



PANGEA LEGAL SERVICES

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Stevens v. BBG et al., 18-cv-5391
DHHS
HHS-18-F-0210
<https://deportationresearchclinic.org/>

SUBMITTED VIA EMAIL & FACSIMILE

Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

Email: (b)(6);(b)(7)(F)@ice.dhs.gov
CC: (b)(6);(b)(7)(F)@ice.dhs.gov
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(b)(6);(b)(7)(F)@ice.dhs.gov
Officer (b)(6);(b)(7)(F) (via facsimile)

Emailed on February 14, 2018

Fax: (661) (b)(6);(b)(7)(F)

Faxed on February 14, 2018

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RE: REQUEST FOR CUSTODY REDETERMINATION OF UAC,
(b)(6) (b)(6) (A (b)(6))

Dear Director Jennings,

My name is (b)(6) I am an immigration attorney at Pangea Legal Services, a non-profit organization. I represent the young (b)(6) (b)(6) on a *pro bono* basis. I am writing to respectfully request that, at your lead, Immigration and Customs Enforcement (“ICE”) terminate (b)(6) present custody and order his release for the reasons stated below.

Under current Department of Homeland Security (“DHS”) guidelines, ICE possesses the authority to exercise **discretionary release “on a case-by-case basis.”**¹ Such discretionary authority includes “[t]he use of **Alternatives to Detention, including the use of ankle monitors, [which] will continue on a case-by-case basis at the discretion of the officers on the ground.**”² Furthermore, the DHS has outlined seven departmental priorities for arrest,

¹ MEMORANDUM, JOHN KELLY, SECRETARY, DEPARTMENT OF HOMELAND SECURITY, *Enforcement of the Immigration Laws to Serve the National Interest* 4 (Feb. 20, 2017).

² DEPARTMENT OF HOMELAND SECURITY, *Q&A: DHS Implementation of the Executive Order on Border Security and Immigration Enforcement* (Mar. 1, 2017), available at <https://www.dhs.gov/news/2017/02/21/qa-dhs-implementation-executive-order-border-security-and-immigration-enforcement>.

detention, and removal in order to inform discretionary determinations by local officers.³ Such guidelines direct ICE to prioritize enforcement actions against noncitizens who have a criminal history and who may pose a risk to public safety.⁴

Under these guidelines, the discretionary release of (b)(6) is warranted because of the following facts:

- (b)(6) **arrived in the United States as a child.** He was recognized as an unaccompanied alien child (“UAC”) and placed in the care of the Office of Refugee Resettlement (“ORR”). *See Exhibit D, Notice to Appear.*
- (b)(6) **is likely only 16 years old.** Although (b)(6) was arbitrarily assigned a birthdate of (b)(6)/2000 because he lacked identity documents, it is likely that he is still under the age of 18. (b)(6) has made consistent statements to immigration officials, his attorney, and in the San Francisco Immigration Court indicating that he is only 16 years old. The notes in (b)(6) I-213 state that (b)(6) told the interviewing Customs and Border Patrol (“CBP”) officer that his father said he was around 15 years old about 1 to 1.5 years ago.⁵ (b)(6) also told his counsel that he was told he was born in the year 1380 of the Persian calendar. Using a converter from the Persian calendar to the Gregorian calendar, his counsel has determined that (b)(6) was born in the year 2001 and is about 16 years old. *See Exhibit E, Persian calendar converter results.*
- (b)(6) **dental age determination has a margin of error of +/- 3.31 years, which makes it inherently unreliable.** (b)(6) underwent a dental age determination examination on or around December 2017, which found that (b)(6) is 18 years old with a margin of error of +/- 3.31 years.⁶ Given such a large margin of error, the test is unreliable at face value. Doctors across the globe have conducted studies and written reports on the unreliability of age determination examinations, namely dental and bone assessments. **“Because of the problems of sample size and ethnic and other differences, dental age assessments are widely regarded as being highly unreliable for assessing age.”** *See Exhibit K, ILPA Report on age disputes in asylum cases.* **“Moreover it remains the case that x-rays are not, and cannot ever be, used to ascertain chronological age.”** *See id.* Due to the widely accepted knowledge that dental and bone age determination tests are unreliable and problematic, it makes it even more likely that (b)(6) is indeed a child.
- (b)(6) **should be released from ICE custody based on the DHS’s own guidelines in determining the age of an individual.** Under current ICE guidelines, when determining the juvenile status of a noncitizen, ICE “must base age determinations upon the **totality of the evidence** . . . not solely upon the results of dental and/or wrist-bone x-rays,”

³ See MEMORANDUM, JOHN KELLY, SECRETARY, DEPARTMENT OF HOMELAND SECURITY, *Enforcement of the Immigration Laws to Serve the National Interest 2* (Feb. 20, 2017).

⁴ *Id.*

⁵ See Form I-213 Record of Deportable/Inadmissible Alien, (b)(6) (b)(6) page 2 of 5 (dated Nov. 23, 2017)

⁶ See Psychiatric Evaluation, (b)(6) LCSW, Mesa Verde Detention Facility (Dec. 19, 2017) (“Dental age redetermination completed on 12.01.17 and found that P/d has attained 18 years of age +/- 3.31 years.”).

including “statements of the [non-citizen].”⁷ In addition, under current ORR guidelines, “statements provided by the unaccompanied alien child regarding his or her age or birth date” must be considered in determining the age of an individual.⁸ Firstly, the guidelines explicitly state that, “Dental and skeletal (bone) maturity assessments using radiographs may be used to determine age, but **only in conjunction with other evidence.**”⁹ Secondly, between (b)(6) arrival in the United States and the time he was transferred from ORR to ICE custody, the only questioning (b)(6) received regarding his age was from the person who administered the dental exam—a non-immigration official. Based on these guidelines and (b)(6) own consistent statements regarding his age, (b)(6) should be found to be a minor and should be released from ICE custody.

- (b)(6) **detention in an adult detention facility violates the Flores Settlement and opens up ICE to liability.** See *Exhibit J, Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997) (“the Flores Settlement”). The Flores Settlement **requires** a preference for release of juveniles who are in DHS custody. As the settlement states, “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.” See *id.* at VI-¶14. Absent a parent, legal guardian, adult relative, or other adult individual or entity set up by the parent or guardian, the settlement requires release to a licensed program. See *id.* at VI-¶14.D. (b)(6) has *presently available* housing at Lark Inn Youth Shelter in San Francisco, CA. See *Exhibit F, Letter from youth shelter*. Furthermore, (b)(6) has the support of multiple social and legal services organizations—to assist him in attending his immigration court hearings, as well as securing long-term housing, a job, and English language classes. Based on these circumstances, (b)(6) should be immediately released to the youth shelter to avoid a Flores Settlement violation.
- “[T]he risks of wrongly treating children as adults are considerably higher than the other way around.” See *Exhibit K, ILPA Report*. At his hearing before IJ Park on January 16, 2018, before he obtained legal representation, (b)(6) expressed fear in open court about his detention with adults, and asked to be returned to the children’s facility with other children his own age.¹⁰ The potential damage caused to a child who is erroneously placed in adult detention is far worse than the alternative, which the Ninth Circuit Court of Appeals contemplated and intended to address when it issued the Flores Settlement. See, e.g., *Exhibit K, ILPA Report* (“This is because the children system has in-built support and supervision to prevent children from being harmed. No such

⁷ MEMORANDUM, VICTOR X. CERDA, ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *Age Determination Procedures for Custody Decisions 1* (Aug. 20, 2004); see also OFFICE OF REFUGEE RESETTLEMENT, *ORR Guide: Children Entering the United States Unaccompanied* (Jan. 30, 2015), available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1>.

⁸ OFFICE OF REFUGEE RESETTLEMENT, *ORR Guide: Children Entering the United States Unaccompanied* (Jan. 30, 2015), available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1>.

⁹ *Id.*

¹⁰ See Audio recording: *Franco* competency hearing for (b)(6) before Immigration Judge Joseph Park, at San Francisco Immigration Court, 630 Sansome Street, Courtroom 2 (Jan. 16, 2018).

safeguards exist in the adult system.”). (b)(6) **has cried and pleaded with his attorney in numerous phone calls that he is scared and depressed in adult detention and would like to be released, or at the very least transferred back to a children’s program.**¹¹

- (b)(6) **has alternative safe housing presently available to him.** *See Exhibit F, Letter from youth shelter.* (b)(6) social worker (b)(6) at Legal Services for Children (“LSC”) has already secured (b)(6) a “permanent bed” at the Lark Inn Youth Shelter in San Francisco, CA. *See id.* The Lark Inn Youth Shelter is within walking distance of the San Francisco Immigration Courts, LSC, and Pangea Legal Services.
- (b)(6) **has a pending application for asylum.** (b)(6) brother and father both worked in collaboration with the Afghan government, and both were killed by terrorist groups on account of their political opinion. (b)(6) filed an I-589 application for asylum at the San Francisco Asylum Office on February 5, 2018. *See Exhibit C, Stamped I-589 Application for Asylum.*
- (b)(6) **has no criminal history.**
- (b)(6) **has a social worker supporting him for the duration of his immigration proceedings, including upon his release.** *See Exhibit G, Letter from social worker.* Ms. (b)(6) is (b)(6) assigned social worker since January 2018. She has been working with (b)(6) to find him safe alternative housing and will also provide him “clinical case management support to meet [his] psychosocial needs for the duration of his immigration case.” *See id.*
- (b)(6) **has the support of local members of the Afghan community through the Afghan Coalition located in Fremont, CA.** *See Exhibit H, Letter from ED of Afghan Coalition.* In addition to the support he will receive from his social worker at LSC, (b)(6) has support from members of the Afghan community in the Bay Area who will help him “secure stable employment and assist him in enrolling in an English language program.” *See id.* **A volunteer interpreter in (b)(6) case and former U.S. military contractor also felt compelled to submit a letter of support on behalf of (b)(6) advocating for his release from ICE detention into the community.** *See Exhibit I, Letter from (b)(6)*
- (b)(6) **has retained pro bono counsel to represent him in immigration court and understands the importance of appearing at his court hearings.** Pangea Legal Services, a non-profit legal services organization, took on *pro bono* representation of (b)(6) in his immigration court proceedings. Our office is committed to continuing to represent him upon his release and will ensure that he attends his court hearings. *See Exhibits A and B, Notices of Entry of Appearance as Attorney.*

¹¹ *See* Psychiatric Evaluation, (b)(6) LCSW, Mesa Verde Detention Facility (Dec. 19, 2017) (“P/d transferred from Unaccompanied Children facility to adult facility where he may have decompensated.”).

In support of this release request and the facts laid out above, please find enclosed an annotated table of contents with supporting documents (Exhibits A-K).

For all these reasons, we respectfully request the immediate release of (b)(6) on his own recognizance or on a minimum bond of \$1,500. At the very least, (b)(6) should be transferred back to ORR custody immediately.

Thank you for your careful consideration of this matter. Should you need any further information, please contact me at the number or email provided below.

Sincerely,

(b)(6)

(b)(6)

PANGEA LEGAL SERVICES

(415) (b)(6)

(b)(6)@pangealegal.org

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EXHIBITS IN SUPPORT OF CUSTODY REDETERMINATION

FOR (b)(6) (b)(6)
(b)(6)

DOCUMENTS DEMONSTRATING THAT (b)(6) HAS SECURED *PRO BONO* LEGAL REPRESENTATION

Exhibit A Notice of Entry of Appearance as Attorney (Form G-28)

Exhibit B Notice of Entry of Appearance as Attorney (Form E-28)

(b)(6) APPLICATION FOR ASYLUM FILED WITH THE ASYLUM OFFICE

Exhibit C Copy of stamped Form I-589, Application for Asylum, filed on February 5, 2018

DOCUMENT DEMONSTRATING THAT DHS CLASSIFIED (b)(6) AS AN UNACCOMPANIED CHILD UPON HIS ARRIVAL IN THE UNITED STATES

Exhibit D Copy of Notice to Appear, dated November 23, 2017

- Marked "JUVENILE" on page 2.

DOCUMENT SHOWING CONVERSION FROM THE PERSIAN CALENDAR TO THE GREGORIAN CALENDAR AND DEMONSTRATING THAT (b)(6) IS AROUND 16 YEARS OLD, BASED ON HIS STATEMENT THAT HE WAS TOLD HE WAS BORN IN THE YEAR 1380 OF THE PERSION CALENDAR.

Exhibit E Printout of online Persian calendar to Gregorian calendar converter, available at http://www.iranchamber.com/calendar/converter/iranian_calendar_converter.php

- Persian Calendar Input: 1380 Farvardin 1, which is the first day of the year 1380 in the Persian calendar.
- Gregorian Calendar Output: 2001 March 21.
- This indicates that if (b)(6) was born in the Persian year 1380 as he stated, he will be turning 17 years old sometime after March 21, 2018.

**LETTER DEMONSTRATING THAT (b)(6) HAS ALTERNATIVE SAFE HOUSING
AVAILABLE TO HIM UPON HIS RELEASE FROM DETENTION**

Exhibit F Letter from Larkin Street Youth Services offering shelter to (b)(6) upon his release, dated January 19, 2018

- “Mr. (b)(6) has made it to the top of the waitlist and there is a permanent bed available for him here at the Lark Inn Youth Shelter.”
- “The Lark Inn provides emergency and transitional shelter to homeless youth . . . During the first week of stay, they will be matched with a case manager who will then work with the client to address specific goals and needs including referrals to our agency transitional housing programs.”
- “Each resident is required to participate in scheduled meetings with their assigned Case Manager. These meetings are for the purpose of supporting residents in meeting their physical and emotional needs and developing a comprehensive treatment plan.”

**LETTERS DEMONSTRATING (b)(6) SUPPORT FROM HIS SOCIAL WORKER,
A COMMUNITY ORGANIZATION WORKING WITH THE LOCAL AFGHAN COMMUNITY,
AND HIS VOLUNTEER PASHTO INTERPRETER**

Exhibit G Letter from (b)(6) Social Work Intern at Legal Services for Children, dated February 7, 2018

- “If (b)(6) were released to our community, Legal Services for Children will provide clinical case management support to meet (b)(6) psychosocial needs for the duration of his immigration case.”
- “As his social worker, I will provide (b)(6) the support to ensure that he attends all of his immigration court hearings, including teaching him to access public transportation.”
- (b)(6) currently has a bed available at the Lark Inn upon his release from detention.”

Exhibit H Letter from Rona Popal, Executive Director at the Afghan Coalition in Fremont, CA, dated February 7, 2018

- “If (b)(6) were released to our community, Afghan Coalition will connect (b)(6) to a supportive Afghan community and we will help him secure stable employment and assist him in enrolling in an English language program. We will also provide referrals to mental health services in the area with Pashto language capacity. Our volunteers will also help (b)(6) navigate the public transportation system so that he can appear for his court dates.”

Exhibit I Letter from Mr. (b)(6) Pashto interpreter in (b)(6) case, dated February 8, 2018, with Copy of his California Driver’s License

- “I will continue to support (b)(6) however I can, including through translation in meetings with his attorney.”

- “My community [of around 350 Afghan families] and I here will support and help (b)(6) if he is released from detention, including with emotional support, interpretation, transportation, and help with acculturation.”
- “I found (b)(6) to be a very sweet and kind child, and I was very saddened to know that he was in immigration detention, with adults!”
- “During the meeting between (b)(6) and his lawyer, I could tell that (b)(6) was very happy to have someone like me who understood his language and understood the region and culture that he came from. It made it easier for him to communicate with his lawyer...”

FLORES SETTLEMENT DETAILING STANDARDS REGARDING THE DETENTION, RELEASE, AND TREATMENT OF ALL CHILDREN IN IMMIGRATION DETENTION, UNDERSCORING PREFERENCE FOR RELEASE

Exhibit J **Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997), available at <http://www.aila.org/File/Related/14111359b.pdf>**

- **“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.”

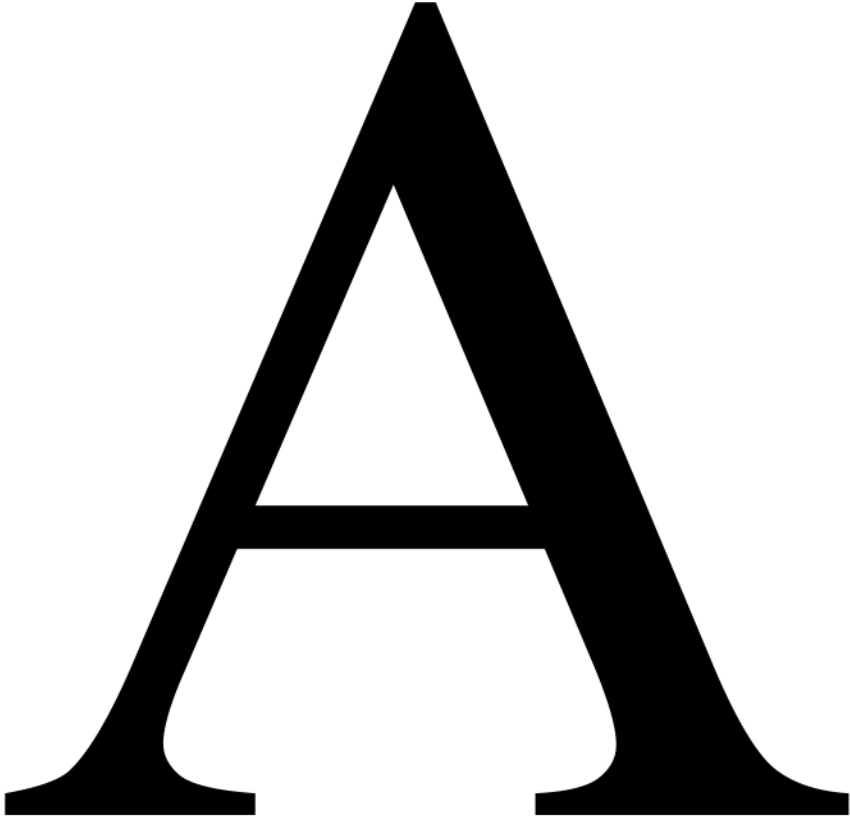
**REPORT DOCUMENTING THE UNRELIABILITY OF AGE DETERMINATION TESTS
USED ON REFUGEES AND THE NEED TO TAKE INTO ACCOUNT THE TOTALITY OF
THE EVIDENCE, INCLUDING ANY STATEMENT BY THE NON-CITIZEN, AS MANDATED
BY ICE'S OWN GUIDELINES**

Exhibit K **Excerpts from: Heaven Crawley, Immigration Law Practitioners' Association, *When is a child not a child?: Asylum, age disputes and the process of age assessment* (May 2007), available at www.ilpa.org.uk/data/resources/13266/ILPA-Age-Dispute-Report.pdf**

- Chapter 2.3 – Difficulties in assessing chronological age
 - “There is however, a widely accepted margin of error associated with dental age assessment. Critics, such as the German Association of Forensic Medicine and researchers in Sweden, Finland, France and the USA, state that the development of teeth depends on the environment, nutrition, as well as ethnicity and race.”
 - “Those studies which have been undertaken looking at the applicability of dental age assessments to different populations suggest that there are wide variations in the chronological ages that are associated with different recognised stages of dental development.”
 - **“One of the main problems with the use of dental age assessments in the asylum context is that there is no benchmark data relating to the countries from which asylum seeking children originate.”**
 - **“Because of the problems of sample size and ethnic and other differences, dental age assessments are widely regarded as being highly unreliable for assessing age.** In the Netherlands, for example, dental age examination is regarded as being unsound because 25% of all people grow no wisdom teeth and because root development of the wisdom tooth demonstrates an extreme degree of inter-personal variation in the maturation process.”
 - “The difficulties in assessing chronological age using medical techniques are reflected in international and national guidance, including UNHCR’s *Guidelines on policies and procedures in dealing with unaccompanied children seeking asylum* (1997)”
 - **“In practice, age determination is extremely difficult to do with certainty, and no single approach to this can be relied upon. Moreover for young people aged 15–18, it is even less possible to be certain about age.”**
 - **“For this reason assessments of age should only be made in the context of a holistic examination of the child and no single measurement or type of assessment should be relied upon.”**
 - **“[T]he more that studies are conducted involving populations from different socio-economic and ethnic backgrounds the more unreliable such methods appear to be.”**
 - **“Moreover it remains the case that x-rays are not, and cannot ever be, used to ascertain chronological age.”**

- Chapter 2.4 – The risks of getting it wrong
 - “[F]rom a common-sense point of view the risks of wrongly treating children as adults are considerably higher than the other way around. This is because the children system has in-built support and supervision to prevent children from being harmed. No such safeguards exist in the adult system. Indeed it appears that any ‘risks’ associated with adults in the children system are much more related to the economic implications and a perception that immigration controls are being undermined than they are with outcomes for children.”

- Chapter 5.4 – Supporting information
 - “Most importantly, it is the margin of error which is inherent in all medical assessments of age and which is an explicit feature of the paediatric assessments submitted to local authorities and the Home Office, which creates the most significant difficulties in the use and interpretation of medical evidence of this kind. In some cases the margin of error is interpreted as confirmation that an age disputed child is an adult even where the assessment states that he or she has been assessed as being 16 or 17 years old plus or minus two years.”
 - “[M]edical evidence is always open to interpretation. To this extent it is not at all clear that medical evidence provides the solution to the difficulties of age assessment. These approaches can in themselves be abusive and damaging to children and may simply increase the competing claims of those with an interest in the outcome of the process. There is a danger that one set of measurements that assess ‘childhood’ on the basis of our norms and expectations of physical behaviour and demeanour are replaced with another set of norms which are based on physical measurements and assumptions that are not necessarily universal but are assumed to be. This may be appealing because it gives the contentious process of age assessment an air of scientific legitimacy but there is no evidence that it is more reliable.”
 - “Medical evidence may be an important part of the picture in the assessment of age but it should not be relied upon in isolation from other evidence and information.”



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Consult to DHS

of the Freedom of Information and Privacy Act

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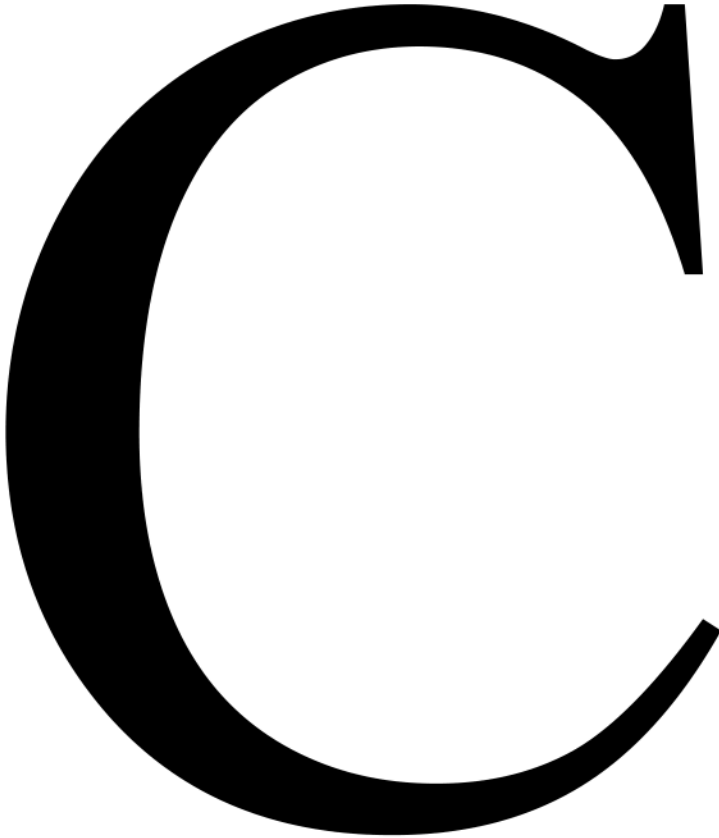
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Tuesday, February 13, 2018

Iranian Calendar Converter

Iranian Calendar (Jalali Calendar)

The Iranian calendar (also known as **Persian** calendar or the **Jalaali** Calendar) is a solar calendar currently used in Iran and Afghanistan. It is observation-based, rather than rule-based, beginning each year on the vernal equinox as precisely determined by astronomical observations from Tehran.

Date:
Weekday: [To other Calendars](#)

Gregorian Calendar

The Gregorian calendar is the calendar that is used nearly everywhere in the world. A modification of the Julian calendar, it was first proposed by the Neapolitan doctor Aloysius Lilius, and was decreed by Pope Gregory XIII, for whom it was named, on 24 February 1582.

Date:
Weekday: [To other Calendars](#)

Islamic Calendar (Hijri Calendar)

The Islamic calendar or Muslim calendar (also called "Hijri calendar") is the calendar used to date events in many predominantly Muslim countries, and used by Muslims everywhere to determine the proper day on which to celebrate Islamic holy days. It is a lunar calendar having 12 lunar months in a year of about 354 days. Because this lunar year is about 11 days shorter than the solar year, such as a year of the Jalali or Gregorian calendar.

Date:
Weekday: [To other Calendars](#)

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YOUTH SERVICES

Larkin Street Youth Services
Lark Inn Shelter
869 Ellis Street
San Francisco, CA 94109
Tel (415) 749.2968
Fax (415) 749.2967
larkinstreetyouth.org

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C. David Zoba

January 19, 2018

To Whom It May Concern,

I am writing to inform you that Mr. (b)(6) has made it to the top of the waitlist and there is a permanent bed available for him here at the Lark Inn Youth Shelter.

The Lark-Inn provides emergency and transitional shelter to homeless youth aged 18 to 24 for up to 120 nights per year. During the first week of stay, they will be matched with a case manager who will then work with the client to address specific goals and needs including referrals to our agency transitional housing programs.

Residents are required to show progress in their case management sessions to remain in services at the Lark-Inn. Each resident is required to participate in scheduled meetings with their assigned Case Manager. These meetings are for the purpose of supporting residents in meeting their physical and emotional needs and developing a comprehensive treatment plan.

Larkin Street Youth Services has given young people a safe place to rebuild their lives. We provide housing, education and employment training, and health and wellness supports to help these young people get off the street for good.

If you have any questions or concerns please feel free to contact me. Thank you for your time.

Sincerely,

(b)(6)

(b)(6)

Assistant Program Manager – Lark Inn

Larkin Street Youth Services

(b)(6)@larkinstreetyouth.org

(415)673-0911 ext. (b)(6)

G

February 7, 2018

Re: (b)(6) A#
Letter of Support re: Post 18 Plan

Your Honorable Immigration Judge:

Please accept this letter in support of (b)(6) release to the community. This letter will document (b)(6) social work support that Legal Services for Children will provide him if he were to be released to our community.

(b)(6) currently has a bed available at the Lark Inn upon his release from detention. The Lark Inn provides emergency housing, meals and case management services to youths between the ages of 18 to 24 years old. Larkin Street Youth Services also has a day time drop in center where they provide educational, recreational and job training services as well as day time meals. While staying at this shelter, (b)(6) will have the opportunity to enroll in local adult school to attend English classes and job trainings, and can apply to transitional living programs.

If (b)(6) were released to our community, Legal Services for Children will provide clinical case management support to meet (b)(6) psychosocial needs for the duration of his immigration case. As his social worker, I will provide (b)(6) the support to ensure that he attends all of his immigration court hearings, including teaching him to access public transportation. In addition, an LSC social worker will continue to provide social work support to (b)(6) after my internship ends in May 2018.

Please do not hesitate to contact us if you have any questions concerning this letter. Thank you very much in advance for your support of (b)(6)

Sincerely,
Legal Services for Children

(b)(6)

(b)(6)
Social Work Intern

Advancing the rights
of youth since 1975

1254 Market St. 3rd Floor
San Francisco, CA 94102

t: 415.863.3762
f: 415.863.7708
www.lsc-sf.org

II



Afghan Coalition

Empowering the Afghan Community and Building Bridges to Afghanistan
EIN 94-3398311

February 7, 2018

Re:

(b)(6) A#

Letter of Support re: Post 18 Plan

Your Honorable Immigration Judge:

Please accept this letter in support of (b)(6) release to the community. This letter will document the support that Afghan Coalition will provide him if he were to be released to our community.

The Afghan Coalition is a non-profit community based organization that seeks to empower refugee families, women and youth, both locally and in Afghanistan and to build bridges between the United States and Afghanistan. The mission is accomplished through the provision of community services, supporting member organizations' community based programs and fostering understanding, reconciliation, reconstruction and mutual relations between the people of Afghanistan and the people of the United States.

If (b)(6) were released to our community, Afghan Coalition will connect (b)(6) to a supportive Afghan community and we will help him secure stable employment and assist him in enrolling in an English language program. We will also provide referrals to mental health services in the area with Pashto language capacity. Our volunteers will also help (b)(6) navigate the public transportation system so that he can appear for his court dates.

Please contact us if you have any questions concerning this letter. Thank you for your support of (b)(6)

Sincerely,
Afghan Coalition

(b)(6)

Rona Popal
Executive Director

I

000602

February 8, 2018

To Whom It May Concern:

Hello, my name is (b)(6) I am writing this letter in support of the release of (b)(6) (b)(6) I currently live in (b)(6) CA, and I work for (b)(6) I am originally from Afghanistan and came to the United States in 2014 under a special immigrant visa. In Kabul, where I am from, I worked as an interpreter for the United States military from (b)(6) My unit was the (b)(6) and I translated for the Marines, the Air Force engineers, and the Navy.

I met (b)(6) over the phone when I was translating in a meeting between (b)(6) and his lawyer. I found (b)(6) to be a very sweet and kind child, and I was very saddened to know that he was in immigration detention, with adults! During the meeting between (b)(6) and his lawyer, I could tell that (b)(6) was very happy to have someone like me who understood his language and understood the region and culture that he came from. It made it easier for him to communicate with his lawyer and to explain the violence that he experienced in Afghanistan.

Since I am from Afghanistan and also because I worked with the U.S. military, I know how terrible it is there, especially in the district where (b)(6) is from, the (b)(6) District.

I will continue to support (b)(6) however I can, including through translation in meetings with his attorney. I felt sad to hear that he was detained so far away because I would like to visit with him in person, and I would like to be able to bring him some Afghan food to help him feel closer to home. I also want to be able to send (b)(6) a little money if it helps him.

In my community in (b)(6) CA, there are around 350 Afghan families who are all interpreters. Most of us worked (b)(6) (b)(6) and for the U.S. in Afghanistan. We are a strong community here, and we all try to help other Afghans and people from war-torn regions, like Syria, who come to the United States in need of support and a community. Many of us have hosted families or individuals in need of temporary housing. My community and I here will support and help (b)(6) if he is released from detention, including with emotional support, interpretation, transportation, and help with acculturation.

Thank you for considering the release of this child from adult detention.

Sincerely,

(b)(6)

(b)(6)

02/08/2018

CALIFORNIA ^{USA} DRIVER LICENSE

(b)(6)

(b)(6)

DL

EXP

(b)(6)

2019

CLASS C
END NONE

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(b)(6)

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WGT 190 lb

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DD

(b)(6)

J

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, et al, Plaintiffs

v.

JANET RENO, Attorney General of the United States, et al., Defendants

Case No. CV 85-4544-RJK(Px)

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 responses, 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

In the event of an emergency or influx that prevents the prompt placement of minors in licensed programs with which the Community Relations Service has contracted, INS policy is to make all reasonable efforts to place minors in licensed programs licensed by an appropriate state agency as expeditiously as possible. An emergency is an act or event, such as a natural disaster (e.g. earthquake, fire, hurricane), facility fire, civil disturbance, or medical emergency (e.g. a chicken pox epidemic among a group of minors) that prevents the prompt placement of minors in licensed facilities. An influx is defined as any situation in which there are more than 130 minors in the custody of the INS who are eligible for placement in licensed programs.

1. The Juvenile Coordinator will establish and maintain an Emergency Placement List of at least 80 beds at programs licensed by an appropriate state agency that are potentially available to accept emergency placements. These 80 placements would supplement the 130 placements that INS normally has available, and whenever possible, would meet all standards applicable to juvenile placements the INS normally uses. The Juvenile Coordinator may consult with child welfare specialists, group home operators, and others in developing the list. The Emergency Placement List will include the facility name; the number of beds at the facility; the name and telephone number of contact persons; the name and telephone number of contact persons for nights, holidays, and weekends if different; any restrictions on minors accepted (e.g. age); and any special services that are available.
2. The Juvenile Coordinator will maintain a list of minors affected by the emergency or influx, including (1) the minor's name, (2) date and country of birth, and (3) date placed in INS custody.
3. Within one business day of the emergency or influx the Juvenile Coordinator, or his or her designee will contact the programs on the Emergency Placement List to determine available placements. As soon as available placements are identified, the Juvenile Coordinator will advise appropriate INS staff of their

availability. To the extent practicable, the INS will attempt to locate emergency placements in geographic areas where culturally and linguistically appropriate community services are available.

4. In the event that the number of minors needing emergency placement exceeds the available appropriate placements on the Emergency Placement List, the Juvenile Coordinator will work with the Community Relations Service to locate additional placements through licensed programs, county social services departments, and foster family agencies.

5. Each year, the INS will reevaluate the number of regular placements needed for detained minors to determine whether the number of regular placements should be adjusted to accommodate an increased or decreased number of minors eligible for placement in licensed programs. However, any decision to increase the number of placements available shall be subject to the availability of INS resources. The Juvenile Coordinator shall promptly provide Plaintiffs' counsel with any reevaluation made by INS pursuant to this paragraph.

6. The Juvenile Coordinator shall provide to Plaintiffs' counsel copies of the Emergency Placement List within six months after the court's final approval of the Settlement Agreement.

EXHIBIT 4 Agreement Concerning Facility Visits Under Paragraph 33

The purpose of facility visits under paragraph 33 is to interview class members and staff and to observe conditions at the facility. Visits under paragraph 33 shall be conducted in accordance with the generally applicable policies and procedures of the facility to the extent that those policies and procedures are consistent with this Exhibit.

Visits authorized under paragraph 33 shall be scheduled no less than seven (7) business days in advance. The names, positions, credentials, and professional association (e.g., Center for Human Rights and Constitutional Law) of the visitors will be provided at that time.

All visits with class members shall take place during normal business hours.

No video recording equipment or cameras of any type shall be permitted. Audio recording equipment shall be limited to hand-held tape recorders.

The number of visitors will not exceed six (6) or, in the case of a family foster home, four (4), including interpreters, in any instance. Up to two (2) of the visitors may be non-attorney experts in juvenile justice and/or child welfare.

No visit will extend beyond three (3) hours per day in length. Visits shall minimize disruption to the routine that minors and staff follow.

Exhibit 5
List of Organizations to Receive Information re: Settlement Agreement

Eric Cohen, Immig. Legal Resource Center, 1663 Mission St. Suite 602, San Francisco, CA 94103

Cecilia Munoz, Nat'l Council Of La Raza, 810 1st St. NE Suite 300, Washington, D.C. 20002

Susan Alva, Immig. & Citiz. Proj Director, Coalition For Humane Immig Rights of LA, 1521 Wilshire Blvd., Los Angeles, CA 90017

Angela Cornell, Albuquerque Border Cities Proj., Box 35895, Albuquerque, NM 87176-5895

Beth Persky, Executive Director, Centro De Asuntos Migratorios, 1446 Front Street, Suite 305, San Diego, CA 92101

Dan, Kesselbrenner, , National Lawyers Guild, National Immigration Project, 14 Beacon St.,#503, Boston, MA 02108

Lynn Marcus , SWRRP, 64 E. Broadway, Tucson, AZ 85701-1720

Maria Jimenez, , American Friends Service Cmte., ILEMP, 3522 Polk Street, Houston, TX 77003-4844

Wendy Young, , U.S. Cath. Conf., 3211 4th St. NE, , Washington, DC, 20017-1194

Miriam Hayward , International Institute Of The East Bay, 297 Lee Street , Oakland, CA 94610

Emily Goldfarb, , Coalition For Immigrant & Refugee Rights, 995 Market Street, Suite 1108 , San Francisco, CA 94103

Jose De La Paz, Director, California Immigrant Workers Association, 515 S. Shatto Place , Los Angeles, CA, 90020

Annie Wilson, LIRS, 390 Park Avenue South, First Asylum Concerns, New York, NY 10016

Stewart Kwoh, Asian Pacific American Legal Center, 1010 S. Flower St., Suite 302, Los Angeles, CA 90015

Warren Leiden, Executive Director, AILA, 1400 Eye St., N.W., Ste. 1200, Washington, DC, 20005

Frank Sharry, Nat'l Immig Ref & Citiz Forum, 220 I Street N.E., Ste. 220, Washington, D.C. 20002

Reynaldo Guerrero, Executive Director, Center For Immigrant's Rights, 48 St. Marks Place , New York, NY 10003

Charles Wheeler , National Immigration Law Center, 1102 S. Crenshaw Blvd., Suite 101 , Los Angeles, CA 90019

Deborah A. Sanders, Asylum & Ref. Rts Law Project, Washington Lawyers Comm., 1300 19th Street, N.W., Suite 500 , Washington, D.C. 20036

Stanley Mark, Asian American Legal Def.& Ed.Fund, 99 Hudson St, 12th Floor, New York, NY 10013

Sid Mohn, Executive Director, Travelers & Immigrants Aid, 327 S. LaSalle Street, Suite 1500, Chicago, IL, 60604

Bruce Goldstein, Attornet At Law, Farmworker Justice Fund, Inc., 2001 S Street, N.W., Suite 210, Washington, DC 20009

Ninfa Krueger, Director, BARCA, 1701 N. 8th Street, Suite B-28, McAllen, TX 78501

John Goldstein, , Proyecto San Pablo, PO Box 4596,, Yuma, AZ 85364

Valerie Hink, Attorney At Law, Tucson Ecumenical Legal Assistance, P.O. Box 3007 , Tucson, AZ 85702

Pamela Mohr, Executive Director, Alliance For Children's Rights, 3708 Wilshire Blvd. Suite 720, Los Angeles, CA 90010

Pamela Day, Child Welfare League Of America, 440 1st St. N.W., , Washington, DC 20001

Susan Lydon, Esq., Immigrant Legal Resource Center, 1663 Mission St. Ste 602, San Francisco, CA 94103

Patrick Maher, Juvenile Project, Centro De Asuntos Migratorios, 1446 Front Street, # 305, San Diego, CA 92101

Lorena Munoz, Staff Attorney, Legal Aid Foundation of LA-IRO, 1102 Crenshaw Blvd., Los Angeles, CA 90019

Christina Zawisza, Staff Attorney, Legal Services of Greater Miami, 225 N.E. 34th Street, Suite 300, Miami, FL 33137

Miriam Wright Edelman, Executive Director, Children's Defense Fund, 122 C Street N.W. 4th Floor,
Washington, DC 20001

Rogelio Nunez, Executive Director, Proyecto Libertad, 113 N. First St., Harlingen, TX 78550

Exhibit 6
Notice of Right to Judicial Review

"The INS usually houses persons under the age of 18 in an open setting, such as a foster or group home, and not in detention facilities. If you believe that you have not been properly placed or that you have been treated improperly, you may ask a federal judge to review your case. You may call a lawyer to help you do this. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form."

K

000634

ILPA research report

When is a child not a child?

Asylum, age disputes and the process of age assessment

Heaven Crawley

With a foreword by Professor Sir Al Aynsley-Green,
Children's Commissioner for England

Project directed by Susan Rowlands

Funded by The Nuffield Foundation

May 2007

ILPA Immigration Law Practitioners' Association

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Policy and law correct at 1 March 2007

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CHAPTER 2

Understanding age disputes

This chapter outlines the factors that underlie disputes over age in the asylum context and the reasons why the number of age disputes appears to have increased over recent years.

Case study

Mireille, 17, from Benin

This culture of disbelief can also be seen in the tendency to exaggerate or over-emphasise the proportion of age disputed clients who are assessed as being adults. When asked the proportion of age disputed referrals that were found to be adults, one social worker commented that 'I would say it's 99%'. Another said, 'I don't think it's that high – maybe about 90%'. Figures obtained for that local authority indicate that the number is actually much lower.⁸ Further specific examples and the implications of such an approach for disputes over age and the assessment process are discussed throughout this report.

2.3 Difficulties in assessing chronological age

The assessment of chronological age is notoriously difficult. Even among children who grow up in the same social and economic environment and come from similar ethnic backgrounds, there are significant physical and emotional differences, as well as differences in needs and vulnerability, between children of the same age. Separated asylum seeking children come from cultures and contexts in which childhood is defined in different ways and where the social, economic and political circumstances in which they live make it impossible for them to do the things that we expect children living in the UK to be able to do.

These children are much less likely to go to school – the taken for granted 'norm' of childhood in our society – and much more likely to work, involve themselves in political activities, be caught up in conflict and fight for their communities or even their survival. Many of these children come from cultural contexts where chronological age is insignificant or from situations of conflict and violence which render it effectively meaningless. Not only may they look and behave older than we would expect children in our society to look and behave, but they often have no documentary evidence – no passport or birth certificate – to confirm that they are the age they know or believe themselves to be.

The difficulty in assessing chronological age is further exacerbated by the fact that there is no scientific or medical assessment process

⁸ Unpublished figures provided by the Children's Panel.

which can solve this problem accurately. The medical assessment methods described in this chapter are associated with a margin of error of at least two years in either direction. In other words, a child or young person may actually be up to two years older or younger than the estimated chronological age, reflected in the fact that an assessed age is often expressed in terms of being plus or minus (+/-) two years. Age assessment is particularly difficult for those who are aged between 15 and 20 years of age and yet this is where the assessment of age – and the outcome of the process – is most critical.

Although this research does not attempt to give a definitive account of the different medical or scientific methods for the assessment of age, it is important to understand some of the methods that may be used in an attempt to assess developmental maturity and from which it may be possible to 'read off' an approximate chronological age. These methods can be grouped into the following types: assessment of bone age; dental age assessments; and the assessment of physical development (including puberty, height, weight and skin).⁹

The assessment of bone age is most commonly based on x-rays of the hand and wrist which are compared to one of two different but similar reference atlases developed by Greulich and Pyle and Tanner and Whitehouse. The Greulich and Pyle method was established as a result of a 1935 study which did not attempt to evaluate age but rather assessed skeletal maturity and did not take inter-racial or socio-economic differences into consideration. The authors themselves recognised that there was not necessarily a relationship between the chronological age of a child and the amount of progress which the child has made toward attaining skeletal adulthood.

Reflecting this, numerous studies of the Greulich and Pyle standards and other dental and bone age standards have found discrepancies and variability. Ontell et al (1997) conclude that using the standards of Greulich and Pyle to determine bone age must be done with reservations, particularly in black and Hispanic girls and in Asian and Hispanic boys in late childhood and adolescence.

⁹ For an overview of the various scientific and medical techniques available for the assessment of age see Eizenberger 2003.

Another study of US children of European and African descent, published in 2001, concludes that new standards are needed to make clinical decisions that require reliable bone ages and accurately represent a multiethnic paediatric population.¹⁰

The Tanner and Whitehouse (TW-2) method of bone age assessment is based on the assessment of skeletal maturity and a prediction of adult height. In this case each of the 20 bones in the hand is individually compared with a series of pictures of the development of that particular bone. The reference standards which are used were established in the 1950s and 1960s. There is evidence that bone maturity is reached sooner now than four or five decades ago and that this is a particularly unreliable method for older groups (those of 15 to 18 years of age) and for those from different ethnic and racial backgrounds.¹¹

It seems likely therefore that both methods of bone age assessment involving x-rays of the wrist and hand are affected by racial differences. A further method of bone age assessment involving the fusion of the clavicle has been used in some contexts but is generally considered to be relevant only in determining whether an individual is over or under 21 years of age, which is the approximate chronological age at which full clavicle development is most usually observed.

Although several countries which have previously used bone age assessment methods have discontinued this practice (for example Germany, Austria, Switzerland), this method is still used in several European countries, such as Belgium, Finland, Lithuania and France. In the Netherlands the Committee on Age Determination has been dismissive of age assessment being conducted solely on the basis of x-rays of the hand–wrist region because ‘the exclusive use of the hand–wrist region means that about 90% of all girls and some 50% of all boys reach the physical criterion for exclusion before they reach the age of 18, which means they may be unjustly refused treatment as minors’.¹² The Dutch authorities use clavicle x-rays along with x-rays of the hand–wrist region to determine age although this is a much more intrusive process and the margin of error remains considerable.

¹⁰ Mora et al 2001.

¹¹ Eizenberger 2003.

¹² Committee on Age Determination 2006, 9.

One of the most common methods for the medical assessment of age is dental age assessment using x-rays. Dental maturity, often expressed as dental age, is an indicator of the biological maturity of growing children. Although different methods have been proposed to determine dental age – most of which involve counting the number of primary or permanent teeth, the existence or otherwise of wisdom-teeth and studying the mineralization of the teeth – the system developed by Demirjian has gained the widest acceptance.

There is however, a widely accepted margin of error associated with dental age assessment. Critics, such as the German Association of Forensic Medicine and researchers in Sweden, Finland, France and the USA, state that the development of teeth depends on the environment, nutrition, as well as ethnicity and race.

Those studies which have been undertaken looking at the applicability of dental age assessments to different populations suggest that there are wide variations in the chronological ages that are associated with different recognised stages of dental development. For example:

- Koshy and Tandon (1998) found that Demirjian's method of age assessment is not accurate when applied to South Indian children. In this case it was found that Demirjian's method gave an overestimation of 3.04 and 2.82 years in males and females respectively. The study concludes that this method of age assessment was not applicable for this group of children;
- Thorson and Hagg (2001) investigated the accuracy of the development of one molar often used to estimate chronological age in certain young foreign individuals with uncertain birth records. They found that the difference between estimated and true chronological age was large: plus or minus 4.5 years in girls and plus or minus 2.8 years in boys. They concluded that the association between dental age and chronological age, expressed in correlation coefficients, was poor;
- Eid et al (2002) applied the Demirjian method to Brazilian children aged 6 to 14 years of age and found that compared to the French-Canadian sample of Demirjian, Brazilian males and females were 0.6 years more advanced in dental maturity;

- McKenna et al (2002) applied the Demirjian method to South Australian children in order to assess its accuracy and concluded that the mean of differences was consistently outside the range of what would be considered acceptable for forensic age determination;
- Ethnic differences in the mineralization of third molars have been identified by Olze et al (2004; 2006);
- Combining a bone age measurement with dental exams still yielded significant overestimation of chronological age in another study of Swedish adolescents (Kullman 1995); and
- A number of other studies have also found multi-year differences between chronological and dental age.¹³

One of the main problems with the use of dental age assessments in the asylum context is that there is no benchmark data relating to the countries from which asylum seeking children originate. Moreover many of the samples that exist in relation to other populations are for groups of children who are much younger in age, most commonly under 14 years of age. During the earlier developmental stages, tooth development in males and females coincides closely. However, during later developmental stages, particularly root formation, a notable divergence between the sexes arises; with females being advanced when compared with males.¹⁴ This is in keeping with other studies and reaffirms that any assessment of dental maturation must take into account these gender differences and the fact that the margin of error increases as children get older.

Because of the problems of sample size and ethnic and other differences, dental age assessments are widely regarded as being highly unreliable for assessing age. In the Netherlands, for example, dental age examination is regarded as being unsound because 25% of all people grow no wisdom teeth and because root development of the wisdom tooth demonstrates an extreme degree of inter-personal variation in the maturation process. According to a recent report by the Committee on Age Determination, 'about 10% of all girls and some 16% of all boys

¹³ See Physicians for Human Rights (2003) for further information.

¹⁴ McKenna et al 2002.

reach the criterion for exclusion before they are 18 years old and may therefore be unjustly refused treatment as a minor'.¹⁵

Finally, there are a number of anthropometric measurements (including puberty, height, weight and skin) which do not involve the use of x-rays, and have been used in a number of countries, including the UK, in an attempt to assess age. However these methods are also problematic. Although they do not involve x-rays, anthropometric measurements have been highly criticised because they do not take into consideration variations according to ethnicity, race, nutritional intake and socio-economic background. The reference tables are 35–40 years old and no longer correspond to the size of people living in Europe today. There are also problems with pubertal staging as a method of age assessment because it only provides an indication of whether someone is over approximately 15 years of age. Moreover any kind of puberty test involving an examination of the genitals is highly unlikely to be anything other than abusive.

There are increasing concerns among academics and practitioners alike that despite the problems with medical assessments of age outlined above, unreliable medical tests and examinations are being given unwarranted scientific legitimacy in the search for a technically simple solution to a difficult and seemingly intractable problem. At a conference held on 7 March 2000, organised by the Austrian NGO *Kinderstimme* (Children's Voice), experts came to the conclusion that age determination is not possible using existing medical methods.¹⁶ In most cases medical tests are very expensive and can only indicate whether the age is under 16 years of age or over 20. According to medical research, a divergence of up to three years between the chronological age and the assessed age of the bones is possible. Any parameter variation from a growth source varies as children get older and this variation reduces the degree of accuracy. To this extent, age assessment is not a determination of chronological age but rather an educated guess.

¹⁵ Committee on Age Determination 2006, 9.

¹⁶ Eizenberger 2003.

The difficulties in assessing chronological age using medical techniques are reflected in international and national guidance, including UNHCR's *Guidelines on policies and procedures in dealing with unaccompanied children seeking asylum* (1997), the *Statement of Good Practice* issued by the Separated Children in Europe Programme. In the UK the clearest guidance on the assessment of age is that provided by the Royal College of Paediatrics and Child Health (RCPCH) in 1999. The guidelines state that:

'In practice, age determination is extremely difficult to do with certainty, and no single approach to this can be relied upon. Moreover for young people aged 15–18, it is even less possible to be certain about age. There may also be difficulties in determining whether a young person who might be as old as 23 could, in fact, be under the age of 18. Age determination is an inexact science and the margin of error can sometimes be as much as five years either side. Assessments of age measure maturity, not chronological age.'¹⁷

According to the RCPCH guidelines, the determination of age is a complex and often inexact set of skills where various types of physical, social and cultural factors all play their part, although none provide a wholly exact or reliable indication of age, especially for older children. For this reason assessments of age should only be made in the context of a holistic examination of the child and no single measurement or type of assessment should be relied upon. The RCPCH also notes the existence of well-documented uncertainties about the accuracy of dental age assessments and the fact that estimates of a child's physical age from his or her dental development are accurate only to within plus or minus two years for 95% of the population.

The RCPCH has also expressed its opposition to the use of x-rays for non-clinical purposes. In 1996 the Royal College of Radiologists advised its members that it was inappropriate to undertake an x-ray for the purposes of age estimation. This advice has not changed in the intervening decade.

Reflecting the position set out in the RCPCH guidelines most paediatricians in the UK have taken a decision against involvement in the process of age assessment, considering, it is assumed, that

¹⁷ RCPCH 1999, paragraph 5.6.

they have little to add to the process. The few paediatricians who have become involved in undertaking age assessments of children have become caught up in a difficult and increasingly litigious process. This situation and its implications is discussed in more detail in chapter 5.

Medical tests to assess age also raise important issues around informed consent. Central to the dental and medical professions' ethical codes are principles of patient autonomy, welfare and consent. Dental and bone age testing examination, which are conducted by a limited number of physicians and dentists and are effectively contracted and paid for by the government, seem to breach all three of these ethical principles.

Given that medical age assessments constitute an invasion of privacy for no therapeutic gain, it is particularly important that the informed consent of those who are to be subjected to these procedures is secured before they are undertaken. It seems unlikely that a child or young person who is asked at a screening unit or port of arrival whether he or she is willing to undergo a dental x-ray to ascertain age, will be in a position to give consent that is both genuine and informed. In particular there are concerns that if an individual refuses to undertake a medical assessment in such circumstances he or she will be assumed to be an adult so that 'informed consent' effectively becomes compulsion in practice.

Given the problems associated with medical assessments of chronological age and the ethical issues associated with x-rays undertaken for non-medical purposes, it is surprising that the Home Office has indicated that it intends to make greater use of dental development x-rays where there is a reasonable doubt about the claimed age.¹⁸ According to the consultation document which was published whilst this report was being finalised, 'there does appear to have been more recent research that indicates x-ray analysis (of the teeth and collar and wrist bones) can be a more reliable means of determining age than was once thought. That is certainly the belief of some of our EU partners, who regularly use these techniques for immigration purposes.'¹⁹ The source of evidence on which these statements are made is not provided.

¹⁸ Home Office 2007, paragraph 31.

¹⁹ Home Office 2007, paragraph 27.

Contrary to these assertions, this research has found that there is no evidence that x-ray analysis can be a more reliable means of determining age than was once thought. Indeed the more that studies are conducted involving populations from different socio-economic and ethnic backgrounds the more *unreliable* such methods appear to be.

Moreover it remains the case that x-rays are not, and cannot ever be, used to ascertain chronological age. They can only ever provide an indication of skeletal or developmental maturity from which conclusions about chronological age may be inferred. Relying upon these methods does not provide any insight into the vulnerability and needs of the child or young person concerned. This is significant because social and psychological factors are also important in the assessment of age and need.

2.4 The risks of getting it wrong

“ In September there was a young girl who claimed she was 14. The Home Office disputed her as being 17 or 18. We came to the conclusion that she was 14 and reunited her with her father in London. We managed to get her birth certificate and passport and it turns out she is 11 and has gone into year 7 at school. But the Home Office wanted to detain her as a 17 or 18 year old.”

■ Social worker

There is evidence that the age of separated asylum seeking children is often wrongly disputed. Statistical evidence on the number of wrongly disputed children is limited. In March 2007 the Government was asked how many age disputed applicants were subsequently assessed as being children. The Minister responded that this information would only be available by examination of individual case-files at disproportionate cost and was therefore not available.²⁰

According to the Home Office's own published statistics however, a total of 1145 cases were 'resolved' during 2004 and 2005.²¹

²⁰ Hansard written answers 23 March 2007: Column 1162W, www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070323/text/70323w0003.htm [accessed 1 March 2007].

²¹ Home Office 2005.

Without separating the 'resolved' cases into those that were subsequently accepted by the Home Office as children and those that withdrew their claim to be under 18 years of age, it is difficult to know how many separated asylum seeking children were deprived of the protection to which they were entitled and for how long. However it seems likely that in the vast majority of cases the evidence of a social work assessment has been accepted.²² It also seems likely from the evidence collected during this research and discussed in the chapters that follow, that the number of cases where children are wrongly age disputed is even higher than this figure suggests. This is because not all children are able to access a social work assessment of their age and even when they are assessed as being under 18 years of age their records are not updated accordingly.

Statistical evidence from other sources confirms this conclusion. For example, statistics on the number of age disputed cases brought into the Oakington Reception Centre and the 'outcomes' for each case have been collected by the Refugee Council. In 2005 over 60% of those assessed by the local authority – amounting to 101 children over the course of the year – were found to be children following a detailed assessment. For three months of the year this rose to more than 80% of cases. The overwhelming evidence from the Oakington statistics is that the 'benefit of the doubt' is not being properly applied by immigration officers at ports of entry and screening units. It should also be noted that a significant proportion (around one third) of all assessments end up being cancelled. This may be because the child concerned has already been removed from the UK.²³

The Children's Panel also collects statistics on the outcome of age disputed cases being dealt with by local authorities in the London area. For the 15-month period March 2005 – May 2006, the Panel was in contact with a total of 164 age disputed cases. Of these half (49%) went on to be assessed by a local authority as being children and supported by them. 41% were assessed as adults

²² This research did not uncover any evidence of claims to be a child being withdrawn.

²³ It is not known what happened to these children as there are no records of the outcome in such cases.

and referred to NASS for support. A small number (8 in total) were either removed or disappeared. It should be noted that there are significant differences in the 'success' rates for reassessments between London boroughs. For some local authorities it was 14%; for others only 1, 2 or 3%.

The Home Office's policy on disputed age cases is discussed in more detail in the following chapters. It should be noted here however that the fact that IND does not treat age disputed applicants as children unless and until their age is established as being under 18 is a cause of very great concern among social workers, legal representatives and voluntary sector practitioners alike:

- “ My biggest worry is that the system isn't working. It's failing at a number of different levels. Disputes over age are a sizable problem and the policy response is effectively a failure of child protection.”
 - Medical practitioner
- “ What really concerns me is that someone who has not been assessed should be treated as an adult...it's a huge risk...it's important that they sit outside the adult system because of child protection and other issues.”
 - Voluntary sector practitioner

Many of those working with separated asylum seeking children consider that there are significant risks associated with treating children as adults. These include:

- Risks that children will not receive the international protection to which they are entitled, including protection from detention and removal from the UK;
- Health, welfare and social risks resulting from the failure to provide appropriate welfare and support, including the risks of children being dispersed around the UK; and
- Child protection risks associated with placing vulnerable children, including those who have been trafficked, with adults.

All of these risks must be understood in the context of the Government's safeguarding children agenda.²⁴

²⁴ Section 11 of the Children Act 2004 places a statutory duty on key people and bodies to make arrangements to safeguard and promote the welfare of children.

Although the Home Office is aware of these concerns,²⁵ Ministers and senior policy officials have consistently chosen to focus on the risks of adults being placed in the children system to a far greater extent than on the risks to children of being placed in the adult system. This focus partly reflects a conviction, discussed earlier, that the problem of age disputes stems primarily from adults claiming to be children and not from problems in immigration or social work policy and practice.

And yet even from a common-sense point of view the risks of wrongly treating children as adults are considerably higher than the other way around. This is because the children system has in-built support and supervision to prevent children from being harmed. No such safeguards exist in the adult system. Indeed it appears that any 'risks' associated with adults in the children system are much more related to the economic implications and a perception that immigration controls are being undermined than they are with outcomes for children.

It is clear from the evidence presented in the preceding section that there is no easy or straightforward way of determining chronological age. But it is also clear that in a significant number of cases each year, involving hundreds of separated asylum seeking children, the wrong decision is reached at the beginning of the asylum process with all the associated risks that this entails. The process by which age comes to be disputed, the effectiveness of procedures for assessing age, and the implications of age disputes for the children form the basis of the analysis and discussion in the chapters that follow.

²⁵ The Home Office's consultation paper on proposed reforms to the programme of support for unaccompanied asylum seeking children acknowledges that '[s]takeholders frequently draw attention to the serious child protection issues that could arise as a consequence of decisions that lead to children being placed in accommodation designed for adults' (Home Office 2007, paragraph 25).

CHAPTER 5

The assessment of age

This chapter provides an overview of our findings in relation to the process of age assessment itself, including the quality of the assessments undertaken by social workers, the use of the practice guidelines developed by the London boroughs of Hillingdon and Croydon and the extent to which supporting documentary and medical or professional evidence is taken into account.

It also sets out the implications of ongoing disputes over age for both local authorities and children seeking asylum.

Case studies

Fatuma, 14, from Liberia

Sembala, 15, from Uganda

Desta, 16, from Ethiopia

Erbil, 14, from Iran

Yvette, 16, from the Democratic Republic of the Congo

- “ The gist of age assessments definitely changed after Merton. Now we see the credibility argument all the time. It’s ridiculous. Lying is not an indicator of age. 15 years olds do lie. The credibility argument needs to be shown for what it is. Teenagers who come into the UK will almost certainly tell a lot of lies.”
 - Medical practitioner
- “ Many of the age assessments focus on consistency. This is a constant argument about the process of age assessment. We all change the story we tell, and its okay to do that. When you add in trauma we should expect people to tell us inconsistencies. To argue that it has a bearing on age assessment whether or not you think someone is lying is ridiculous...but there is pressure on the age assessment to be consistent from start to finish. The job of an age assessment is not to get to the truth...We need to acknowledge that no one keeps the story for so long and that trauma and experience will have an impact on the way we tell our stories.”
 - Voluntary sector practitioner

5.4 Supporting information

There is evidence of considerable variation in the use and interpretation of documentary, expert and medical evidence in the age assessment process. Many social workers do not know what weight they should give to the different – and sometimes conflicting – evidence that is presented in particular cases. This includes documentary evidence, medical evidence and in particular paediatric reports, and evidence provided by other professionals.

Documentary evidence

There is evidence that some local authorities take documentary evidence into account when it is presented. Hakim is a 13 year old boy from Afghanistan (► case study, chapter 7.1). After his age was disputed and he was dispersed by NASS, his age was assessed by social services who concluded that he was 16 years of age and gave him a date of birth of 01/01/1990. When a birth certificate confirming his age was subsequently sent by his brother his date of birth was changed accordingly. As a result he was placed with a foster family and is attending school.

As with many aspects of the age assessment process however, there are inconsistencies in the extent to which appropriate consideration is given to documentary evidence which confirms a child's stated age. Many social workers expressed concerns about the authenticity of the documents that are presented:

‘ Often we don't know whether it's authentic or if it's useful. It can be authentic but might not be useful. We take documentary evidence but we have no way of verifying it and knowing whether it's authentic or not. There are other kinds of documents that can be useful, for school photos, especially old ones, are helpful. We always tell people, 'if you can provide documentary evidence you can come back but we can't guarantee we will change our decision on the basis of this.' ’

■ Social worker

‘ We don't have to automatically accept a birth certificate as proof of age. Birth certificates are not necessarily a proof of identity. Someone could have arrived in the UK using false documents because of the risk of having a genuine form of identity with them. If they have arrived using false documents then they are people who have access to false documents....We can take account of how the young person says they have their birth certificate and no other supporting documents with them. ’

■ Social worker

In some cases these concerns about the authenticity or otherwise of documents are exacerbated by the fact that the original documents have been held by the Home Office and only a photocopy is available. When Yvette (► case study, chapter 5.5) applied for asylum at the screening unit, she took with her the original of her *Attestation de Naissance*⁷ confirming that she was a child. The Home Office kept the original document and gave her a photocopy. Although an academic professor with expertise in the DRC authenticated the document, the social worker did not accept that the *Attestation* provided evidence of her age because it was a copy of the original and because there was nothing to indicate that the Home Office had seen the original as verification of Yvette's date of birth. The Home Office subsequently sent the original *Attestation* to the solicitor but it did not arrive.

⁷ An *Attestation* is not a 'birth certificate' of the sort used in the UK but 'confirmation of birth' which will normally have been based on documents provided by the person or persons concerned or, less usually, by a relative on their behalf to a local authority, a justice of the peace or an equivalent of a 'responsible person'.

Social workers undertaking age assessments may also ignore documentary evidence of a child's age because the Home Office ignored it. Astrit was 17 when he arrived in the UK in January 2006. Although he presented his birth certificate and UN identity certificate at the screening unit, his age was disputed. He was referred by the Children's Panel to a local authority in London who assessed him as being over 18 years of age and referred him back to the Children's Panel. When Astrit's adviser at the Panel asked whether consideration had been given to the birth certificate, she was told that it had not been considered because Astrit's age was disputed by the Home Office who had already seen the certificate. This is not consistent with the Merton judgment, which states that a local authority must make an assessment on the material available to and obtained by it.

This approach towards documentary evidence can create huge problems for children and is associated with ongoing disputes over age (as discussed below). The evidence presented in chapters 2 and 3 suggests that the inability of children to present documentary evidence in support of their stated age can increase the possibility that the applicant's age is disputed. The evidence presented here suggests that even those able to provide documentary evidence in support of their age may continue to be treated as adults by social services:

- 4 Some local authorities are not accepting documents even if they are authenticated. In these cases the young person starts to question the evidence. If they still don't believe who I am does that mean I'm not anybody? ▯
 - Social work manager

This can also create a situation where children are put at considerable additional risk. When Lavdie (► case study, chapter 7.3) applied for asylum at the screening unit, both her passport and birth certificate were taken from her and she was given photocopies. Her age was then disputed by the SSD to whom she was referred for support. According to correspondence between the social worker and Children's Panel, the social worker believed that the documents were forged or did not belong to Lavdie although she had not seen the original documents that were with Home Office and which had not disputed their authenticity.

The social worker told Lavdie that her age would not be disputed if she was able to obtain another birth certificate from Albania, despite the obvious risks that this might entail both for her and her family:

- ▣ They wanted my passport but I had just a photocopy. They said 'if you bring your birth certificate we believe you and everything will be okay'. Because of this I made myself in risk by phoning my sister. If my father knows where I am he will kill me. She sent me the certificate but they still don't believe me. ▸

- Lavdie, 15, Albania

Medical evidence

The evidence presented in chapter 2 strongly suggests that there is no reliable medical or other scientific test to establish chronological age. Nonetheless these methods are being increasingly used by SSDs and legal practitioners in an effort to resolve disputes over age. The most commonly used medical evidence is an assessment undertaken by a consultant paediatrician. This method of age assessment typically involves anthropometric measurements including height, weight, skin and non-objective indicators, such as a young person's interactions with the paediatrician.

Although most children do not consider paediatric assessment to be particularly intrusive, there is evidence that paediatric assessment of age is not always useful in the current context where age has become so contested. Although some local authorities may accept the assessment of a paediatrician and amend their assessment of a child's age accordingly, in other cases the assessment itself may become the subject of an ongoing dispute between the child and local authority or between different local authorities. Moreover paediatric assessments of age are not necessarily or automatically accepted by the Home Office as evidence that a child or young person is the age that he or she claims to be.

Some of these problems arise from the fact that many paediatric assessments of age are undertaken by one paediatrician. Although that paediatrician does not assess all to be under 18 years of age there is a perception, held by many of the social workers that were interviewed during the course of this research and by Home Office officials and policy makers, that the majority of age disputed cases are assessed as children and that this evidence is therefore

not objective and impartial. This perception arises in significant part from the fact that the assessment is usually commissioned by a legal representative, who pays the fee for the assessment process and who will only relay the outcome of the assessment to the local authority and/or Home Office if it is in the client's favour.

Some social workers are particularly hostile to paediatric assessments submitted in a child's favour and may compare the account given by the child during the paediatric assessment process with that provided during the social service interview or at other times. Where differences or inconsistencies in the account are identified this may be used as evidence that the child is lying about their age. Others are dismissive of the views of the paediatrician who they do not consider as expert or experienced as themselves.

Concerns about the objectivity or otherwise of paediatric assessments are exacerbated by the fact that there are sometimes errors in the reports provided to local authorities. Because the process of age assessment has become so contested, such errors, even where they are relatively minor factual or typographical in nature, can lead to accusations that a child has been inconsistent in the information that provided to different assessors. For example, the social worker involved in the case of Fatuma (► case study, chapter 5.1) states in ongoing correspondence with the child's legal representative that there are inconsistencies between the information given to the paediatrician and the information collected during the age assessment. When raised with the paediatrician, it was accepted that there had been a typographical error in the date of birth given.

Most importantly, it is the margin of error which is inherent in *all* medical assessments of age and which is an explicit feature of the paediatric assessments submitted to local authorities and the Home Office, which creates the most significant difficulties in the use and interpretation of medical evidence of this kind. In some cases the margin of error is interpreted as confirmation that an age disputed child is an adult even where the assessment states that he or she has been assessed as being 16 or 17 years old plus or minus two years. In other words, the assessment is interpreted as meaning that someone who is assessed as being 16 years of age could actually be 18 and someone who is assessed as 17 could actually be 19.

This is despite the fact that the balance of probabilities means that someone who is assessed as 17 is *more likely* to be a child of 15, 16 or 17 than an adult of 18:⁸

- “ [A paediatrician] still uses a two year span and often concludes that someone is between 17 and 19 or 16 and 18. It simply doesn't help us. When we get an assessment like that we will mostly conclude that they are still adults. ”
 - Social work manager
- “ A paediatric report is no better or worse than ours so we have only commissioned one or two of those. Usually what we do is sit down with the report and try to answer any questions raised or statements made. Some people are using medical qualifications to add credence to the assessment but it doesn't say anything different. ”
 - Social work manager

This approach to the margin of error is reflected in the fact that until recently it had become increasingly common for the Home Office to refuse to accept a consultant paediatrician's report as an independent assessment of age. This was challenged in the cases of *R (on the application of A)* and *R (I & O)* which are discussed above. Both of these cases involved age disputed children who had been unlawfully detained.⁹

It should also be noted here that whilst paediatric age assessments are the most common kind of medical evidence submitted in support of age disputed children and young people, there is also anecdotal evidence that local authorities and legal representatives are increasingly commissioning other kinds of medical examinations in an attempt to assess age, including examinations which involve the use of x-rays. Such x-rays may be undertaken specifically as part of the age assessment process or in the context of a routine dental check-up:

⁸ See 'Note on Implications' by Blake, N and Kilroy, C, available at www.childrenslegalcentre.com/shared_asp_files/uploadedfiles/%7BB77EF00D-D6A8-470E-BFD7-AA9FCF2C6923%7D_Note%20on%20consent%20order%20_oakington_%2019.10.pdf [accessed 1 March 2007].

⁹ See chapter 6 for a detailed discussion of detention.

- “ My solicitor made an appointment for an age assessment. I went to a doctor...The doctor searched my teeth and do some x-ray. The x-rays were of my face and inside my mouth. And then he checked my hands, my forearms and my wrists. It [the examination] was normal...he said my real age and didn't make any confusion...he assessed my age as being between 16 and 17.”
- Darab, 16, Iran

Although it may be presented as definitive and accurate, medical evidence is always open to interpretation. To this extent it is not at all clear that medical evidence provides the solution to the difficulties of age assessment. These approaches can in themselves be abusive and damaging to children and may simply increase the competing claims of those with an interest in the outcome of the process. There is a danger that one set of measurements that assess 'childhood' on the basis of our norms and expectations of physical behaviour and demeanour are replaced with another set of norms which are based on physical measurements and assumptions that are not necessarily universal but are assumed to be. This may be appealing because it gives the contentious process of age assessment an air of scientific legitimacy but there is no evidence that it is more reliable.

Medical evidence may be an important part of the picture in the assessment of age but it should not be relied upon in isolation from other evidence and information. As has been suggested throughout this chapter, social workers and voluntary sector practitioners are of the view that age assessment should be a holistic process in which the view of different types of evidence provided by different kinds of professionals are taken into account. This is the only way in which ongoing disputes over the assessment of age can be avoided.

Evidence from other professionals

A number of children participating in this research commented that the questions that were asked of them during the age assessment process were irrelevant to their experiences and did not allow them to properly explain the circumstances of their lives in the country of origin. The difficulties in understanding and making sense of children's experiences suggest that social workers should develop good working relationships with other professionals in contact with separated asylum seeking children.

Many social workers recognise the importance of understanding life in the countries of origin, and some local authorities have developed partnerships with local voluntary and statutory organisations in order to achieve this. Although these relationships can be difficult, especially where there are differences of view as to the age and needs of children and young people, they are nonetheless largely viewed as being worthwhile. Others highlighted the important role that other professionals can potentially play in the age assessment process. This echoes the concerns of some social workers which were raised in the previous chapter about the absence of a multi-agency approach towards the age assessment process.

Despite social workers' recognition of the potential value of evidence provided by other professionals, it is apparent that the weight placed on that evidence varies in the assessment process. Although some social workers shared information about their own good practice in this respect, others were dismissive of the evidence provided by other service providers (for example, teachers, doctors and mental health workers) in support of a child's stated age on the basis that the opinions of these professionals were in some way biased in favour of the child. For example, in Yvette's case (► case study, chapter 5.5) additional information provided by two child and adolescent psychotherapists and a Children's Panel adviser appears to have made little or no difference to the assessment process. In the case of Fatuma (► case study, chapter 5.1) neither a paediatric assessment, nor a letter from an adviser at the Refugee Arrivals Project, nor a specialist psychiatrist's report were taken into account until legal action was taken.

Some local authorities do not even undertake formal age assessments but rely instead on the observations of third parties, particularly foster carers. This can be problematic if there is a conflict between the child and the foster carer which might influence the outcome of the process. In one case of which we were made aware, an age disputed child claimed that the foster carer had told the local authority that he was an adult as punishment for his refusal to undertake unpaid work in the family business. Whilst the views of the foster carer can appropriately be taken into account, these views should not, in and of themselves, result in a decision to treat a child as an adult. Rather a holistic process requires that the assessment takes place over a period of time and involves a wide range of professionals:

- “ I think it would be better if there was a longer process, perhaps over a week. It would involve the foster carer or key worker and any adult with contact with the young person, for example, education providers if they are on an ESOL course. It’s important to take account of how the young person interacts with others, including, for example, volunteers at any social group the young person is involved with. I think this would help us to create a fuller picture. We should still err on the side of caution but it should be more evidence based and not just based on a one hour conversation with a social worker.”
 - Social worker
- “ The ideal scenario would be that there is some kind of social interface and a support team with some cultural background involved. There could be a six-week support package as part of the induction process. The young people could be provided with a bit of education, some creative input. It would be a holistic process with an element of trying to check someone’s age. In that way the process would be beneficial regardless of the outcome.”
 - Social work manager

5.5 Outcome of the assessment and ongoing disputes

The process of age assessment has become the subject of increasing conflict between children and their legal representatives and some SSDs. This situation has arisen largely because of the considerable variations in the way in which the age assessment process is conducted and the inconsistencies in the weight given to different kinds of evidence identified by this research.

Many ongoing disputes over age reflect actual or perceived inconsistencies in the account, minor and seemingly inconsequential events or errors (including typographical and administrative errors), and assumptions about behaviour and actions that are not necessarily appropriate or accurate.

Because the age assessment process is not based on statutory guidance and because there is no independent review mechanism to examine the process by which a decision as to a child’s age has been reached, the only option available where there are concerns about the quality of the assessment process is judicial review.

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From:	James De LA Cruz via Cisco WebEx <james.delacruz@acf.hhs.gov>
To:	"De LA Cruz, James (ACF) </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2eba95d119ab4cd6a77b34616dc3366c-De LA Cruz,>"; "Volovar, Jill (ACF) </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f452fce1b8e94751b340f7ebd6f4ee4b-Volovar, Ji>"; (b)(6);(b)(7)(F)@ice.dhs.gov>; (b)(6);(b)(7)(F)@ice.dhs.gov)"
Subject:	Invitation to WebEx meeting: Age Determination Procedures
Date:	2018/02/01 18:47:13
Start Date:	2018/02/02 14:00:00
End Date:	2018/02/02 15:00:00
Priority:	Normal
Type:	Appointment
Location:	WebEx Online

Hi James De LA Cruz,
James De LA Cruz is inviting you to this WebEx meeting:
Age Determination Procedures
Host: James De LA Cruz
When it's time, join the meeting from here:
<u>Join the meeting</u>

When: Friday, February 2, 2018, 2:00 pm (1 hr), Eastern Standard Time (New York, GMT-05:00).
Access Information
Meeting Number:
(b)(6)
Password:
(This meeting does not require a password.)
Audio Connection
202774 (b)(6) (Meeting Server Main Number)
Access Code:
(b)(6)
Delivering the power of collaboration The meetingserver.hhs.gov team
Case 1.
<p>In consultation with FFS Supervisor, FFS is re-submitting prior ORR request for Transfer of Custody of ICC Participant - K.S. (A# --- (b)(6)). Per HHS/DHS joint age determination policy, namely 1.6 Determining the Age of an Individual without Lawful Immigration Status, in which the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) instructs HHS to devise age determination procedures for individuals without lawful immigration status in consultation with the U.S. Department of Homeland Security (DHS), and in order to carry out the TVPRA provision, in which HHS and DHS worked jointly to develop the age determination policies and procedures in this section.</p> <p>Each agency acknowledges the challenges in determining the age of individuals in custody, listed below for this case, but not limited to:</p> <ul style="list-style-type: none"> • Unavailable documentation; (or lack of cooperation from participant's family to provide needed documentation) • Contradictory or fraudulent identity documentation and/or statements; (lack of cooperation from Consulate/Embassy – government officials will not verify nationality or verify documents) • NEITHER the Consulate in Chicago nor the Embassy in D.C. have verified Participant's Nationality- as being from India • NEITHER the Consulate in Chicago nor the Embassy in D.C. have verified that HANDWRITTEN BC/with juvenile DOB provided by the family, is an authentic

document or that it belongs to him.

- DHS advised participant has a history of providing an adult DOB (b)(6) 97
- Physical appearance of the individual; (photo attached)
- Diminished capacity of the individual (noted excessive child-like behaviors of concern/possibly in an attempt to deter from an older age, and other SIR's at the shelter)
- FORENSIC/MEDICAL AGE ASSESSMENT with 97.5% probability, 21.55 mean age, and age range 19.15- 23.95 noted below, was reviewed by FFS Supervisor, and per all the concerns noted for this case and per joint HHS/DHS policy, Supervisor has requested FFS re-submit request for transfer of custody.

Despite multiple efforts by FFS, CFS, and ICC, requesting that government officials (India Consulate in Chicago and Embassy in D.C) verify the validity of the documentation provided for this participant, they have not completed this request. To date, neither the participant's nationality, nor his alleged DOB have been verified. The FFS supervisor has reviewed the determination regarding the age submitted by the examining doctor noting the joint policy below.

- If an individual's estimated probability of being 18 or older is 75 percent or greater according to a medical age assessment, and this evidence has been considered in conjunction with the totality of the evidence, ORR may refer the individual to DHS. The 75 percent probability threshold applies to all medical methods and approaches identified by the medical community as appropriate methods for assessing age.
- The FFS compiles all pertinent information (e.g., how reasonable suspicion was raised that the subject is over 18, the information referenced, the individuals or agencies consulted, statements and conclusions) and documents it in a memorandum for review and approval by the FFS Supervisor.
- The FFS then will forward the memo to the care provider facility case manager to be included in the unaccompanied alien child's case file and to the ICE Detention and Removal Office (DRO) Field Office Juvenile Coordinator (FOJC) for inclusion in the unaccompanied alien child's A-file.

Please advise how soon DHS/FOJC can coordinate transfer of custody with ICC of this participant to an adult DRO facility.

2. (b)(6) (b)(6)
COO Guinea; DOB (b)(6)/00; LOS 120+36
EP 92.55%
Admitted to DUCO on 8/29/17
Referred to ICE on 10/16/17
Transferred to Leake and Watts LTFC on 12/27/17, still in care
3. (b)(6) (b)(6)
COO Guinea; DOB (b)(6)00; LOS 169