidelines on Determining the best Interests of the Child,* 2008.

APPENDIX I

FLORES SETTLEMENT

Nationwide settlement regulating INS treatment of detained minors: Flores v. Ashcroft.

Center for Human Rights & Constitutional Law

***Flores v. Meese*: Final Text of Settlement Establishing Minimum Standards and Conditions for Housing and Release of Juveniles in INS Custody**

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Attorneys for Defendants

Additional counsel listed next page

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, et al., Case No. CV 85-4544-RJK(Px)

Plaintiffs, Stipulated Settlement) Agreement-vs-JANET RENO, Attorney General)of the United States, et al.,

Defendants.

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STIPULATED SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs have filed this action against Defendants, challenging, *inter alia*, the constitutionality of Defendants' policies, practices and regulations regarding the detention and release of unaccompanied minors taken into the custody of the Immigration and Naturalization Service (INS) in the Western Region; and

WHEREAS, the district court has certified this case as a class action on behalf of all minors apprehended by the INS in the Western Region of the United States; and

WHEREAS, this litigation has been pending for nine (9) years, all parties have conducted extensive discovery, and the United States Supreme Court has upheld the constitutionality of the challenged INS regulations on their face and has remanded for further proceedings consistent with its opinion; and

WHEREAS, on November 30, 1987, the parties reached a settlement agreement requiring that minors in INS custody in the Western Region be housed in facilities meeting certain standards, including state standards for the housing and care of dependent children, and Plaintiffs' motion to enforce compliance with that settlement is currently pending before the court; and

WHEREAS, a trial in this case would be complex, lengthy and costly to all parties concerned, and the decision of the district court would be subject to appeal by the losing parties with the final outcome uncertain; and

WHEREAS, the parties believe that settlement of this action is in their best interests and best serves the interests of justice by avoiding a complex, lengthy and costly trial, and subsequent appeals which could last several more years;

NOW, THEREFORE, Plaintiffs and Defendants enter into this Stipulated Settlement Agreement (the Agreement), stipulate that it constitutes a full and complete resolution of the issues raised in this action, and agree to the following:

I DEFINITIONS

As used throughout this Agreement the following definitions shall apply:

1. The term "party" or "parties" shall apply to Defendants and Plaintiffs. As the term applies to Defendants, it shall include their agents, employees, contractors and/or successors in office. As the term applies to Plaintiffs, it shall include all class members.

2. The term "Plaintiff" or "Plaintiffs" shall apply to the named plaintiffs and all class members.

3. The term "class member" or "class members" shall apply to the persons defined in Paragraph 10 below.

4. The term "minor" shall apply to any person under the age of eighteen (18) years who is detained in the legal custody of the INS. This Agreement shall cease to apply to any person who has reached the age of eighteen years. The term "minor" shall not include an emancipated minor or an individual who has been incarcerated due to a conviction for a criminal offense as an adult. The INS shall treat all persons who are under the age of eighteen but not included within the definition of "minor" as adults for all purposes, including release on bond or recognizance.

5. The term "emancipated minor" shall refer to any minor who has been determined to be emancipated in an appropriate state judicial proceeding.

6. The term "licensed program" shall refer to any program, agency or organization that is licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors. A licensed program must also meet those standards for licensed programs set forth in Exhibit 1 attached hereto. All homes and facilities operated by licensed programs, including facilities for special needs minors, shall be non-secure as required under state law; provided, however, that a facility for special needs minors may maintain that level of security permitted under state law which is necessary for the protection of a minor or others in appropriate circumstances, *e.g.*, cases in which a minor has drug or alcohol problems or is mentally ill. The INS shall make reasonable efforts to provide licensed placements in those geographical areas where the majority of minors are apprehended, such as southern California, southeast Texas, southern Florida and the northeast corridor.

7. The term "special needs minor" shall refer to a minor whose mental and/or physical condition requires special services and treatment by staff. A minor may have special needs due to drug or alcohol abuse, serious emotional disturbance, mental illness or retardation, or a physical condition or chronic illness that requires special services or treatment. A minor who has suffered serious neglect or abuse may be considered a minor with special needs if the minor requires special services or treatment as a result of the neglect or abuse. The INS shall assess minors to determine if they have special needs and, if so, shall place such minors, whenever possible, in licensed programs in which the INS places children without special needs, but which provide services and treatment for such special needs.

8. The term "medium security facility" shall refer to a facility that is operated by a program, agency or organization licensed by an appropriate State agency and that meets those standards set forth in Exhibit 1 attached hereto. A medium security facility is designed for minors who require close supervision but do not need placement in juvenile correctional facilities. It provides 24-hour awake supervision, custody, care, and treatment. It maintains stricter security measures, such as intensive staff supervision, than a facility operated by a licensed program in order to control problem behavior and to prevent escape. Such a facility may have a secure perimeter but shall not be equipped internally with major restraining construction or procedures typically associated with correctional facilities.

II SCOPE OF SETTLEMENT, EFFECTIVE DATE, AND PUBLICATION

9. This Agreement sets out nationwide policy for the detention, release, and treatment of minors in the custody of the INS and shall supersede all previous INS policies that are inconsistent with the terms of this Agreement. This Agreement shall become effective upon final court approval, except that those terms of this Agreement regarding placement pursuant to Paragraph 19 shall not become effective until all contracts under the Program Announcement referenced in Paragraph 20 below are negotiated and implemented. The INS shall make its best efforts to execute these contracts

within 120 days after the court's final approval of this Agreement. However, the INS will make reasonable efforts to comply with Paragraph 19 prior to full implementation of all such contracts. Once all contracts under the Program Announcement referenced in Paragraph 20 have been implemented, this Agreement shall supersede the agreement entitled Memorandum of Understanding Re Compromise of Class Action: Conditions of Detention (hereinafter "MOU"), entered into by and between the Plaintiffs and Defendants and filed with the United States District Court for the Central District of California on November 30, 1987, and the MOU shall thereafter be null and void. However, Plaintiffs shall not institute any legal action for enforcement of the MOU for a six (6) month period commencing with the final district court approval of this Agreement, except that Plaintiffs may institute enforcement proceedings if the Defendants have engaged in serious violations of the MOU that have caused irreparable harm to a class member for which injunctive relief would be appropriate. Within 120 days of the final district court approval of this Agreement, the INS shall initiate action to publish the relevant and substantive terms of this Agreement as a Service regulation. The final regulations shall not be inconsistent with the terms of this Agreement. Within 30 days of final court approval of this Agreement, the INS shall distribute to all INS field offices and sub-offices instructions regarding the processing, treatment, and placement of juveniles. Those instructions shall include, but may not be limited to, the provisions summarizing the terms of the Agreement attached hereto as Exhibit 2.

III CLASS DEFINITION

10. The certified class in this action shall be defined as follows: "All minors who are detained in the legal custody of the INS."

IV STATEMENTS OF GENERAL APPLICABILITY

11. The INS treats, and shall continue to treat, all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors. The INS shall place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with its interests to ensure the minor's timely appearance before the INS and the immigration courts and to protect the minor's well-being and that of others. Nothing herein shall require the INS to release a minor to any person or agency whom the INS has reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.

V PROCEDURES AND TEMPORARY PLACEMENT FOLLOWING ARREST

12. Whenever the INS takes a minor into custody, it shall expeditiously process the minor and shall provide the minor with a notice of rights, including the right to a bond redetermination hearing if applicable. Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS's concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor. The INS will segregate unaccompanied minors from unrelated adults. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours. If there is no one to whom the INS may release the minor pursuant to Paragraph 14, and no appropriate licensed program is immediately available for placement pursuant to Paragraph 19, the minor may be placed in an INS detention facility, or other INS-contracted facility, having separate accommodations for minors, or a State or county juvenile detention facility. However, minors shall be separated from delinquent offenders. Every effort must be taken to ensure that the safety and well-being of the minors detained in these facilities are satisfactorily provided for by the staff. The INS will transfer a minor from a placement under this paragraph to a placement under Paragraph 19 (i) within three (3) days, if the minor was apprehended in an INS district in which a licensed program is located and has space available; or (ii) within five (5) days in all other cases; except:

1. as otherwise provided under Paragraph 13 or Paragraph 21;

2. as otherwise required by any court decree or court-approved settlement;

3. in the event of an emergency or influx of minors into the United States, in which case the INS shall place all minors pursuant to Paragraph 19 as expeditiously as possible; or

4. where individuals must be transported from remote areas for processing or speak unusual languages such that the INS must locate interpreters in order to complete processing, in which case the INS shall place all such minors pursuant to Paragraph 19 within five (5) business days.

B. For purposes of this Paragraph, the term "emergency" shall be defined as any act or event that prevents the placement of minors pursuant to Paragraph 19 within the time frame provided. Such emergencies include natural disasters (e.g., earthquakes, hurricanes, etc.), facility fires, civil disturbances, and medical emergencies (e.g., a chicken pox epidemic among a group of minors). The term "influx of minors into the United States" shall be defined as those circumstances where the INS has, at any given time, more than 130 minors eligible for placement in a licensed program under Paragraph 19, including those who have been so placed or are awaiting such placement.

C. In preparation for an "emergency" or "influx," as described in Subparagraph B, the INS shall have a written plan that describes the reasonable efforts that it will take to place all minors as expeditiously as possible. This plan shall include the identification of 80 beds that are potentially available for INS placements and that are licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children. The plan, without identification of the additional beds available, is attached as Exhibit 3. The INS shall not be obligated to fund these additional beds on an ongoing basis. The INS shall update this listing of additional beds on a quarterly basis and provide Plaintiffs' counsel with a copy of this listing.

13. If a reasonable person would conclude that an alien detained by the INS is an adult despite his claims to be a minor, the INS shall treat the person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require the alien to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor in accordance with this Agreement for all purposes.

VI GENERAL POLICY FAVORING RELEASE

14. Where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS shall release a minor from its custody without unnecessary delay, in the following order of preference, to:

A. a parent;

B. a legal guardian;

C. an adult relative (brother, sister, aunt, uncle, or grandparent);

D. an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer or (ii) such other document(s) that establish(es) to the satisfaction of the INS, in its discretion, the affiant's paternity or guardianship;

E. a licensed program willing to accept legal custody; or

F. an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.

15. Before a minor is released from INS custody pursuant to Paragraph 14 above, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:

A. provide for the minor's physical, mental, and financial well-being;

B. ensure the minor's presence at all future proceedings before the INS and the immigration court;

C. notify the INS of any change of address within five (5) days following a move;

D. in the case of custodians other than parents or legal guardians, not transfer custody of the minor to another party without the prior written permission of the District Director;

E. notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and

F. if dependency proceedings involving the minor are initiated, notify the INS of the initiation of a such proceedings and the dependency court of any immigration proceedings pending against the minor.

In the event of an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 72 hours. For purposes of this Paragraph, examples of an "emergency" shall include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian in writing seeks written permission for a transfer, the District Director shall promptly respond to the request.

16. The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement required under Paragraph 15. The INS, however, shall not terminate the custody arrangements for minor violations of that part of the custodial agreement outlined at Subparagraph 15.C above.

17. A positive suitability assessment may be required prior to release to any individual or program pursuant to Paragraph 14. A suitability assessment may include such components as an investigation of the living conditions in which the minor would be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. Any such assessment should also take into consideration the wishes and concerns of the minor.

18. Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, shall make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor pursuant to Paragraph 14 above. Such efforts at family reunification shall continue so long as the minor is in INS custody.

VII INS CUSTODY

19. In any case in which the INS does not release a minor pursuant to Paragraph 14, the minor shall remain in INS legal custody. Except as provided in Paragraphs 12 or 21, such minor shall be placed temporarily in a licensed program until such time as release can be effected in accordance with Paragraph 14 above or until the minor's immigration proceedings are concluded, whichever occurs earlier. All minors placed in such a licensed program remain in the legal custody of the INS and may only be transferred or released under the authority of the INS; provided, however, that in the event of an emergency a licensed program may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 8 hours.

20. Within 60 days of final court approval of this Agreement, the INS shall authorize the United States Department of Justice Community Relations Service to publish in the Commerce Business Daily and/or the Federal Register a Program Announcement to solicit proposals for the care of 100 minors in licensed programs.

21. A minor may be held in or transferred to a suitable State or county juvenile detention facility or a secure INS detention facility, or INS-contracted facility, having separate accommodations for minors whenever the District Director or Chief Patrol Agent determines that the minor:

A. has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act; provided, however, that this provision shall not apply to any minor whose offense(s) fall(s) within either of the following categories:

i. Isolated offenses that (1) were not within a pattern or practice of criminal activity and (2) did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc. This list is not exhaustive.);

ii. Petty offenses, which are not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc. This list is not exhaustive.);

As used in this paragraph, "chargeable" means that the INS has probable cause to believe that the individual has committed a specified offense;

B. has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer;

C. has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc. This list is not exhaustive.);

D. is an escape-risk; or

E. must be held in a secure facility for his or her own safety, such as when the INS has reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

22. The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:

A. the minor is currently under a final order of deportation or exclusion;

B. the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of deportation or exclusion;

C. the minor has previously absconded or attempted to abscond from INS custody.

23. The INS will not place a minor in a secure facility pursuant to Paragraph 21 if there are less restrictive alternatives that are available and appropriate in the circumstances, such as transfer to (a) a medium security facility which would provide intensive staff supervision and counseling services or (b) another licensed program. All determinations to place a minor in a secure facility will be reviewed and approved by the regional juvenile coordinator.

24A. A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing.

B. Any minor who disagrees with the INS's determination to place that minor in a particular type of facility, or who asserts that the licensed program in which he or she has been placed does not comply with the standards set forth in Exhibit 1 attached hereto, may seek judicial review in any United States District Court with jurisdiction and venue over the matter to challenge that placement determination or to allege noncompliance with the standards set forth in Exhibit 1. In such an action, the United States District Court shall be limited to entering an order solely affecting the individual claims of the minor bringing the action.

C. In order to permit judicial review of Defendants' placement decisions as provided in this Agreement, Defendants shall provide minors not placed in licensed programs with a notice of the reasons for housing the minor in a detention or medium security facility. With respect to placement decisions reviewed under this paragraph, the standard of review for the INS's exercise of its discretion shall be the abuse of discretion standard of review. With respect to all other matters for which this paragraph provides judicial review, the standard of review shall be *de novo* review.

D. The INS shall promptly provide each minor not released with (a) INS Form I-770; (b) an explanation of the right of judicial review as set out in Exhibit 6, and (c) the list of free legal services providers compiled pursuant to INS regulation (unless previously given to the minor).

E. Exhausting the procedures established in Paragraph 37 of this Agreement shall not be a precondition to the bringing of an action under this paragraph in any United District Court. Prior to initiating any such action, however, the minor and/or the minors' attorney shall confer telephonically or in person with the United States Attorney's office in the judicial district where the action is to be filed, in an effort to informally resolve the minor's complaints without the need of federal court intervention.

VIII TRANSPORTATION OF MINORS

25. Unaccompanied minors arrested or taken into custody by the INS should not be transported by the INS in vehicles with detained adults except

A. when being transported from the place of arrest or apprehension to an INS office, or

B. where separate transportation would be otherwise impractical.

When transported together pursuant to Clause (B) minors shall be separated from adults. The INS shall take necessary precautions for the protection of the well-being of such minors when transported with adults.

26. The INS shall assist without undue delay in making transportation arrangements to the INS office nearest the location of the person or facility to whom a minor is to be released pursuant to Paragraph 14. The INS may, in its discretion, provide transportation to minors.

IX TRANSFER OF MINORS

27. Whenever a minor is transferred from one placement to another, the minor shall be transferred with all of his or her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions will be shipped to the minor in a timely manner. No minor who is represented by counsel shall be transferred without advance notice to such counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived such notice, in which cases notice shall be provided to counsel within 24 hours following transfer.

X MONITORING AND REPORTS

28A. An INS Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation shall monitor compliance with the terms of this Agreement and shall maintain an up-to-date record of all minors who are placed in proceedings and remain in INS custody for longer than 72 hours. Statistical information on such minors shall be collected weekly from all INS district offices and Border Patrol stations. Statistical information will include at least the following: (1) biographical information such as each minor's name, date of birth, and country of birth, (2) date placed in INS custody, (3) each date placed, removed or released, (4) to whom and where placed, transferred, removed or released, (5) immigration status, and (6) hearing dates. The INS, through the Juvenile Coordinator, shall also collect information regarding the reasons for every placement of a minor in a detention facility or medium security facility.

B. Should Plaintiffs' counsel have reasonable cause to believe that a minor in INS legal custody should have been released pursuant to Paragraph 14, Plaintiffs' counsel may contact the Juvenile Coordinator to request that the Coordinator investigate the case and inform Plaintiffs' counsel of the reasons why the minor has not been released.

29. On a semi-annual basis, until two years after the court determines, pursuant to Paragraph 31, that the INS has achieved substantial compliance with the terms of this Agreement, the INS shall provide to Plaintiffs' counsel the information collected pursuant to Paragraph 28, as permitted by law, and each INS policy or instruction issued to INS employees regarding the implementation of this Agreement. In addition, Plaintiffs' counsel shall have the opportunity to submit questions, on a semi-annual basis, to the Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation with regard to the implementation of this Agreement and the information provided to Plaintiffs' counsel during the preceding six-month period pursuant to Paragraph 28. Plaintiffs' counsel shall present such questions either orally or in writing, at the option of the Juvenile Coordinator. The Juvenile Coordinator shall furnish re-

sponses, either orally or in writing at the option of Plaintiffs' counsel, within 30 days of receipt.

30. On an annual basis, commencing one year after final court approval of this Agreement, the INS Juvenile Coordinator shall review, assess, and report to the court regarding compliance with the terms of this Agreement. The Coordinator shall file these reports with the court and provide copies to the parties, including the final report referenced in Paragraph 35, so that they can submit comments on the report to the court. In each report, the Coordinator shall state to the court whether or not the INS is in substantial compliance with the terms of this Agreement, and, if the INS is not in substantial compliance, explain the reasons for the lack of compliance. The Coordinator shall continue to report on an annual basis until three years after the court determines that the INS has achieved substantial compliance with the terms of this Agreement.

31. One year after the court's approval of this Agreement, the Defendants may ask the court to determine whether the INS has achieved substantial compliance with the terms of this Agreement.

XI ATTORNEY-CLIENT VISITS

32. A. Plaintiffs' counsel are entitled to attorney-client visits with class members even though they may not have the names of class members who are housed at a particular location. All visits shall occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff shall provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit any such notice of appearance to representation of the minor in connection with this Agreement. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.

B. Every six months, Plaintiffs' counsel shall provide the INS with a list of those attorneys who may make such attorney-client visits, as Plaintiffs' counsel, to minors during the following six month period. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law in Los Angeles, California or the National Center for Youth Law in San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

C. Agreements for the placement of minor in non-INS facilities shall permit attorney-client visits, including by class counsel in this case.

D. Nothing in Paragraph 32 shall affect a minor's right to refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

XII FACILITY VISITS

33. In addition to the attorney-client visits permitted pursuant to Paragraph 32, Plaintiffs' counsel may request access to any licensed program's facility in which a minor has been placed pursuant to Paragraph 19 or to any medium security facility or detention facility in which a minor has been placed pursuant to Paragraphs 21 or 23. Plaintiffs' counsel shall submit a request to visit a facility under this paragraph to the INS district juvenile coordinator who will provide reasonable assistance to Plaintiffs' counsel by conveying the request to the facility's staff and coordinating the visit. The rules and procedures to be followed in connection with any visit approved by a facility under this paragraph are set forth in Exhibit 4 attached, except as may be otherwise agreed by Plaintiffs' counsel and the facility's staff. In all visits to any facility pursuant to this Agreement, Plaintiffs' counsel and their associated experts shall treat minors and staff with courtesy and dignity and shall not disrupt the normal functioning of the facility.

XIII TRAINING

34. Within 120 days of final court approval of this Agreement, the INS shall provide appropriate guidance and training for designated INS employees regarding the terms of this Agreement. The INS shall develop written and/or audio or video materials for such training. Copies of such written and/or audio or video training materials shall be made available

to Plaintiffs' counsel when such training materials are sent to the field, or to the extent practicable, prior to that time.

XIV DISMISSAL

35. After the court has determined that the INS is in substantial compliance with this Agreement and the Coordinator has filed a final report, the court, without further notice, shall dismiss this action. Until such dismissal, the court shall retain jurisdiction over this action.

XV RESERVATION OF RIGHTS

36. Nothing in this agreement shall limit the rights, if any, of individual class members to preserve issues for judicial review in the appeal of an individual case or for class members to exercise any independent rights they may otherwise have.

XVI NOTICE AND DISPUTE RESOLUTION

37. This paragraph provides for the enforcement, in this District Court, of the provisions of this Agreement except for claims brought under Paragraph 24. The parties shall meet telephonically or in person to discuss a complete or partial repudiation of this Agreement or any alleged non-compliance with the terms of the Agreement, prior to bringing any individual or class action to enforce this Agreement. Notice of a claim that defendants have violated the terms of this Agreement shall be served on plaintiffs addressed to:

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Carlos Holguín
Peter A. Schey
256 South Occidental Boulevard
Los Angeles, CA 90057

NATIONAL CENTER FOR YOUTH LAW
Alice Bussiere
James Morales
114 Sansome Street, Suite 905
San Francisco, CA 94104

and on Defendants addressed to:

Michael Johnson
Assistant United States Attorney
300 N. Los Angeles St., Rm. 7516
Los Angeles, CA 90012

Allen Hausman
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, DC 20044

XVII PUBLICITY

38. Plaintiffs and Defendants shall hold a joint press conference to announce this Agreement. The INS shall send copies of this Agreement to social service and voluntary agencies agreed upon by the parties, as set forth in Exhibit 5 attached. The parties shall pursue such other public dissemination of information regarding this Agreement as the parties shall agree.

XVIII ATTORNEYS FEES AND COSTS

39. Within 60 days of final court approval of this Agreement, Defendants shall pay to Plaintiffs the total sum of $_____, in full settlement of all attorneys' fees and costs in this case.

XIX TERMINATION

40. All terms of this Agreement shall terminate the earlier of five years from the date of final court approval of this Agreement or three years after the court determines that the INS is in substantial compliance with the Agreement, except the following: the INS shall continue to house the general population of minors in INS custody in facilities that are state-licensed for the care of dependent minors.

XX REPRESENTATIONS AND WARRANTY

41. Counsel for the respective parties, on behalf of themselves and their clients, represent that they know of nothing in this Agreement that exceeds the legal authority of the parties or is in violation of any law. Defendants' counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Attorney General, the United States Department of Justice, and the Immigration and Naturalization Service, and acknowledge that Plaintiffs enter into this Agreement in reliance on such representation. Plaintiffs' counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Plaintiffs, and acknowledge that Defendants enter into this Agreement in reliance on such representation. The undersigned, by their signatures on behalf of the Plaintiffs and Defendants, warrant that upon execution of this Agreement in their representative capacities, their principals, agents, and successors of such principals and agents shall be fully and unequivocally bound hereunder to the full extent authorized by law.

/ / /

EXHIBIT 1

Minimum Standards for Licensed Programs

A. Licensed programs shall comply with all applicable state child welfare laws and regulations and all state and local building, fire, health and safety codes and shall provide or arrange for the following services for each minor in its care:

1. Proper physical care and maintenance, including suitable living accommodations, food, appropriate clothing, and personal grooming items.

2. Appropriate routine medical and dental care, family planning services, and emergency health care services, including a complete medical examination (including screening for infectious disease) within 48 hours of admission, excluding weekends and holidays, unless the minor was recently examined at another facility; appropriate immunizations in accordance with the U.S. Public Health Service (PHS), Center for Disease Control; administration of prescribed medication and special diets; appropriate mental health interventions when necessary.

3. An individualized needs assessment which shall include: (a) various initial intake forms; (b) essential data relating to the identification and history of the minor and family; (c) identification of the minors' special needs including any specific problem(s) which appear to require immediate intervention; (d) an educational assessment and plan; (e) an assessment of family relationships and interaction with adults, peers and authority figures; (f) a statement of religious preference and practice; (g) an assessment of the minor's personal goals, strengths and weaknesses; and (h) identifying information regarding immediate family members, other relatives, godparents or friends who may be residing in the United States and may be able to assist in family reunification.

4. Educational services appropriate to the minor's level of development, and communication skills in a structured classroom setting, Monday through Friday, which concentrates primarily on the development of basic academic competencies and secondarily on English Language Training (ELT). The educational program shall

include instruction and educational and other reading materials in such languages as needed. Basic academic areas should include Science, Social Studies, Math, Reading, Writing and Physical Education. The program shall provide minors with appropriate reading materials in languages other than English for use during the minor's leisure time.

5. Activities according to a recreation and leisure time plan which shall include daily outdoor activity, weather permitting, at least one hour per day of large muscle activity and one hour per day of structured leisure time activities (this should not include time spent watching television). Activities should be increased to a total of three hours on days when school is not in session.

6. At least one (1) individual counseling session per week conducted by trained social work staff with the specific objectives of reviewing the minor's progress, establishing new short term objectives, and addressing both the developmental and crisis-related needs of each minor.

7. Group counseling sessions at least twice a week. This is usually an informal process and takes place with all the minors present. It is a time when new minors are given the opportunity to get acquainted with the staff, other children, and the rules of the program. It is an open forum where everyone gets a chance to speak. Daily program management is discussed and decisions are made about recreational activities, etc. It is a time for staff and minors to discuss whatever is on their minds and to resolve problems.

8. Acculturation and adaptation services which include information regarding the development of social and inter-personal skills which contribute to those abilities necessary to live independently and responsibly.

9. Upon admission, a comprehensive orientation regarding program intent, services, rules (written and verbal), expectations and the availability of legal assistance.

10. Whenever possible, access to religious services of the minor's choice.

11. Visitation and contact with family members (regardless of their immigration status) which is structured to encourage such visitation. The staff shall respect the minor's privacy while reasonably preventing the unauthorized release of the minor.

12. A reasonable right to privacy, which shall include the right to: (a) wear his or her own clothes, when available; (b) retain a private space in the residential facility, group or foster home for the storage of personal belongings; (c) talk privately on the phone, as permitted by the house rules and regulations; (d) visit privately with guests, as permitted by the house rules and regulations; and (e) receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband.

13. Family reunification services designed to identify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for the release of the minor.

14. Legal services information regarding the availability of free legal assistance, the right to be represented by counsel at no expense to the government, the right to a deportation or exclusion hearing before an immigration judge, the right to apply for political asylum or to request voluntary departure in lieu of deportation.

B. Service delivery is to be accomplished in a manner which is sensitive to the age, culture, native language and the complex needs of each minor.

C. Program rules and discipline standards shall be formulated with consideration for the range of ages and maturity in the program and shall be culturally sensitive to the needs of alien minors. Minors shall not be subjected to corporal punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping. Any sanctions employed shall not: (1) adversely affect either a minor's health, or physical or psychological well-being; or (2) deny minors regular meals, sufficient sleep, exercise, medical care, correspondence privileges, or legal assistance.

D. A comprehensive and realistic individual plan for the care of each minor must be developed in accordance with the minor's needs as determined by the individualized need assessment. Individual plans shall be implemented and closely coordinated through an operative case management system.

E. Programs shall develop, maintain and safeguard individual client case records. Agencies and organizations are required to develop a system of accountability which preserves the confidentiality of client information and protects the records from unauthorized use or disclosure.

F. Programs shall maintain adequate records and make regular reports as required by the INS that permit the INS to monitor and enforce this order and other requirements and standards as the INS may determine are in the best interests of the minors.

Exhibit 2

Instructions to Service Officers re:

Processing, Treatment, and Placement of Minors

These instructions are to advise Service officers of INS policy regarding the way in which minors in INS custody are processed, housed and released. These instructions are applicable nationwide and supersede all prior inconsistent instructions regarding minors.

(a) Minors. A minor is a person under the age of eighteen years. However, individuals who have been "emancipated" by a state court or convicted and incarcerated for a criminal offense as an adult are not considered minors. Such individuals must be treated as adults for all purposes, including confinement and release on bond.

Similarly, if a reasonable person would conclude that an individual is an adult despite his claims to be a minor, the INS shall treat such person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require such an individual to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor for all purposes.

(b) General policy. The INS treats and shall continued to treat minors with dignity, respect and special concern for their particular vulnerability. INS policy is to place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with the need to ensure the minor's timely appearance and to protect the minor's well-being and that of others. INS officers are not required to release a minor to any person or agency whom they have reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.

(c) Processing. The INS will expeditiously process minors and will provide them a Form I-770 notice of rights, including the right to a bond redetermination hearing, if applicable.

Following arrest, the INS will hold minors in a facility that is safe and sanitary and that is consistent with the INS's concern for the particular vulnerability of minors. Such facilities will have access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor. The INS will separate unaccompanied minors from unrelated adults whenever possible. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours.

If the minor cannot be immediately released, and no licensed program (described below) is available to care for him, he should be placed in an INS or INS-contract facility that has separate accommodations for minors, or in a State or county juvenile detention facility that separates minors in INS custody from delinquent offenders. The INS will make every effort to ensure the safety and well-being of juveniles placed in these facilities.

(d) Release. The INS will release minors from its custody without unnecessary delay, unless detention of a juvenile is required to secure her timely appearance or to ensure the minor's safety or that of others. Minors shall be released in the following order of preference, to:

(i) a parent;

(ii) a legal guardian;

(iii) an adult relative (brother, sister, aunt, uncle, or grandparent);

(iv) an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer, or (ii) such other documentation that establishes to the satisfaction of the INS, in its discretion, that the individual designating the individual or entity as the minor's custodian is in fact the minor's parent or guardian;

(v) a state-licensed juvenile shelter, group home, or foster home willing to accept legal custody; or

(vi) an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.

(e) Certification of custodian. Before a minor is released, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:

(i) provide for the minor's physical, mental, and financial well-being;

(ii) ensure the minor's presence at all future proceedings before the INS and the immigration court;

(iii) notify the INS of any change of address within five (5) days following a move;

(iv) if the custodian is not a parent or legal guardian, not transfer custody of the minor to another party without the prior written permission of the District Director, except in the event of an emergency;

(v) notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and

(vi) if dependency proceedings involving the minor are initiated, notify the INS of the initiation of a such proceedings and the dependency court of any deportation proceedings pending against the minor.

In an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS, but must notify the INS of the transfer as soon as is practicable, and in all cases within 72 hours. Examples of an "emergency" include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian seeks written permission for a transfer, the District Director shall promptly respond to the request.

The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement. However, custody arrangements will not be terminated for minor violations of the custodian's obligation to notify the INS of any change of address within five days following a move.

(f) Suitability assessment. An INS officer may require a positive suitability assessment prior to releasing a minor to any individual or program. A suitability assessment may include an investigation of the living conditions in which the minor is to be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. The assessment will also take into consideration the wishes and concerns of the minor.

(g) Family reunification. Upon taking a minor into custody, the INS, or the licensed program in which the minor is

placed, will promptly attempt to reunite the minor with his or her family to permit the release of the minor under Paragraph (d) above. Such efforts at family reunification will continue so long as the minor is in INS or licensed program custody and will be recorded by the INS or the licensed program in which the minor is placed.

(h) Placement in licensed programs. A "licensed program" is any program, agency or organization licensed by an appropriate state agency to provide residential group, or foster care services for dependent children, including a program operating group homes, foster homes or facilities for special needs minors. Exhibit 1 of the Flores v. Reno Settlement Agreement describes the standards required of licensed programs. Juveniles who remain in INS custody must be placed in a licensed program within three days if the minor was apprehended in an INS district in which a licensed program is located and has space available, or within five days in all other cases, except when:

(i) the minor is an escape risk or delinquent, as defined in Paragraph (l) below;

(ii) a court decree or court-approved settlement requires otherwise;

(iii) an emergency or influx of minors into the United States prevents compliance, in which case all minors should be placed in licensed programs as expeditiously as possible; or

(iv) where the minor must be transported from remote areas for processing or speaks an unusual language such that a special interpreter is required to process the minor, in which case the minor must be placed in a licensed program within five business days.

(i) Secure and supervised detention. A minor may be held in or transferred to a State or county juvenile detention facility or in a secure INS facility or INS-contracted facility having separate accommodations for minors, whenever the District Director or Chief Patrol Agent determines that the minor -

(i) has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act, unless the minor's offense is

(a) an isolated offense not within a pattern of criminal activity which did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc.); or

(b) a petty offense, which is not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc.);

(ii) has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer;

(iii) has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc.);

(iv) is an escape-risk; or

(v) must be held in a secure facility for his or her own safety, such as when the INS has reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

"Chargeable" means that the INS has probable cause to believe that the individual has committed a specified offense.

The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:

(a) the minor is currently under a final order of deportation or exclusion;

(b) the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of deportation or exclusion;

(c) the minor has previously absconded or attempted to abscond from INS custody.

The INS will not place a minor in a State or county juvenile detention facility, secure INS detention facility, or secure INS-contracted facility if less restrictive alternatives are available and appropriate in the circumstances, such as transfer to a medium security facility that provides intensive staff supervision and counseling services or transfer to another licensed program. All determinations to place a minor in a secure facility must be reviewed and approved by the regional Juvenile Coordinator.

(j) Notice of right to bond redetermination and judicial review of placement. A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case in which he either affirmatively requests, or fails to request or refuse, such a hearing on the Notice of Custody Determination. A juvenile who is not released or placed in a licensed placement shall be provided (1) a written explanation of the right of judicial review in the form attached, and (2) the list of free legal services providers compiled pursuant to 8 C.F.R. § 292a.

(k) Transportation and transfer. Unaccompanied minors should not be transported in vehicles with detained adults except when being transported from the place of arrest or apprehension to an INS office or where separate transportation would be otherwise impractical, in which case minors shall be separated from adults. INS officers shall take all necessary precautions for the protection of minors during transportation with adults.

When a minor is to be released, the INS will assist him or her in making transportation arrangements to the INS office nearest the location of the person or facility to whom a minor is to be released. The Service may, in its discretion, provide transportation to such minors.

Whenever a minor is transferred from one placement to another, she shall be transferred with all of her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions must be shipped to the minor in a timely manner. No minor who is represented by counsel should be transferred without advance notice to counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived notice, in which cases notice must be provided to counsel within 24 hours following transfer.

(l) Periodic reporting. All INS district offices and Border Patrol stations must report to the Juvenile Coordinator statistical information on minors placed in proceedings who remain in INS custody for longer than 72 hours. Information will include: (a) biographical information, including the minor's name, date of birth, and country of birth, (b) date placed in INS custody, (c) each date placed, removed or released, (d) to whom and where placed, transferred, removed or released, (e) immigration status, and (f) hearing dates. The Juvenile Coordinator must also be informed of the reasons for placing a minor in a medium security facility or detention facility as described in paragraph (i).

(m) Attorney-client visits by Plaintiffs' counsel. The INS will permit lawyers for the *Reno v. Flores* plaintiff class to visit minors even though they may not have the names of minors who are housed at a particular location. A list of Plaintiffs' counsel entitled to make attorney-client visits with minors is available from the district Juvenile Coordinator. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law of Los Angeles, California, or the National Center for Youth Law of San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

Visits must occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff must provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit the notice of appearance to

representation of the minor in connection with his placement or treatment during INS custody. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.

A minor may refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

(n) Visits to licensed facilities. In addition to the attorney-client visits, Plaintiffs' counsel may request access to a licensed program's facility (described in paragraph (h)) or to a medium-security facility or detention facility (described in paragraph (i)) in which a minor has been placed. The district juvenile coordinator will convey the request to the facility's staff and coordinate the visit. The rules and procedures to be followed in connection with such visits are set out in Exhibit 4 of the *Flores v. Reno* Settlement Agreement,, unless Plaintiffs' counsel and the facility's staff agree otherwise. In all visits to any facility, Plaintiffs' counsel and their associated experts must treat minors and staff with courtesy and dignity and must not disrupt the normal functioning of the facility.

EXHIBIT 3, Contingency Plan, EXHIBIT 4, Agreement Concerning Facility Visits Under Paragraph 33, Exhibit 5, List of Organizations to Receive Information re: Settlement Agreement and Exhibit 6, Notice of Right to Judicial Review, may be viewed at http://web.centerforhumanrights.net:8080/centerforhumanrights/children/Document.2004-06-18.8124043749

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This report was written by a team of individuals from the Women's Refugee Commission* and the law firm of Orrick, Herrington & Sutcliffe LLP (Orrick): Michelle Brané, director, Detention and Asylum program, Women's Refugee Commission; Emily Butera, program officer, Detention and Asylum program, Women's Refugee Commission; Katharine Crost, partner, Orrick; Rene Kathawala, pro bono counsel, Orrick; Leah Sanzari, partner, Orrick; Amie Davis, associate, Orrick; and Allison Young, associate, Orrick. Research and site visits were conducted by Women's Refugee Commission staff, and attorneys, legal assistants and staff members at Orrick. Thanks also to Sharita Gruberg, program specialist at the Women's Refugee Commission, and to Åsa Kelmeling, volunteer, who researched and wrote the appendix on comparative international practices (Appendix H). The report was edited by Diana Quick, director of communications, Women's Refugee Commission.

The Women's Refugee Commission wishes to acknowledge the enormous pro bono contributions of Orrick in conducting the field work and writing this report. Orrick coordinated and participated in more than 30 site visits, entailing extensive travel, time and expense, as well as providing technical assistance and legal expertise.

The Office of Refugee Resettlement, Division of Unaccompanied Children's Services deserves special acknowledgment for its assistance and cooperation as we carried out our research. We were given full access to facilities, staff, children and policy manuals and statistics. We also thank Department of Homeland Security officials within the Border Patrol division of Customs and Border Enforcement, the Juvenile and Family Residential Management Unit of Immigration and Customs Enforcement and the Department of Homeland Security Office of Civil Rights and Civil Liberties for their cooperation and input.

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Above all, we thank the courageous children who trusted us and shared their experiences.

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* *Formerly the Women's Commission for Refugee Women and Children*

NOTES

[1] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, H.R. 7311, 110th Cong., 2nd Sess. (2008).
[2] Carlos, interviewed by Michelle Brané, Baptist Child and Family Services, San Antonio, Texas, February 5, 2008. All of the names and some identifying characteristics of the children quoted and referenced in this report have been changed to protect their anonymity and ensure confidentiality.
[3] Morris, interviewed by Michelle Brané, Abraxas Hector Garza Center, February 5, 2008.
[4] Homeland Security Act of 2002, 6 U.S.C.A. § 462(g)(2).
[5] Although much of the literature that has been written on this subject refers to this population as unaccompanied alien children, or UACs, this report will use the terms "unaccompanied children" and "children" interchangeably in an attempt to be accurate, given the confusion surrounding the definition of this term.
[6] Women's Commission for Refugee Women and Children, *Prison Guard or Parent?: INS Treatment of Unaccompanied Refugee Children,* May 2002, p. 1.
[7] Homeland Security Act of 2002, 6 U.S.C.A. § 462(g)(2).
[8] Most children's initial contact with the U.S. government is with Border Patrol (BP), which completes initial intake processing for the majority of children apprehended and notifies Immigration and Customs Enforcement (ICE) that it has a child in custody. During the time that a child is in proceedings, all legal immigration processes are adjudicated by the Executive Office for Immigration Review (EOIR).
[9] Department of Health and Human Services Office of Inspector General, *Department of Unaccompanied Alien Children's Services: Efforts to Serve Children*, March 2008, OE1-07-06-00290 at p. 1. http://oig.hhs.gov/oei/reports/oei-07-06-00290.pdf (hereinafter referred to as the "OIG Report"); confirmed as FY 2007 by Maureen Dunn, Director of DUCS, in email to Michelle Brané, July 24, 2008. The numbers for 2009 are expected to be lower. ORR informed us in their comments to the draft of this report that there has been more than a 225 percent increase in unaccompanied children in care since 2003. ORR also informs us that there has been a dramatic increase in the number of UAC with serious criminal and mental health backgrounds. David Siegel, Acting Director, Office of Refugee Resettlement, letter to Michelle Brané, December 24, 2008.
[10] See Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, *Locking Up Family Values: The Detention of Immigrant Families*, February 2007.
[11] Orrick and the Women's Refugee Commission requested this information both at meetings and through a formal Freedom of Information Act (FOIA) request. The response is inconclusive. ICE provided us with a list of facilities and some numbers that did not clearly reflect the number of children who remain in ICE custody or why. See Appendix C.
[12] The Delegation (members of the Women's Refugee Commission/Orrick team) conducting site visits comprised attorneys primarily and was not equipped to evaluate in-depth compliance with standard child welfare practices. We do, however, note that such an evaluation may be beneficial.
[13] Settled in 1996, *Flores* was intended to protect the rights and well-being of unaccompanied juveniles in INS custody. Stipulated Settlement Agreement, *Flores v. Reno*, Case No CV85-4544-RJK (C.D. Cal. 1996). See Appendix I.
[14] The DUCS Manual provides detailed guidance to DUCS programs on a range of subjects including program management, residential structure, services to be provided, placement, reunification and release. The manual incorporates the minimum requirements of the *Flores* Settlement and in many cases provides for an even higher threshold of care. The manual has not been made available to the public because it was never reviewed and cleared by the Assistant Secretary's Office of the Administration for Children and Families, Department of Health and Human Services. ORR/DUCS is currently revising the manual and intends to make it public and post it on their website upon review and approval. However, the full and complete draft manual was made available to us for our research and review purposes.
[15] ICE Juvenile Protocol Manual (JPM), available from the Women's Refugee Commission.
[16] Department of Health and Human Services, Office of Inspector General*, Division of Unaccompanied Children's Services: Efforts to Serve Children*, March 2008, OEI-07-06-00290, p. 17.
[17] Children who are nationals of a contiguous country (Canada or Mexico) are generally allowed to withdraw their request for entry and are repatriated immediately unless they express a fear of return.
[18] Richard Woodard, Assistant Chief, Office of Border Patrol, David Hoffman, Division Chief, Operations and Planning Analyses, headquarters office of Border Patrol, interviewed by Michelle Brané and Katharine Crost, February 15, 2008.
[19] Mexico or Canada.
[20] If there is a fear of return, the child should be given the opportunity to apply for asylum and therefore should be placed in immigration proceedings and transferred to DUCS.
[21] Stipulated Settlement Agreement, *Flores v. Reno*, Case No CV85-4544-RJK (C.D. Cal. 1996).
[22] For more detail and information on children who are repatriated from the United States, see Center for Public Policy Priorities (CPPP), Amy Thompson, *"A Child Alone and Without Papers,"* Austin, Texas, December 2008.
[23] See Trafficking Victims Protection Reauthorization Act (TVPRA), which includes screening requirements. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, H.R. 7311, 110th Cong., 2nd Sess. (2008).
[24] JPM, Section 2.1.3.
[25] Staff and children interviewed by the Delegation, Southwest Indiana Regional Youth Village, Vincennes, Indiana, July 2007; staff in-

terviews conducted by the Delegation, TRAC Program, Children's Village, Dobbs Ferry, New York, August 2007; staff interviews conducted by the Delegation, TRAC, Flushing, New York, September 2007.
[26] Age determination can be completed by either Border Patrol or ICE depending on which entity initially apprehends an individual suspected of being a child.
[27] This was also an issue when the Women's Refugee Commission evaluated conditions under the INS. See *Prison Guard or Parent?: Treatment of Unaccompanied Refugee Children,* May 2002.
[28] Some children identify themselves to authorities as adults because they are afraid, believe it will be more likely to result in release or have been told to do so by smugglers or traffickers.
[29] Felix, interviewed by the Delegation, Casa de los Amigos Youth Care Shelter, Seattle, Washington, October 2007.
[30] Dario, interviewed by the Delegation, Tumbleweed Group Home Facility, Phoenix, Arizona, July 2007.
[31] See Homeland Security Act of 2002, 6 U.S.C.A.§462 (2008).
[32] Reginald Sakamoto, Detention and Deportation Officer, and Deane Dougherty, Management and Program Analyst, Juvenile and Family Residential Management Unit, interviewed by Michelle Brané and Rene Kathawala, Equinox Youth Shelter, Albany, New York, November 2, 2007; Reginald Sakamoto, interviewed by Martin Howard and Jessica Iglesias at the Gila County Juvenile Detention Center in Globe, Arizona, November 2007.
[33] We have also recommended that families be released or transferred to the custody of ORR but that has not been mandated by law as of this writing. See Lutheran Immigration and Refugee Service and Women's Commission for Refugee Women and Children, *Locking Up Family Values: The Detention of Immigrant Families*, February 2007.
[34] See Section on DHS Custody of Children in this report, p. 11.
[35] Reginald Sakamoto, Detention and Deportation Officer, and Deane Dougherty, Management and Program Analyst, Juvenile and Family Residential Management Unit, interviewed by Michelle Brané and Rene Kathawala, Equinox Youth Shelter, Albany, New York, November 2, 2007.
[36] Reported by ICE officials to Maggie Niebler, HIAS Pennsylvania; Interviews and emails exchanged with Michelle Brané, on file with the Women's Refugee Commission; Facility staff, Edgar, Hilberto and Jose**,** interviewed by Michelle Brané and Emily Butera, Berks County Youth Center, October 27, 2006.
[37] Other than those in family detention facilities; Reginald Sakamoto, Detention and Deportation Officer, and Deane Dougherty, Management and Program Analyst, Juvenile and Family Residential Management Unit (JFRMU), interviewed by Michelle Brané and Rene Kathawala, Equinox Youth Shelter, Albany, New York, November 2, 2007.
[38] Reports from advocate Maggie Niebler, HIAS Pennsylvania; interviews and emails exchanged with Michelle Brané, on file with the Women's Refugee Commission; Edgar, Hilberto and Jose**,** interviewed by Michelle Brané and Emily Butera, Berks County Youth Center, October 27, 2006.
[39] DUCS believes that these children are accompanied and should be reunified with family rather than detained, citing that by detaining them ICE is rendering them unaccompanied; Maureen Dunn, Director, DUCS, telephone interview with Michelle Brané, Washington, D.C., October 24, 2008. All statements of ORR personnel reflect the views of staff and are not reflective of the agency's viewpoint.
[40] Perhaps because the parent is undocumented.
[41] Reginald Sakamoto, Detention and Deportation Officer, and Deane Dougherty, Management and Program Analyst, Juvenile and Family Residential Management Unit, interviewed by Michelle Brané and Rene Kathawala, Equinox Youth Shelter, Albany, New York, November 2, 2007. However, some attorneys have told us that this is not always the practice; some children appear to remain in ICE custody unless an attorney is able to work with DUCS to have them transferred and particularly for Mexican children ICE sometimes deports them without transfer to DUCS, presumably after they sign a stipulated removal or request voluntary departure.
[42] We believe these children should be released to family. If they cannot be released, they should be transferred to DUCS.
[43] DUCS reunifies 50 percent - 60 percent of the children in its care with parents or sponsors–demonstrating the arbitrary nature of their interpretation of "unaccompanied."
[44] Reports from advocates Maggie Niebler, HIAS Pennsylvania; Interviews and emails exchanged with Michelle Brané, on file with the Women's Refugee Commission; Edgar, Hilberto and Jose**,** interviewed by Michelle Brané and Emily Butera, Berks County Youth Center, October 27, 2006.
[45] The Homeland Security Act of 2002 transfers custody of *all* unaccompanied children to the Office of Refugee Resettlement. See Homeland Security Act § 462. However, it should be noted that the Patriot Act could be interpreted to allow DHS to retain custody of children it deems to be a risk to national security; USA Patriot Act, Pub. L. 107-56, Title IV, §412(a), 115 Stat. 350 (2001), 8 U.S.C.A. §1226a (West 2008). It is possible that some of the children who remain in ICE custody without their parents have been classified as security threats due to criminal activity or gang membership. However, we were unable to confirm this with ICE. When asked if these children or children with a history or suspicion of gang activity are considered to be security threats, ICE officials refused to answer. Reginald Sakamoto, Detention and Deportation Officer, and Deane Dougherty, Management and Program Analyst, Juvenile and Family Residential Management Unit, interviewed by Michelle Brané and Rene Kathawala, Equinox Youth Shelter, Albany, New York, November 2, 2007.
[46] Maureen Dunn, email correspondence with Michelle Brané, June 19, 2007; Maria Woltjen, email correspondence with Michelle Brané, June 18, 2008; Barbara Hines, email correspondence with Michelle Brané, September 19, 2008.
[47] ICE currently has contracts for two family detention facilities; T. Don Hutto and the Berks Family Shelter. Both facilities detain only people with no criminal background.

[48] Alternatives to Detention (ATD) is a term of art describing a range of mechanisms used to ensure that individuals in immigration proceedings who are not in detention facilities appear for court dates and/or removal.
[49] With the exception of children who may be considered to remain in DHS custody as security risks under the Patriot Act.
[50] Reginald Sakamoto, Detention and Deportation Officer, and Deane Dougherty, Management and Program Analyst, Juvenile and Family Residential Management Unit, interviewed by Michelle Brané and Rene Kathawala, Equinox Youth Shelter, Albany, New York, November 2, 2007; Richard Woodard, Assistant Chief, Office of Border Patrol, David Hoffman, Division Chief, Operations and Planning Analyses, Headquarters Office of Border Patrol, interviewed by Michelle Brané and Katharine Crost, February 15, 2008; the JPM provides that "INS will release a juvenile from its custody without unnecessary delay unless detention is required to secure a timely appearance in court or to ensure the juvenile's safety, or that of others." We note that while we have been told that this manual is still in effect, it was written before the transfer of custody of unaccompanied children and does not appear to have been updated since the INS was dissolved.
[51] Anonymous Border Patrol officers, interviews conducted by Michelle Brané, Katharine Crost, Amy Thompson, Fort Brown, Texas, July 20, 2007.
[52] We were unable to identify any specific training materials on this subject. Headquarters officials informed us that training is provided; Richard Woodard, Assistant Chief, Office of Border Patrol, David Hoffman, Division Chief, Operations and Planning Analyses, Headquarters Office of Border Patrol, interviewed by Michelle Brané and Katharine Crost, Feb.15, 2008. However, again, Border Patrol officers told us they did not receive any such training and that they have no written policies or materials. Anonymous Border Patrol officers, interviews conducted by Michelle Brané, Katharine Crost, Amy Thompson, Fort Brown, Texas, July 20, 2007. Since that time, Border Patrol has launched a trafficking victims identification program. We applaud this effort and hope that those at the field level are indeed receiving the training they require.
[53] Barbara Hines, University of Texas, interviewed by Michelle Brané, followed up with email, on record with Women's Refugee Commission, December 2, 2007. Confirmed by Charu Al-Sahli, Florida Immigrant Advocacy Center (FIAC), interviewed by Michelle Brané. See also Lutheran Immigration and Refugee Service and Women's Commission for Refugee Women and Children, *Locking Up Family Values: The Detention of Immigrant Families*, February 2007.
[54] Lutheran Immigration and Refugee Service and Women's Commission for Refugee Women and Children, *Locking Up Family Values: The Detention of Immigrant Families*, February 2007.
[55] Luz, interviewed by Michelle Brané, Berks Family Shelter Care Facility, October 27, 2006 (from *Locking Up Family Values*).
[56] *Flores* Settlement, EXHIBIT 2, provision (c). Exception refers to cases in which distance and travel time exceed what is reasonable for a child to travel in a day.
[57] HHS/OIG Report, "Division of Unaccompanied Children's Services: Efforts to Serve Children" p. i.
[58] ICE is limited in the distances it can transport children per day and children who have been placed in DUCS programs far from the point of apprehension may spend more time in DHS custody as a result. DHS can retain custody for five days in these cases, Stipulated Settlement Agreement, *Flores v. Reno*, Case No CV85-4544-RJK (C.D. Cal. 1996).
[59] Maureen Dunn, Director of DUCS, note to Michelle Brané, August 4, 2008. DUCS added 100 bed-spaces at the border for use in high seasons.
[60] See *Flores* Settlement, EXHIBIT 1 (requiring for each unaccompanied child "[p]roper physical care and maintenance, including suitable living accommodations, food, appropriate clothing, and personal grooming items").
[61] Border Patrol agent, interviewed by the Delegation at Ft. Brown, Brownsville Border Patrol Holding Facility located in Brownsville, Texas, July 20, 2007.
[62] Jose, interviewed by the Delegation at the Southwest Key Shelter (Canutillo), Texas, April 25-27, 2007.
[63] Manny, interviewed by the Delegation at the St. Michael's Home for Children: Unaccompanied Alien Children Program located in Houston, Texas, July 2007.
[64] Border Patrol agent, Harlingen substation, interviewed by Michelle Brané and Emily Butera, December 6, 2006.
[65] Maria, interviewed by Michelle Brané, Ft. Brown Border Patrol Station, Brownsville, Texas, July 20, 2007.
[66] Isabella, interviewed by the Delegation, Devereux Group Home Facility, Scottsdale, Arizona, July 10, 2007.
[67] Aryah Somers and Elise McCaffrey of the Florence Immigrant and Refugee Rights Project, interviewed by Reagan Beck, Kate Kerr and Kara Moskowitz in Phoenix, Arizona, July 11, 2007.
[68] Santiago, interviewed by the Delegation, Devereux Group Home Facility, Scottsdale, Arizona, July 10, 2007.
[69] Richard Woodard et al, Border Patrol headquarters, interviewed by Michelle Brané and Katharine Crost, Washington, D.C., February 15, 2008.
[70] Anonymous staff, interviewed by Katharine Crost, International Education Services foster care program, Brownsville, Texas , July 20, 2007.
[71] Juan, interviewed by the Delegation at the Harlingen Foster Program located in Harlingen, Texas, July 2007.
[72] Carmen, interview by Michelle Brané and Emily Butera, Brownsville, Texas, December 6, 2006.
[73] Ana, interviewed by the Delegation, Border Patrol in Harlingen, Texas, July 2007.
[74] Jesus, interviewed by the Delegation, Border Patrol in Harlingen, Texas, July 2007.
[75] Samuel, conducted by the Delegation, Ft. Brown Border Patrol Station, Brownsville, Texas, July 20, 2007.
[76] Rosa, interviewed by the Delegation at the Southwest Key Program, Phoenix, Arizona, July 2007.
[77] Ramon, interviewed by the Delegation, Ft. Brown Border Patrol Station, Brownsville, Texas, July 2007.
[78] Miguel, interviewed by the Delegation, St. Michael's Home for Children, Houston, Texas, July 2007.

[79] Santos, interviewed by the Delegation at the International Education Services foster care program located in Brownsville, Texas, July 2007.
[80] Jorge, conducted by the Delegation at the Southwest Key Facility (La Esparanza), Brownsville, Texas, July 2007; staff interviews conducted by the Delegation, TRAC Program, Children's Village, Dobbs Ferry, New York, August 2007.
[81] In which case they are appropriately classified as accompanied. See Lutheran Immigration and Refugee Service and Women's Commission for Refugee Women and Children, *Locking Up Family Values: The Detention of Immigrant Families*, February 2007.
[82] Herman, interviewed by the Delegation, Casa de los Amigos, Seattle, Washington, October 2007.
[83] It only reported that in fiscal years 2005, 2006 and 2007 it had in its care 9,996, 10,647 and 9,586 children, respectively. This includes all unaccompanied children that were transferred to ORR and may also account for minors who are emancipated or adjudicated as adults. See Appendix C.
[84] See Appendix C for FOIA response, including a list of facilities.
[85] Email from Deane Dougherty, December 15, 2008, on file with Women's Refugee Committee.
[86] Aryah Somers, Florence Immigrant and Refugee Rights Project (FIRRP), telephone interview by Michelle Brané, June 2007; Aryah Somers and Elise McCaffrey, FIRRP, interviewed by Reagan Beck, Kate Kerr and Kara Moskowitz, Phoenix, Arizona, July 2007; Maggie Niebler, HIAS Philadelphia, emails and interviews with Michelle Brané, on file with Women's Refugee Commission.
[87] Email from Rene Kathawala to Lucinda Riley, ICE's National Outreach Coordinator, September 14, 2007.
[88] Michelle Brané and Rene Kathawala visited the Albany, New York, facility on November 2, 2007, and met with the facility's administrative director, its counsel and two ICE officials (Reginald J. Sakamoto, Detention and Deportation Officer, and Deane Dougherty, Management and Program Analyst, Juvenile and Family Residential Management Unit). We visited the Globe, Arizona facility on November 13, 2007 and met with the Unit Supervisor and Reginald J. Sakamoto.
[89] This visit was not arranged by ICE.
[90] Staff at Equinox Youth Shelter, interviewed by Michelle Brané and Rene Kathawala, Albany, New York, November 2, 2007. ICE officials, Reginald J. Sakamoto, Detention and Deportation Officer, and Deane Dougherty, Management and Program Analyst, Juvenile and Family Residential Management Unit, would not confirm this information; interviewed by Michelle Brané and Rene Kathawala, Albany, New York, November 2, 2007.
[91] Reginald J. Sakamoto, Detention and Deportation Officer, and anonymous facility staff, interviews conducted by Rene Kathawala, Marty Howard and Jessica Iglesias, Globe, Arizona, November 13, 2007.
[92] Ibid.
[93] Aryah Somers, FIRRP, telephone interview conducted by Michelle Brané, June 2007; Aryah Somers and Elise McCaffrey, FIRRP, interviewed by Reagan Beck, Kate Kerr and Kara Moskowitz, Phoenix, Arizona, July 2007.
[94] Staff interviews conducted by Michelle Brané and Emily Butera, Berks County Youth Juvenile facility, Leesport, Pennsylvania, October 27, 2006.
[95] Ibid.
[96] Ibid.
[97] Staff and children, interviewed by the Delegation, Southwest Indiana Regional Youth Village, Vincennes, Indiana, July 2007. The children were not serving criminal sentences at the time they were at Berks, but did have criminal records.
[98] A delinquency court had ordered that they could not return to their mother's household while their minor sister was still in the home.
[99] Reginald Sakamoto, Detention and Deportation Officer, and Deane Dougherty, Management and Program Analyst, Juvenile and Family Residential Management Unit, interviewed by Michelle Brané and Rene Kathawala, Equinox Youth Shelter, Albany, New York, November 2, 2007.
[100] David Siegel, Acting Director of ORR, letter to Michelle Brané, December 24, 2008
[101] Women's Commission for Refugee Women and Children, *Prison Guard or Parent?,* 2002.
[102] DHS is responsible for transportation of children to and from ORR custody (but not for transporting children between DUCS facilities).
[103] DUCS Manual, Section 5.02.
[104] The TVPRA addresses this inappropriate use of secure facilities. The legislation states that a child shall not be placed in a secure facility absent an independent determination that the child poses a danger to self or others, or has been charged with having committed a criminal offense. It also mandates monthly placement reviews for all children placed in secure facilities.
[105] Micah Bump and Elzbieta Gozdziak, "Protecting Children, The Care of Unaccompanied, Undocumented Children in Federal Custody: Issues and Options," *Protecting Children*, Vol. 22 (No. 2). It should be noted that in their comments to the draft report, ORR claims that only four of their programs currently holds more than 68 children, David Siegel, Acting Director of ORR, letter to Michelle Brané, December 24, 2008.
[106] Anonymous staff, interviewed by the Delegation, South West Key (Mesa), Houston, Texas, May 24-25, 2007.
[107] Ibid.
[108] May 2007–June 2008.
[109] As immigration enforcement efforts across the country expand, children are increasingly referred to ICE by local law enforcement authorities. ICE then transfers the unaccompanied children to DUCS and DUCS typically places these children in staff-secure or secure facilities. Note that we have found that some of these children that ICE receives from law enforcement are not transferred to ORR. It is not clear why. See this report, section on DHS as Gatekeeper and DHS Custody of Children.

[110] For example, Northern Virginia Juvenile Detention Home (NOVA), Alexandria, Virginia, visited October 19, 2007; Northern Regional Corrections Facilities (NORCPR), The Dalles, Oregon, visited September 6, 2007.
[111] Northern Virginia Juvenile Detention Home (NOVA), Alexandria, Virginia, visited October 19, 2007. At the time of our visit the facilities agreement with ORR was fairly new. We assume that the facility has had the opportunity to conduct trainings and hire appropriate staff since this visit but the fact remains that they did not at the time of our visit.
[112] See Discipline and Abuse section for more information, p. 25.
[113] Ibid.
[114] Southwest Key (Mesa), Houston, Texas, May 24-25, 2007; Selma R. Carson Home, Tacoma, Washington, October 16, 2007; Southwest Indiana Regional Youth Village, Vincennes, Indiana, July 30-31, 2007.
[115] Lead Case Manager, Marin County Staff-secure Facility, interviewed by the Delegation, San Rafael, California, September, 28, 2007.
[116] Southwest Key (Mesa), Houston, Texas, May 24-25, 2007 (40 percent); St. Michael's Home for Children, Houston, Texas, July 16, 2007 (5 percent).
[117] Anonymous staff, interviewed by Rene Kathawala, Southwest Indiana Regional Youth Village, Vincennes, Indiana, July 30-31, 2007.
[118] Anonymous staff, interviewed at St. Michael's Home for Children, Houston, Texas, July 16, 2007.
[119] Anonymous staff, interviewed at Southwest Key (Mesa), July 1, 2007, Houston, Texas, May 24-25, 2007.
[120] Chad C. Haddal, *Unaccompanied Alien Children: Policies and Issues*, Congressional Research Services, Washington, D.C., March 2007, RL 33896; p. 19, footnote 85.
[121] A finding that is corroborated by the HHS-OIG report.OIG Report, pp. 13-14.
[122] For example, while at Southwest Key (El Paso), Canutillo, Texas, clinicians must have at least a Master's degree in psychology; at other facilities, such as the TRAC Program at Children's Village, Dobbs Ferry, New York, and Southwest Key (Mesa), Houston, Texas, group counseling is provided by case workers or program directors.
[123] Marin County Staff-secure Facility, San Rafael, CA, September 28, 2007.
[124] Anonymous case manager, interviewed at Selma R. Carson Home, Tacoma, Washington, October 16, 2007. This sentiment was echoed by facility staff interviewed at Southwest Key (Mesa), Houston, Texas, May 24-25, 2007.
[125] Anonymous staff, interviews conducted at Southwest Key (Mesa), Houston, Texas, May 24-25, 2007.
[126] Ibid.
[127] Ibid.
[128] Ibid.
[129] David Siegel, Acting Director of ORR, letter to Michelle Brané, December 24, 2008.
[130] Both children interviewed at both facilities by Michelle Brané, Berks County Youth Center, Leesport, Pennsylvania, October 27, 2006, and at Southwest Indiana Regional Youth Village, Vincennes, Indiana, July 31, 2007. See Section on DHS as Gatekeeper. It is unclear why these children remained in ICE custody for more than six months before their attorney managed to make arrangements to have them transferred to DUCS.
[131] While under DUCS official policy suitability assessments are done only in the U.S, voluntary agencies assisting these children are sometimes able to make phone calls or make other contact with family overseas.
[132] David Siegel, Acting Director of ORR, letter to Michelle Brané, December 24, 2008.
[133] In the two-year period following the transfer from INS, DUCS discontinued agreements with 31 secure juvenile detention facilities; David Siegel, Acting Director of ORR, letter to Michelle Brané, December 24, 2008. However, ICE has continued contracts with some of those facilities and DUCS has re-engaged in agreements with a small number of these facilities in the past year—including NOVA in Virginia and Guadalupe in Texas.
[134] It must be noted that some children do require a more secure facility and that DUCS does have the capacity to place children who are a danger to themselves or others in these settings when it is appropriate to do so.
[135] Maureen Dunn, email to Michelle Brané, July 24, 2008. Despite this, ORR reports that as of December 11, 2008, only 4.5 percent of children were in staff-secure facilities and an additional 4.5 percent were in secure facilities. David Siegel, Acting Director of ORR, letter to Michelle Brané, December 24, 2008.
[136] DUCS Manual, Section 5.02
[137] DUCS Manual, Section 2.05 and 3.02.
[138] Ibid.
[139] Southwest Key (Mesa), Houston, Texas, May 24-25, 2007.
[140] Pedro, interviewed by the Delegation, the Southwest Key (Mesa), Houston, Texas, May 24-25, 2007.
[141] In its amended statement of work with the Vera Institute of Justice for FY09, DUCS has asked the Institute to provide technical assistance to DUCS to:

- develop a standardized assessment tool to guide custody classification determinations;
- identify protocols for adjusting classification determinations;
- train DUCS staff to use the classification tool and the adjustment protocols; and
- assist in identifying and developing more effective, more rehabilitative secure detention services and environments.

Information provided by Maureen Dunn, Director, DUCS, to Michelle Brané, August 6, 2008.
[142] Lutheran Immigration and Refugee Service (LIRS) contracts with DUCS.
[143] By law, suitability assessments must be completed for Chinese and Indian children, since there has been a high degree of smug-

gling and trafficking crimes associated with these groups.
[144] This opinion was expressed by individuals who have carried roles within the DUCS system and all expressed the wish to remain anonymous.
[145] David Siegel, Acting Director of ORR, letter to Michelle Brané, December 24, 2008.
[146] If attorneys are made aware of a problem with reunification, they may be able to address concerns–e.g., remove a single adult male with questionable criminal history from the household. We do acknowledge that this can be tricky for DUCS since there is sometimes concern that an attorney may in reality be associated with a trafficker or smuggler. DUCS must use its discretion in assessing these situations. It is also another example of a situation in which having an independent guardian assigned to children would be helpful (see discussion later in report).
[147] See Reunification Section below for more on jurisdiction.
[148] In FY 2007–59.4 percent, FY 2008 through May–56.6 percent, Maureen Dunn, email to Michelle Brané, July 24, 2008.
[149] DUCS has argued that all jurisdiction transfers back to ICE at the time of release. While ICE's jurisdiction applies to prosecution, it does not, and should not, extend to the provision of follow-up services.
[150] During our visit to Catholic Community Services in Tacoma, the staff stated that approximately "one in fifty" children who were receiving mental health care while at the DUCS-funded facility were able to continue this care following reunification and even in those rare cases, the care only continued for three months. This was confirmed as a national concern in an interview with Olivia Faries, Lutheran Immigration and Refugee Service, Director of Children's Services, interviewed by Michelle Brané, February 2008.
[151] The TVPRA requires HHS to work with the Executive Office for Immigration Review to ensure that sponsors of unaccompanied children who are reunified receive legal orientation presentations to ensure the child's appearance in court. This should help reduce the number of children who do not appear for their immigration hearing.
[152] A postponement of a hearing or other scheduled court proceeding.
[153] William, interviewed by Michelle Brané, Southwest Indiana Regional Youth Village, Vincennes, Indiana, July 31, 2007.
[154] DUCS Manual, Section 6.01.
[155] Ibid. DUCS sends forms containing information about sponsors' immigration status and place of employment to ICE. While the address at which a child will be living and the name of sponsors is necessary for ICE to adequately follow up with the child's immigration proceedings, other identifying information about sponsors and others in the household is not appropriate to share with ICE and serves as a deterrent to reunification.
[156] DUCS Manual Section 6.01.
[157] See Lutheran Immigration and Refugee Service and Women's Commission for Refugee Women and Children, *Locking Up Family Values: The Detention of Immigrant Families*, February 2007. Also, information obtained from Barbara Hines, University of Texas, email to Michelle Brané, December 12, 2007 and from Charu Al-Sahli, Florida Immigrant Advocacy Center, interviewed by Michelle Brané.
[158] For example, children interviewed by the Delegation at the South West Key (Mesa) Facility, Houston, Texas, May 24-25, 2007; *see also* Aryah Somers and Elise McCaffrey of the Florence Immigrant and Refugee Rights Project, interviewed by Reagan Beck, Kate Kerr and Kara Moskowitz, Phoenix, Arizona, July 11, 2007.
[159] See Women's Commission for Refugee Women and Children, *Prison Guard or Parent?: Treatment of Unaccompanied Refugee Children,* May 2002.
[160] These could include Special Immigrant Juvenile visa and asylum applications, among other forms of relief. Susanna Ortiz-Ang, Deputy Director of DUCS, interviewed by Michelle Brané, February 15, 2008; confirmed by Maureen Dunn, Director, DUCS, email to Michelle Brané, July 28, 2008.
[161] In addition to use in court, ICE has the authority to block a child's petition for Special Immigrant Juvenile Status ("SIJS") and regularly uses information from DUCS files to justify refusing consent for a child to go to family court. A percentage of immigrant visas are allocated to a class of children known as "special immigrant juveniles." A special immigrant juvenile is an unaccompanied alien child who is deemed eligible for long-term foster care based on abuse, neglect or abandonment and for whom a probate or juvenile court has determined that it is not in the child's best interest to be sent back to his or her country of origin and that family reunification is not an option. Given ICE's limited expertise in these matters and the fact that even once an application is made the application will still be adjudicated by DHS, it is highly inappropriate that ICE must grant consent for a child to go to family court in preparation for their SIJS petition. This is addressed at least in part by the TVPRA.
[162] *A.A.-M v Alberto Gonzales et al*, U.S. District Court Western District of Washington at Seattle.
[163] Often by the time a child is assigned an attorney much of the sensitive information is included in the case file. For example, caseworkers at the TRAC Program at Children's Village will often discuss all aspects of a child's case in their initial intake in an effort to evaluate the child's legal standing. Caseworker interview, TRAC Program at Children's Village, Dobbs Ferry, New York**,** August 13, 2007.
[164] Anonymous staff interview.
[165] OIG Report, p. 13.
[166] Oren Root, Vera Institute of Justice, email communication to Michelle Brané and Emily Butera, December 24, 2008.
[167] Homeland Security Act of 2002, 6 U.S.C.A.§462 (2008). There is no consensus as to what "no expense to the government" means. Some have argued that this means that the government cannot fund legal counsel while others have suggested that the government cannot be required to do so. For more information see Olga Byrne, *Unaccompanied Children in the United States: A Literature Review,* Vera Institute of Justice, New York, April, 2008.

[168] As noted in the Vera Institute of Justice, Pro Bono Project, Option Year 2, Quarter 3 Report, January 2008 Memorandum. *See* Steve Lang, Pro Bono Coordinator, Executive Office for Immigration Review, telephone interview by Michelle Brané, March 17, 2008. *See also* Trisha Swartz and Anne Rose Menachery, National Center for Refugee and Immigrant Children, interviewed by Michelle Brané, Washington, D.C., March 14, 2008. The Vera Institute of Justice has more recently determined that where a Vera subcontractor saw a child and that child remains in ORR custody throughout their proceedings, 75 percent are represented. Oren Root, Vera Institute of Justice, email communication to Michelle Brané and Emily Butera, December 24, 2008. However, not all facilities have Vera projects and the facilities are sometimes hours away from legal service providers who must travel to meet with the children. In addition, less than 50 percent of children remain in ORR custody throughout their proceedings.
[169] ORR reports that about 828 transfers occurred in FY 2007, meaning that about 10 percent of children are transferred between facilities. Maureen Dunn, Director of DUCS, email to Michelle Brané, August 8, 2008.
[170] The TVPRA provides for children's asylum claims to be heard affirmatively, in a non-adversarial setting.
[171] U. S. Department of Justice, Interim Operating Policies and Procedures Memorandum 04-07: Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children, Washington, D.C., DOJ, 2007. These policies were initially published in 2004 and were updated in 2007.
[172] Homeland Security Act of 2002, 6 U.S.C.A. § 462(g)(2).
[173] DUCS Manual, Section 3.17.
[174] If a child is likely to be reunified, an attorney is generally not assigned to him or her as reunification may involve transferring the child to a different part of the country, and such transfer would necessitate filing for a change of venue and obtaining a new attorney. The Vera Institute of Justice is currently assessing the effectiveness of this program to see how it can be improved. In addition to the ORR pilot, EOIR had a one-year program for providing legal orientation programs for children at four locations. This program ended in September 2007.
[175] Anonymous children, interviews conducted by the Delegation, "La Esperanza," Southwest Key Shelter Care facility, Brownsville, Texas, July 19, 2007.
[176] According to the National Center for Refugee and Immigrant Children (National Children's Center), a program that provides services for unaccompanied children who have been released from ORR custody, 70 percent of the children referred to them are not matched with an attorney. This does not include the many children who are reunified with their parents and whom the Center does not currently serve. (The National Center's prohibition on referrals to children reunified with their parents does NOT apply to referrals from Vera legal services subcontractors.) While some of these children may obtain attorneys, it is highly likely that most do not. The Children's Center believes that with additional funding it would be able to serve the legal needs of all unaccompanied children. Trisha Swartz and Anne Rose Menachery, National Center for Refugee and Immigrant Children, telephone interview by Michelle Brané, Washington, D.C., March 14, 2008.
[177] With the appropriate support, KIND may eventually be able to play this role.
[178] DUCS and the Vera Institute estimate that more than 25 percent of children who remain in DUCS custody throughout their proceedings do not have an attorney assigned to their case; Oren Root, Vera Institute of Justice, email communication to Michelle Brané and Emily Butera, December 24, 2008. However, only about 40 percent of children who are transferred to ORR remain in ORR custody for the duration of their case; Maureen Dunn, interviewed by Michelle Brané; the National Children's Center serves only a select section of the population of released children and only 30 percent of those who qualify for their services receive representation. See footnote 169 and 176.
[179] Views supported by conversation with Steve Lang, Pro Bono Coordinator, Executive Office for Immigration Review, telephone interview by Michelle Brané, March 17, 2008; Maureen Dunn, Division Director of DUCS, interviewed by Michelle Brané, March 14, 2008.
[180] Anonymous guardian *ad litem*, telephone interviewed by Rene Kathawala and Michelle Brané, October 29, 2007.
[181] In conversations about the need for an independent adult to assist unaccompanied children, the terms guardian *ad litem* and child advocate are often used interchangeably, although there are some distinctions between the two concepts. Our decision to use the term guardian *ad litem* here does not constitute an endorsement of one model over the other.
[182] For further discussion, see Christopher Nugent and Steven Schulman, "Giving Voice to the Vulnerable: On Representing Detained Immigrant and Refugee Children," *Interpreter Releases* 78, No. 39, October 8, 2001, 1569-1589.
[183] A child is interviewed by Border Patrol and/or ICE, possibly several times; then has an intake conducted at a DUCS facility; then is assigned a caseworker; then may meet with a field coordinator, federal field specialist and several other facility staff; and then may have a "Know Your Rights" presentation and be assigned an attorney. It is difficult and confusing for children to keep all these people and their roles straight.
[184] Anonymous guardian *ad litem*, email sent to Rene Kathawala and Michelle Brané dated October 23, 2007.
[185] Ibid.
[186] See box, p. 25.
[187] Stephan, interviewed by Michelle Brané, Hector Garza Center, San Antonio, Texas, February 5, 2008.
[188] Walter, interviewed by Michelle Brané, Southwest Indiana Regional Youth Village, Vincennes, Indiana, July 31, 2007.
[189] Jamal, interviewed by the Delegation, Southwest Key (Mesa) Facility, Houston, Texas, May 25, 2007.
[190] Leo, interviewed by the Delegation, Miami Foster Care Facility, Miami Springs, Florida, December 4, 2007.
[191] Antonio, interviewed by the Delegation, Southwest Key (Mesa) Facility, Houston, Texas, May 25, 2007.
[192] Tony, interviewed by the Delegation, Miami Foster Care Facility, Miami Springs, Florida, December 4, 2007.

[193] DUCS Manual, Section 1.06.
[194] Southwest Key (Mesa), Houston, Texas, May 24-25, 2007; Southwest Key Program, Phoenix, Arizona, July 9, 2007; Southwest Indiana Regional Youth Village, Vincennes, Indiana, July 30-31, 2007. Children at the Vincennes facility are denied access to recreation and education as a disciplinary measure and are also not allowed to speak to others in the pod during free time—resulting in *de facto* isolation.
[195] Southwest Indiana Regional Youth Village, Vincennes, Indiana, July 30-31, 2007.
[196] See http://www.bazelon.org/issues/restraintandseclusion/moreresources/children.htm, Scott Kirkwood, *Practicing Restraint,* Child Welfare League of America, Children's Voice Article, September/October 2003 at http://www.cwla.org/articles/cv0309restraint.htm.
[197] John, interviewed by the Delegation, Northern Regional Correctional Facilities (NORCOR), The Dalles, Oregon, September 6, 2007.
[198] Alberto, interviewed by the Delegation, NORCOR, The Dalles, Oregon, September 6, 2007.
[199] Vicente, interview, NORCOR, The Dalles, Oregon, September 6, 2007.
[200] Anonymous staff, interviewed by the Delegation, Southwest Key (La Esperanza), Brownsville, Texas, July 19-20, 2007.
[201] Based on interviews with children, in particular visits to Vincennes and the Hector Garza Center.
[202] "The Care of Unaccompanied, Undocumented Children in Federal Custody: Issues and Options." *Protecting Children*, Vol. 22 (no. 2): 77.
[203] Susan Watson, staff attorney with the Texas Rio Grande Legal Aid, interviews conducted by Rene Kathawala, November 16, 2007 and January 24, 2008; David Walding, director of the Bernard Kohler Center and an accredited representative, interviewed by Rene Kathawala, December 18, 2007; Anonymous, interviewed by Michelle Brané, March 23, 2007.
[204] Maureen Dunn, interviewed by Michelle Brané. July 24, 2008.
[205] Kenneth Falk, legal director for ACLU-Indiana, interviewed by Rene Kathawala at the Southwest Indiana Regional Youth Village, Vincennes, Indiana, July 30-31, 2007.
[206] Ibid.
[207] Ibid.
[208] Ibid.
[209] Ibid.
[210] Susan Watson, staff attorney with the Texas Rio Grande Legal Aid, interviews conducted by Rene Kathawala, November 16, 2007 and January 24, 2008; David Walding, director of the Bernardo Kholer Center and an accredited representative, interviewed by Rene Kathawala, December 18, 2007.
[211] It is noteworthy that this was the first facility at which we had this experience. Given the same set of questions, only a few of the other 200 + children interviewed reported any kind of serious mistreatment and none to this extent.
[212] Esteban, interviewed by the Delegation, Abraxas Hector Garza Center located in San Antonio, Texas, February 6, 2008. Esteban said that his roommate, Jose, resisted a staff member's hold on him in his room while being reprimanded. Esteban said the staff member twisted Jose's arm until he heard a crack and then Jose began to scream because his shoulder was in pain and his arm was dislocated. Jose was taken to the hospital 20 minutes later and was not seen by the other children at the facility after that.
[213] Marcos, interviewed by Michelle Brané, Abraxas Hector Garza Center, San Antonio, Texas, February 5, 2008
[214] Morris, interviewed by Michelle Brané Abraxas Hector Garza Center, San Antonio, Texas, February 5, 2008.
[215] Adam, interviewed by Michelle Brané Abraxas Hector Garza Center, San Antonio, Texas, February 5, 2008.
[216] Maureen Dunn, Director of DUCS, telephone conversation with Michelle Brané, February 5, 2008. DUCS did not interview the children who made these claims to us even though DUCS' deputy director was coincidentally at the Hector Garza facility on the same day because the Texas Office of Licensing investigations has asked them not to interview children when there is an investigation pending so as not to disrupt potential evidence.
[217] Several days after our visit, there was an incident at the facility in which several children were charged with assault. Many of those children have since applied for U visas. Some are the same children we interviewed.
[218] All complaints made to the Texas Department of Family and Protective Services involving licensed facilities are immediately referred to the Texas State Licensing Office of Investigations.
[219] DUCS identified Hector Garza to us as a facility that specialized in therapeutic-centered care. Hector Garza's state program for domestic children has a very strong mental health component, but that facility is located across town, far away from the Hector Garza facility where unaccompanied children are housed. Attorneys for unaccompanied children housed in the Hector Garza facility claim that children are overmedicated and ignored when it comes to their mental health treatment. David Walding, director of the Bernardo Kholer Center and an accredited representative, interviewed by Rene Kathawala, December 18, 2007. Willie Salas and Michael Elizondo from the Child Care Licensing Division of the Texas Department of Family and Protective Services, telephone interviewed by Michelle Brané, February 22, 2008.
[220] Investigation finding relayed by Maureen Dunn, Division Director of ORR, telephone conversation with Michelle Brané, August 2008.
[221] As the incidents of abuse at the Nixon, Vincennes and Hector Garza facilities demonstrate, DUCS has a formal procedure for children to file grievances against facility staff but not for other sorts of grievances—see rest of this section.
[222] DUCS Manual, Section 3.21.
[223] Ibid. If the grievance cannot be resolved within a reasonable time period (the DUCS Manual does not define reasonable), the

matter shall be referred to the program officer at headquarters. DUCS requires that all significant incidents involving allegations of abuse or instances in which other staff or the institution itself may be in violation shall be reported to the local Child Protective Service agency for an independent investigation. The Project Officer at DUCS headquarters will be notified immediately per Section 1.01 of the DUCS Manual. We found that in our personal experience of bringing an incident to the attention of ORR, this procedure was followed.

[224] Jasper, interviewed by the Delegation, Southwest Key Facility (La Esperanza), Brownsville, Texas July 20, 2007.

[225] Leonard, interviewed by the Delegation, Tumbleweed Group Home Facility, Phoenix, Arizona, July 10, 2007.

[226] Ricardo, interviewed by the Delegation, Tumbleweed Group Home Facility, Phoenix, Arizona, July 10, 2007.

[227] Children interviewed reported fears of retaliation in a number of facilities, including International Educational Services Emergency Shelter (Los Fresnos), Harlingen, Texas; Catholic Charities, Phoenix, Arizona; and Southwest Key (La Esperanza), Brownsville, Texas.

[228] Samuel, interviewed by the Delegation, Southwest Key (Mesa), Houston, Texas, May 24-25, 2007.

[229] Manuel, interviewed by the Delegation, Southwest Key (La Esperanza), Brownsville, Texas, July 19-20, 2007.

[230] The Tumbleweed Group Home, Phoenix, Arizona; Southwest Key (El Paso), Canutillo), Texas; and Southwest Key Program, Phoenix, Arizona had organized governments or councils where children were able to freely discuss their grievances.

[231] For example, advocates claimed that their concerns about the Abraxas Hector Garza Center and Texas Sheltered Care (Nixon) facilities were not addressed by DUCS at the federal field specialist level or above; Susan Watson, staff attorney with the Texas Rio Grande Legal Aid, interviews conducted by Rene Kathawala, November 16, 2007 and January 24, 2008; David Walding, director of the Bernardo Kholer Center and an accredited representative, interviewed by Rene Kathawala, December 18, 2007. DUCS, in turn, denies having received complaints about the Hector Garza Center; Susana Ortiz-Ang, interviewed by Michelle Brané, February 15, 2008.

[232] David Walding, director of the Bernard Kholer Center and an accredited representative, interviewed by Rene Kathawala, December 18, 2007; Susan Watson, Texas Rio Grande Legal Aid, November 16, 2007 and January 24, 2008, interviews conducted by Rene Kathawala.

[233] The investigators also expressed overall frustration with the DUCS program and monitoring procedures. In particular, they feel that they should not be relied upon to investigate and monitor these facilities and that DUCS should do so themselves or through an independent contractor. Willie Salas and Michael Elizondo from the Child Care Licensing Division of the Texas Department of Family and Protective Services, interviewed by Michelle Brané by telephone, February 22, 2008.

[234] Willie Salas and Michael Elizondo from the Child Care Licensing Division of the Texas Department of Family and Protective Services, interviewed by Michelle Brané by telephone, February 22, 2008.

[235] Ibid.

[236] DUCS Manual, Section 4.01, p. 112.

[237] OIG Report, p. 15.

[238] Ibid.

[239] There is ongoing debate about the role of field coordinators, and whether or not they have a role to play alongside federal field specialists in monitoring. LIRS and USCCB (formerly a co-contractor on this project) believe that field coordinators should play a more significant role.

[240] At the time of this writing, DUCS has become severely understaffed at the field and headquarters level. While hiring freezes are a standard procedure at government agencies, such a freeze is not appropriate for an operational program with custody of children.

[241] The DUCS Manual states that care providers are required to develop program evaluation procedures to measure and evaluate service delivery in compliance with state licensing requirements, ORR procedures and the ORR Cooperative Agreement or Statement of Work. DUCS Manual, Section 4.01, p 112.

[242] Self-evaluations are supposed to include input from children, staff, program partners, legal service providers and children's sponsors. DUCS Manual, Section 4.01, p 112.

[243] DUCS Manual, Section 1.03.

[244] Ibid.

[245] One possible model would be for the Administration for Children and Families to monitor DUCS in the same way they monitor states, and use the same or similar standards.

[246] Formerly the Women's Commission for Refugee Women and Children (Women's Commission).

[247] A list of facilities visited is attached at Appendix B of this report.

[248] DUCS Manual, Section 6.01.

[249] DUCS Manual, Section 2.04.

[250] David Siegel, Acting Director, Office of Refugee Resettlement, letter to Michelle Brané, December 24, 2008.

[251] Ibid.

[252] DUCS Manual, Section 2.02.

[253] DUCS Manual, Section 2.05

[254] www.udi.no/templates/Statistikk.aspx?id=9172 (Homepage Norwegian Directorate of Immigration), last verified on January 8, 2009.

[255] Rebekka, UNHCR Regional Office for Baltic and Nordic Countries, telephone interview by Åsa Kelmeling, December 16, 2008.

[256] Nina Sundberg, Norwegian Directorate of Immigration, telephone interview by Åsa Kelmeling, December 17, 2008.

[257] Rebekka, UNHCR Regional Office for Baltic and Nordic Countries, telephone interview by Åsa Kelmeling, December 16, 2008.
[258] www.udi.no/templates/Page.aspx?id=8985 (Homepage Norwegian Directorate of Immigration), last verified on December 17, 2008.
[259] Nina Sundberg, Norwegian Directorate of Immigration, telephone interview by Åsa Kelmeling, December 17, 2008.
[260] www.emb-norway.com.ng/visas/visas/IMMIGRATION+POLICY.htm , last verified on January 8, 2009.
[261] Nina Sundberg, Norwegian Directorate of Immigration, telephone interview by Åsa Kelmeling, December 17, 2008.
[262] Ibid.
[263] Ibid.
[264] Ibid.
[265] NOAS: Norsk Organisasjon for Asylsøkere (Norwegian Organization for Asylum Seekers).
[266] Nina Sundberg, Norwegian Directorate of Immigration, telephone interview by Åsa Kelmeling, December 17, 2008.
[267] Ibid.
[268] www.migrationsverket.se (Homepage Swedish Migration Board), last verified on January 8, 2009.
[269] Ibid.
[270] *Kommun* is a municipality. Every village/city has its own administration with various departments, which make up the kommun.
[271] Isabelle Exposito, Red Cross Sweden, telephone interview by Åsa Kelmeling, November 6, 2008.
[272] www.migrationsverket.se (Homepage Swedish Migration Board), last verified on January 8, 2009.
[273] Seyoum Ghebrehiwet, Swedish Migration Board, telephone interview by Åsa Kelmeling, November 6, 2008.
[274] Isabelle Exposito, Red Cross Sweden, telephone interview by Åsa Kelmeling, November 6, 2008.
[275] www.migrationsverket.se (Homepage Swedish Migration Board), last verified on January 8, 2009.
[276] Anki Carlsson, Red Cross Sweden, telephone interview by Åsa Kelmeling, November 25, 2008.
[277] www.migrationsverket.se (Homepage Swedish Migration Board), last verified on January 8, 2009.
[278] Ibid.
[279] Isabelle Exposito, Red Cross Sweden, telephone interview by Åsa Kelmeling, November 6, 2008.
[280] Ibid.
[281] Anki Carlsson, Red Cross Sweden, telephone interview by Åsa Kelmeling, November 25, 2008.
[282] Isabelle Exposito, Red Cross Sweden, telephone interview by Åsa Kelmeling, November 6, 2008.
[283] Anki Carlsson, Red Cross Sweden, telephone interview by Åsa Kelmeling, November 25, 2008.
[284] See article summary in text box below.
[285] www.bfm.admin.ch/etc/medialib/data/migration/statistik/asylstatistik/statistiken_uma.Par.0003.File.tmp/ UMA_2007-d.pdf (Homepage Swiss Federal Office for Migration), last verified on January 8, 2009.
[286] Claude Hoch, Asylum Organization Zurich, telephone interview by Åsa Kelmeling, October 31, 2008.
[287] Child Rights Network Switzerland and Swiss Refugee Council, *Kinderrechte im Asylbereich* (Children's rights in asylum policy), 2007.
[288] A Canton (*Kanton* in German) in Switzerland is like a State in the U.S.
[289] Claude Hoch, Asylum Organization Zurich, telephone interview by Åsa Kelmeling, October 31, 2008.
[290] Ibid.
[291] www.osar.ch/asylum-politics/topics/children?appendLang=de (Homepage Swiss Refugee Council), last verified on January 8, 2009.
[292] Claude Hoch, Asylum Organization Zurich, telephone interview by Åsa Kelmeling, October 31, 2008.
[293] Ibid.
[294] Ibid.

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