“I running out of hopely...”
Profiles of Children in INS Detention in Florida

Miami, Florida
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The title of this report, "I running out of hopely..." is a direct quote from a letter FIAC received from a detained child, Ernst, regarding his experience in INS custody.

Cover Photo by Alon Reininger/Contact Press Images:
Undocumented Mexican children apprehended by U.S. Border Patrol.
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Finally, FIAC wishes to thank the children who are the subject of this report for their profound courage and spirit, and for the privilege of representing and knowing them.

Florida Immigrant Advocacy Center

The Florida Immigrant Advocacy Center, Inc. (FIAC) was founded in January of 1996 in anticipation of the drastic changes in the availability of legal services to immigrants due to federal funding restrictions on Legal Services Corporation. FIAC's mission is to protect and promote the basic human rights of immigrants of all nationalities through direct legal services and impact advocacy efforts.

FIAC has represented unaccompanied children in detention since late 1999. FIAC's Children's Legal Project provides pro bono legal representation to all unaccompanied children in detention in South Florida who do not have an attorney. FIAC also conducts bi-weekly Know Your Rights presentations for children in INS custody. FIAC advocates for the rights and needs of the individual children it represents, as well as for improved immigration policies for all children in INS custody.

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Executive Summary

It is estimated that children under the age of eighteen\(^1\) account for as many as half of the world's refugees.\(^2\) Each year, thousands of these children arrive in the United States. Children have increasingly become victims of persecution and human rights violations such as genocide, forced military recruitment, female genital mutilation, child labor and exploitation in their home countries. Like adults, many of them flee war and political upheaval. Some children have been forced to leave their homes because their families abused, abandoned or neglected them. Frequently these children are targeted in their home countries because they've been forced to live on the streets. Still others are victims of severe forms of trafficking, and have been smuggled to the United States for such illicit purposes as forced prostitution.

While each child's story is unique, they all share an incredible vulnerability upon arrival in the United States. They arrive not only traumatized by what they have experienced in their home countries, but also by the circumstances of their flight and separation from their families.

In 2001, the U.S. Immigration and Naturalization Service (INS) apprehended and detained approximately 5000 children, triple the number since 1997.\(^3\) As a law enforcement agency, the INS is responsible for the children's apprehension, detention and deportation. Ironically, this very agency is also charged with the children's care, placement and protection. The INS' clearly conflicting roles with children in its custody have led to a disturbing pattern of treatment where the law enforcement interest of the agency frequently supercedes the best interest of the child.

Detention is especially terrifying for children who are unable to comprehend the complex immigration system in which they find themselves. Moreover, INS holds approximately one-third of children in its custody in juvenile jails, at times alongside violent juvenile offenders. Because they are not in criminal proceedings, children in INS custody – unlike juveniles accused of committing a crime – are not entitled to a free attorney. The American Bar Association estimates that over half of the children in immigration proceedings are without an attorney. This is of particular concern given a recent study by Georgetown University, which found that if an adult asylum seeker does not have an attorney, she is four to six times more likely to be denied asylum.\(^4\) Imagine, then, what it must be like for children in INS custody, most of whom do not speak English, have a limited education, and are not adequately informed of their legal rights. Indeed, many children are simply unaware of their potential eligibility for relief from deportation and end up losing hope and agreeing to be returned to their home country.

The United Nations High Commissioner for Refugees (UNHCR) recommends that an independent and formally accredited organization appoint a guardian or adviser as soon as the unaccompanied child is identified. Canada, Luxemburg, the Netherlands, Sweden, Norway, and Spain all automatically appoint guardians \textit{ad litem} to unaccompanied children. A child's guardian ensures that the child's best interests are addressed throughout the course of her detention. Although parents' rights may be fundamental, in some cases a parent's wishes may be contrary to a child's need for protection. In dependency hearings in juvenile court, for example, states provide children and parents with separate attorneys to ensure that children's true best interests are represented. Unaccompanied children in INS custody are especially in need of guardians \textit{ad litem} because they do not know who to trust and frequently have no one to represent their best interests. INS officers, judges, INS lawyers, \textit{pro bono} and private attorneys, and detention center staff all communicate with the children and ask them questions. The same INS Deportation Officer who recommends their deportation and may eventually deport them plays basketball with them at the unaccompanied children's shelter. Children are often extremely confused about who plays what role in determining their future and are unable to understand who is acting in their best interest.

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1. The UN Convention on the Rights of the Child (CRC) defines a child as any person under the age of 18. Every country in the world, except Somalia and the United States, has ratified the CRC.
2. United Nations High Commissioner for Refugees (UNHCR).
3. \textit{INS' Office of Juvenile Affairs, Immigration and Naturalization Service Fact Sheet, August 1, 2002}, p. 3.
4. \textit{Asylum Representation, Summary Statistics}, prepared by Dr. Andrew I. Schoenholtz, Director of Law and policy Studies, Institute for the Study of International Migration, Georgetown University, May 2000.
In *Flores v. Reno*, the Supreme Court ruled that unaccompanied children cannot be detained in the same types of facilities as adults and that our government should be mindful of the needs of this unique group of INS detainees.\(^5\) In 1996, after nine years of federal litigation regarding the treatment of unaccompanied children in INS custody, a stipulated settlement agreement was reached (hereinafter *Flores* agreement)\(^6\) which requires that unaccompanied children be placed in the least restrictive setting and sets other minimum standards for INS treatment of children, such as that they be treated with "dignity, respect, and special concern for their vulnerability."\(^7\) Unfortunately, despite this agreement, the INS has been unable to appropriately balance both its enforcement and caregiver roles and lacks the child welfare expertise necessary to appropriately address the needs of children in its custody. Furthermore, national INS policy is often at odds with actual INS practice in local INS Districts, such as the Miami District, as this report will show. Little oversight of the implementation of the *Flores* agreement has occurred to ensure the agency's compliance with its requirements.\(^8\)

The U.S. Department of Justice's Office of the Inspector General (OIG) investigated INS' compliance with the *Flores* agreement last year and documented systematic violations by the INS. More specifically, the OIG notes that in South Florida the Juvenile Coordinator (an INS Deportation Officer) handles an adult caseload in addition to the children's cases for which he is responsible and that, "[g]iven the size of the [Miami] District's detained juvenile caseload, this arrangement does not appear adequate for handling the juveniles."\(^9\) The OIG also notes that the Juvenile Coordinator was in violation of INS policy because he "routinely picked up unaccompanied juveniles of the opposite sex for transport without a second officer."\(^10\) Additionally, the OIG found that the Miami Border Patrol Sector used facilities to house unaccompanied children overnight that the Juvenile Coordinator/Deportation Officer was unaware of and had never inspected:

"When we informed the district juvenile coordinator of this situation, he stated he did not see a problem with the Border Patrol housing unaccompanied juveniles overnight in these facilities without his knowledge. We disagree. It is the juvenile coordinator's responsibility to know about juveniles being held in custody in the jurisdiction of the district and to know where the juveniles are housed."\(^11\)

The OIG concluded that such "deficiencies [in care] have potentially serious consequences for the well-being of juveniles."\(^12\)

In 2000, Miami, Florida was one of the top five locations where the INS apprehended unaccompanied children.\(^13\) Last year in Florida, the INS used at least three facilities to detain immigrant children: 1) a thirty-two bed INS juvenile detention facility known as Boystown located in Miami, FL and operated by the Catholic Charities Unaccompanied Minors Program; 2) local hotel rooms at a Comfort Suites Hotel in Miami, FL; and 3) the Monroe County Jail, an adult criminal offenders jail in Key West, FL. The Florida Immigrant Advocacy Center (FIAC) has represented children detained at each of these locations. The children have ranged in age from infants to teenagers, and come from all regions of the world.

Over four hundred children were placed at Boystown in 2001. The Boystown shelter offers an institutional environment often referred to as "soft" detention, where the children sleep in small, shared rooms, have

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\(^7\) *Ibid*.
\(^8\) Most children’s attorneys and non-profit agencies concerned with the treatment of children in INS custody lack the resources to file complaints in federal court, which has allowed INS to largely monitor its own compliance with the *Flores* agreement.
\(^10\) OIG Report, Chapter 3, p. 2.
\(^11\) OIG Report, Chapter 3, p. 2.
\(^12\) OIG Report, Chapter 1, p. 6.
\(^13\) OIG Report, Appendix III, p. 2.
educational classes and recreational activities, and are frequently taken on field trips outside the facility. While the children are monitored and not allowed to leave the premises alone, the Boystown staff is generally very affectionate and caring toward children detained there. Children frequently confide in Boystown staff, who they spend most of their time with and often become attached to, and sometimes share sensitive information with them regarding their cases, which they assume will stay confidential. However, because Boystown is an INS contract facility, the INS has complete access to the children’s files and has used such information against the child.

An unknown number of unaccompanied children have been placed at the local hotel, where they live in almost complete isolation. The INS has not responded to FIAC’s requests to be informed of any children placed at the hotel in order to provide legal orientations and determine whether they need legal representation. Neither the children’s families nor their attorneys may visit them at the hotel, where they have no activities, no educational services, and no recreation. For a legal visit, FIAC must request a child be brought from the hotel to Krome, an adult INS Service Processing Center, 24 hours in advance. Even given prior notice, the children are often not brought on time, sometimes miss meals in order to have legal visits, usually spend hours waiting in processing to be transported back to the hotel after visits, and on at least one occasion the wrong boy from the hotel was brought to Krome. The only time a child detained at the hotel can breathe fresh air is when she is taken to Krome for court or visitation, an infrequent occurrence. A number of children have reportedly gone weeks, and even months, without a change of underwear at the hotel.

FIAC is aware of at least two children last year who were housed at the Monroe County Jail. This jail is clearly not the “least restrictive environment” where INS should place children, in accordance with the Flores agreement, and is a facility completely incapable of meeting the special needs of a vulnerable child.

Detention has a profound impact on a child’s ability to develop relationships with others and on their sense of stability, making transfers to other facilities all the more devastating. The INS has transferred a number of FIAC’s clients to facilities outside of Florida and has never provided advance notice to FIAC, in violation of the Flores agreement. These transfers have undermined the children’s legal cases because essential case preparation time is abruptly interrupted and the children’s cases unnecessarily prolonged. Effective communication with the transferred child becomes especially difficult. It is virtually impossible for a non-profit agency like FIAC to continue to represent children when they are transferred hundreds, if not thousands, of miles away, and FIAC has spent countless hours attempting to locate new pro bono counsel for such children.

Transfers also frequently fail to take into account a child’s special needs, such as the need for a special language service or counselling. For example, Alfredo, a 16-year-old indigenous boy from Guatemala, is currently detained in Pennsylvania, which is over 1200 miles from South Florida where the only known interpreter in the country who understands his rare native dialect is located. Despite Alfredo’s diagnosis of Chronic Post Traumatic Stress Disorder after his arrival in the United States, he has not received the intensive mental health treatment he so desperately needs and was transferred eight times in two months, causing his condition to seriously deteriorate.

All detained children in South Florida, whether they have an attorney or not, must attend their court proceedings at Krome. Because they cannot be commingled with adults, the children must wait for their hearings outside Krome in the hot Miami sun, often for hours at a time. The Krome firing range is easily heard by the children while they wait outside to see a judge as well as inside the Krome courtrooms. Many of the children have already suffered significant trauma in their lives, and listening to loud blasts of gunfire both before and during their hearings adversely affects their already limited ability to articulate their asylum claims.

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14 Countless other children have been held at the hotel with adult relatives who accompanied them to the U.S.
15 Letter to Wesley Lee, Krome Officer-in-Charge, from Cheryl Little, FIAC Executive Director, May 30, 2002.
A detained immigrant or refugee child’s opportunity to pursue relief is further undermined by their treatment in court. The UNHCR, in its Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, recommends that special consideration be given to claims of persecution by unaccompanied children. In so doing, they emphasize that it may be necessary to give greater weight to certain objective factors when examining the factual elements of a child’s claim in order to determine if she has a well-founded fear of persecution. Immigration judges, however, frequently fail to give greater weight to the objective factors in the children’s cases, requiring them to meet the same burden as adults. Further, the Board of Immigration Appeals (BIA) recently has come under radical transformation, which has had a significant impact on children’s cases. The reforms are designed to make the BIA more efficient and expeditious. However, the actual impact of the new regulations can be extremely detrimental to children whose need for protection necessitates close and careful review of the decisions of immigration judges. The new rules give individual Board members tremendous discretion over individual asylum cases, including the power to summarily affirm decisions of Immigration Judges and to summarily dismiss appeals without according the judge’s decision full review. These new regulations are particularly harmful to unaccompanied children whose cases typically involve complicated novel social and legal issues.

Special Immigrant Juvenile Status (SIJS) is another form of relief available to immigrant children. If a juvenile court judge finds that an immigrant child is a dependent of the court, that the child is eligible for “long-term foster care,” that the child has been abused, abandoned or neglected, and that it is not in the child’s best interest to be returned to her homeland, the child is eligible to apply for SIJS and lawful permanent residence. Unfortunately, a child in INS detention is only eligible to present her case to a juvenile court judge if the INS gives its consent. It is important to note that even if the juvenile court judge issues a Best Interest Order, it is ultimately up to INS to determine whether the child should be granted Special Immigrant Juvenile Status. INS’ consent for the child to go to juvenile court simply allows the child to have his or her day in court regarding allegations of abandonment, abuse and neglect.16

The INS in South Florida had never consented for a child to go to juvenile court for a hearing on her abuse, abandonment or neglect until October 2002.17 The written decisions FIAC has received denying consent often defy credulity, accusing children of fraud and demonstrating the INS’ inherent distrust of children in its custody. Without a guardian ad litem to inform such decisions, the INS District Director faces an overwhelming conflict of interest in determining the best interest of the child. Even if the District Director has the best of intentions, he is not a child welfare expert capable of making such determinations.

In addition to asylum and SIJS relief, children are also eligible for other forms of relief under our immigration laws. For example, victims of crimes and severe forms of trafficking may be eligible for “T” or “U” visa categories, which Congress created in 2000.18

There is currently no legal limit on the length of time a child may spend in INS detention, although the Flores agreement requires that INS quickly and safely release a child to her eligible sponsor. INS recently claimed that it hopes to convert an INS detention facility for children in Arizona into a long-term shelter. Clearly, long-term detention is not in a child’s best interest, and this plan indicates INS’ inclination to prioritize its enforcement interests over the interests of the child. Considerable research

16 Section 101(a)(27)(J)(iii)(l) Immigration and Nationality Act; see also Thomas E. Cook’s July 9, 1999 Memorandum to Regional Directors stating, “The district director, in consultation with the district counsel, should consent to the juvenile court’s jurisdiction if: 1) it appears that the juvenile would be eligible for SIJ status if a dependency order is issued; and 2) in the judgment of the district director, the dependency proceeding would be in the best interest of the juvenile.”
17 Shortly before this report was released to the public, FIAC received the first and only grant of consent in South Florida by INS for a child to go to juvenile court (see p. 16-19, “Alfredo”). While positive, this grant of consent was only made ten months after it had been requested. While waiting for the decision, the child languished in detention.
18 Victims of a range of crimes (including children), who have suffered serious physical or mental abuse as a result, may be eligible for a “U” nonimmigrant visa if they cooperate in a criminal investigation. Victims of severe forms of trafficking may be eligible for a “T” nonimmigrant visa if they cooperate in investigations of trafficking and show that they would suffer serious harm if returned to their home country. Persons granted “T” or “U” visas may eventually become permanent residents of the U.S.
indicates that institutionalization, separation from attachment figures and cultural dislocation are severe stressors for children, which carry serious long-term consequences.\textsuperscript{19}

In South Florida, the INS requires undocumented relatives of children in INS custody to appear before an immigration officer and be placed into removal proceedings in order for the child to be released to their care. Children are thus often used as “bait” to snare undocumented relatives and force them into removal proceedings. The child often feels guilty for putting her relative in such a difficult position or suffers if her closest relative is unwilling to come forward because she could remain in detention despite other release options. For example, in South Florida, if the child has an immediate family member in the U.S. who is undocumented, the INS won’t release the child to other relatives who are US citizens or lawful permanent residents.

On a more positive note, children from Haiti or Cuba who do not have family or sponsors in the United States can be released into foster care, through a special program for unaccompanied Cuban and Haitian entrant children (CHE).\textsuperscript{20} Miami receives more Cuban and Haitian children than any other INS district in the U.S. Boystown has a number of Creole and Spanish speaking staff and is experienced with this process. Consequently, most Haitian and Cuban children in these circumstances are released to foster care expeditiously. However, although this is a national program, when these children are transferred to other parts of the country where detention staff lack experience with the CHE program, the children’s release is significantly delayed.

While every child’s potential sponsor is subject to background checks and suitability assessments, there are far more extensive inquiries and requirements in the cases of Indian and Chinese children. Unfortunately, when the home study is denied, neither the child nor her attorney are given any explanation regarding the denial from INS or the agency that conducted the home study.

The INS regularly displays its distrust of children in its custody. For example, the INS routinely contracts dentists to perform forensic dental exams on persons it suspects are not minors, despite evidence to the contrary. These exams are far from reliable and do not take into account cultural and developmental differences. According to Dr. Herbert H. Frommer, the director of radiology at New York University College of Dentistry, “It is impossible to make an exact judgment based on radiographs of whether an individual is above or below the age of 18.”\textsuperscript{21} The Lawyers Committee for Human Rights and Women’s Commission for Refugee Women and Children are among those organizations that have raised serious concerns about this practice.

The obstacles faced by children in INS detention in Florida, as well as by their advocates, are clearly enormous. The conflicting role of INS as enforcer and caregiver, as well as the complexity of the various forms of legal relief available for children under current immigration law, must be understood through the prism of a child’s vulnerability, trauma and innocence. This report documents the cases of a number of children whom FIAC has encountered in INS custody in Florida. As these children’s experiences indicate, a wide range of problems exist in INS’ treatment of children, from the moment of their first interrogation by airport officials to the manner in which they are treated in court by INS trial attorneys and immigration judges.

In response to a bill first introduced in the U.S. Congress by Senator Dianne Feinstein that would overhaul the treatment of immigrant and refugee children, the INS created an “Office of Juvenile Affairs” (OJA) to oversee its unaccompanied minors program. The INS has been hopelessly decentralized for years, and the responsibility for the care and custody of immigrant and refugee children has been moved

\textsuperscript{19} Please contact FIAC for an extensive list of references and suggested readings on this issue.

\textsuperscript{20} Cuban and Haitian entrant children are treated the same as asylees and refugees and are eligible for federal foster care under welfare reform legislation of 1996 if no family sponsor is available. Their release to foster care is also pursuant to the Flores agreement, which allows the release of a child in INS custody to “a licensed program willing to take custody” (paragraph 14, E). The U.S. Catholic Conference of Bishops has a history of placing unaccompanied Haitian children detained in South Florida with their program.

to various divisions of the Department of Justice on numerous occasions. Since its creation in July 2002, the OJA has already had two interim directors. While FIAC’s interactions with the individuals directing the OJA have been positive and their decisions regarding certain cases have been thoughtful and encouraging, this still does not represent the sustainable and systematic change needed for the improved treatment of children by the agency. Indeed, creation of the OJA does not address the fundamental conflict of interest the INS faces in its care, custody and removal of immigrant children in the U.S.

The U.S. Congress is now poised to make significant changes regarding how immigrant and refugee children are treated. Legislation for a new Department of Homeland Security (DHS) initially proposed to place all INS functions, including the care and custody of children, under the new agency. Two Substitutes to this legislation (one introduced by Senator Lieberman and the other by Senators Gramm and Miller) would remove the care and custody of unaccompanied children out of the Department of Homeland Security and Department of Justice, and place them under the jurisdiction of the Office of Refugee Resettlement (ORR), which is under the Department of Health and Human Services. This office is far better equipped to oversee the care of vulnerable children, however there is no time limit as to how quickly the transfer to ORR need be done. Moreover, the legislation originally introduced by Senator Feinstein is embodied in Title XII of the Lieberman Substitute to the Homeland Security proposal and would allow for government appointed attorneys and guardians ad litem for the children. The current administration is supporting the Gramm Substitute, which strips the Homeland Security legislation of many of the important reforms fundamental to the protection of unaccompanied children. The Gramm Substitute would not even provide children with an attorney or a guardian ad litem, as they so desperately need.

The children profiled in this report are not simply those who have fallen through the cracks. The serious concerns raised by the individual cases profiled herein are symptomatic of the larger problem of INS’ failure to protect the best interest of children in its custody. This report is meant to compliment a May 2002 report written by the Women’s Commission for Refugee Women and Children, Prison Guard or Parent? INS Treatment of Unaccompanied Refugee Children, which offers a comprehensive investigation and analysis of the treatment of children asylum seekers across the country.

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22 Since 1996, this responsibility has been within INS. In 2000, the INS merged all of its functions for these children to a division under the Detention and Removal branch, further magnifying the enforcement function of INS regarding children in its care.
Everyone at Boystown remembers Gabriel. He is the sweet child who wrote poetry about the abuse he suffered in Honduras. Gabriel was abandoned as a child and severely abused on the streets, where he was forced to raise himself. He eventually escaped his tragic childhood and entered the U.S. in early 1999 when he was 16 years old. He was detained and placed in INS custody at Boystown. At that time, there were no pro bono lawyers assisting minors at Boystown and Gabriel went to court alone.

Like children at Boystown today, Gabriel was taken to court at the Krome Service Processing Center (Krome), an INS detention facility for adults. Gabriel was escorted to court by armed INS security personnel, as were all children at that time. He could hear loud explosions of gunfire from the Krome firing range upon arrival at Krome and while waiting to be taken to court. He could even hear gunfire in the courtroom as he tried to defend himself before the Immigration Judge and against an experienced INS trial attorney.

In court, Gabriel was only granted four weeks to find an attorney. Despite his clear indications to the Court that he was afraid to return to Honduras, that his father was dead, and that he sought to go anywhere but Honduras, Gabriel was never informed by the Court or INS of his right to apply for asylum or of any other

### Excerpts from the official transcript of Gabriel's court proceeding:

**Judge:** The Immigration Service says you entered without being inspected this year. Do you understand?

**Gabriel:** That is correct.

**Judge:** All right. At this hearing you may offer evidence to the Court and the Government may do the same. If the Government offers evidence, you may object to it. If you or the Government calls a witness, you may both ask questions of any witness that appears....

**Judge:** Mr. Muñoz, from what you tell me you are in fact subject to removal from the United States because you entered without being inspected. Is there anything else you'd like to tell me?

**Gabriel:** No.

**Judge:** They the Government must buy you a ticket. Do you want to be removed to [your country of origin] or some other country?

**Gabriel:** It's terrible in [my home country]. I'd like to choose another country. I choose another country in South America, Argentina, for example. Instead of my country.

**Judge:** If Argentina will take you as a deportee, we'll send you there....

**INS Trial Attorney to Judge:** Judge, can we designate in the alternative his country, so we don't have to come back to the Court?

**Judge:** You may indeed....

**Gabriel:** Can I have another? Can I ask another question?

**Judge:** Yes, go ahead.

**Gabriel:** Sir, I'd like to know which is the deportation document to be signed so I let you know in advance I don't want, I don't wish to sign that document?

**Judge:** You don't have to sign any document. I sign the document. You have nothing to do with it. Now, the Government has requested that I name [your country of origin] as an alternative country in the event Argentina will not accept you. Do you understand?

**Gabriel:** Can I choose a free attorney now with this document?

**Judge:** What do you mean you want a free attorney?....

**Gabriel was ordered removed to his country of origin. He never had an attorney in court.**

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23 Most names in this report have been changed to protect the confidentiality of the children.

24 Ages of the children in this report reflect their age when placed in INS custody.

25 In Spring 2001, the Immigration Court at Krome instituted a special docket for children detained at Boystown so that their preliminary hearings are held at the same time with the same judge on Thursday mornings. Boystown staff, rather than INS guards, now transport the children to Krome. Previously, as when Gabriel was detained at Boystown, children could be scheduled for their hearings at any time on any day of the week and armed INS Detention Officers transported each child to court.
form of relief under immigration law. He was simply ordered back to Honduras (see box on previous page).

After the judge ordered him to be removed from the United States, Gabriel, who spoke no English, attempted to submit his own appeal. Gabriel’s caseworker at Boystown knew about his abusive childhood and his fear of return through his poetry and attempted to contact the legal service providers on a list provided to Gabriel in court.

A FIAC attorney received a call from Boystown regarding Gabriel just three days before his appeal was due, and immediately went to Boystown to interview him. Unfortunately, it was too late. Gabriel, who had already been detained for months, was without hope. He had been forced to represent himself in court and had been ordered removed. As a result, he did not understand that he had strong and compelling claims for relief. He had no faith in the system, yet was terribly afraid of being returned to his country. Desperate, Gabriel ran away and disappeared.

Soon thereafter, FIAC went to Boystown in an effort to reach out to other detained children and hoping to prevent what happened to Gabriel from happening to another child. Sadly, virtually all of the children FIAC interviewed during that visit had signed away their right to a hearing before an immigration judge the previous day, during an INS Deportation Officer’s visit.

**Gabriel’s treatment in court is not uncommon:**

Like Gabriel, Marie, a 15-year-old Haitian girl, appeared in court without an attorney. During her first master calendar hearing, a Krome immigration judge asked Marie if she knew what she was charged with. When she guessed, “I did something wrong,” the judge sternly answered, “You sure did.” When Marie subsequently expressed a fear of return to Haiti, the INS attorney asked the Court to continue her case so that she could be informed of her right to apply for asylum. The judge responded, “I don’t see any indication that she’s eligible for asylum under any stretch of the imagination. However, if you want a continuance...I’ll be glad to grant it.”

It takes special skills to ensure that children will understand what is being said in court and to elicit their stories. These skills do not come naturally. Presently, INS attorneys and immigration judges aggressively question minors during their hearings in ways that are often confusing, unhelpful and unnecessary. For example, children are vigorously cross-examined by INS attorneys, sometimes for over an hour. Comments such as, “That is not what you told the Court earlier, is it?” are routine. Questions by both INS attorneys and judges appear to come from a perception that the child is trying to deceive the INS or the Court with claims of persecution.

At the first hearing (master calendar) before the immigration judge, the child is always asked whether she remembers receiving a copy of the document listing the charges against her (called a Notice to Appear or “NTA”). Most children do not understand the question because they do not understand what it means to have charges pending against them. The child frequently responds that she has not received the document or states that she doesn’t understand the question. Often the judge, interpreter and INS attorney react in a hostile manner if the child states she doesn’t understand. The judge will then show the NTA to the child and ask the child if she recognizes the document or her signature at the bottom of the page. If the child still appears to not understand, the judge, INS trial attorney, and even court interpreter frequently are visibly upset. Interpreters, for example, will roll their eyes and a judge may lean forward in an aggressive manner and speak more loudly in a last-ditch attempt to achieve his goal. Sometimes when the child states that she does recognize her signature, the judge continues in an upset tone, “So you did receive a copy, didn’t you?” as if the child had been trying to mislead the court. Complicated questions such as, “Is your mother a lawful permanent resident? Is she legal in the US? Does she have a green-card?” or, “The government states you entered without proper documents, do you understand?” are commonplace.
Fega

Nigeria, 7 years old

Fega, an ethnic Yoruba girl from Nigeria, was seven years old when she arrived alone in New York City on an airplane in May 2000. With a terrible rash covering her body, she immediately presented apparent signs of abandonment and neglect. When Fega was very young, her father forced her and her mother to leave their home in Nigeria. Her mother fled to the United States, leaving Fega to live with an uncle. As Fega neared the age of eight, her uncle and father decided to smuggle Fega out of Nigeria so that she could be reunited with her mother in the United States.26

At the airport in New York, immigration officials determined that Fega’s passport and visa were false and detained her. Undocumented and scared, Fega’s mother sent a note to the INS indicating that she would not be coming for Fega. The INS Deportation Officer later contacted her father who stated he did not want Fega back in Nigeria.

One month later, FIAC met Fega when she appeared alone in court. Despite her young age, Fega had no right to either a guardian or an attorney, and in May 2000, there was no system in place to ensure that her legal rights would be protected.

Fega curled up in a fetal position and wept when she heard Yoruba, her native language, for the first time in over a year of detention in the United States. The primary languages at Boystown, where Fega spent 15 months of her young life, are Spanish, Creole and Mandarin. Fega asked the Yoruba interpreter in English if she was her mother, as she often asked any new woman she encountered.

FIAC submitted a request to the INS District Director for consent for Fega to pursue Special Immigrant Juvenile Status (SIJS), a form of relief for immigrant children who have been abused, abandoned or neglected. Six months later, the District Director denied Fega’s request for consent to go to juvenile court and accused her, through her parents, of putting forth a fraudulent claim of abandonment.

FIAC also helped Fega present her case for asylum. However, after FIAC had been representing Fega for eight months, INS attorneys informed the court that FIAC had no standing to represent Fega and that Fega couldn’t be represented by FIAC. The INS trial attorney’s argument was that, as the child’s guardian, the INS had not agreed to such representation. INS also claimed that they were the only entity with the authority to appoint counsel. In fact, during a hearing, the INS trial attorney suggested that the Krome Officer-in-Charge should be making important decisions such as this in Fega’s case. The immigration judge, after requesting and reviewing briefs on the issue, ruled that FIAC represented Fega and that she could file her asylum application.

FIAC also requested Fega’s release to another relative who wished to care for her. The Flores agreement requires INS to release a child once it is established that detention is not required to ensure court appearances or when detention is not necessary for the child’s safety and there is a suitable sponsor for the child. However, whenever a child’s parent in the Miami District is suspected to be in the United States, the child is not released to anyone but the parent regardless of the parent’s ability or willingness to care for the child. Fega therefore, remained in INS custody for 15 months.27

26 Fega’s new attorneys at the Yale Law School Legal Clinic recently acquired information indicating that the father wanted Fega to leave Nigeria because he was afraid that she would be circumcised on her eighth birthday.
27 This practice is in clear violation of sections of the Flores agreement, which are designed to protect the best interest of the child. The Flores agreement lists people to whom the INS will release children in order of preference: (1) a parent, (2) a legal guardian, (3) an adult relative, (4) an adult individual or entity designated by the parent or legal guardian, (5) a licensed program willing to accept legal custody, or (6) another adult individual or entity seeking custody when family reunification is not an option. See Flores, para. 14.
Excerpt of Transcript of Fega's Master Calendar Hearing on April 6, 2001. (FIAC began representing her in June 2000):

INS Trial Attorney (TA): After research this issue has now been sent to Washington to address the issue... The respondent's age is the problem in this case. There is the issue and the Service is not willing at this point in time to concede that an attorney may represent a child of that minor age in an immigration proceeding... That the attorney absent a qualified guardian for the child cannot represent them and go forward in an immigration hearing...

Judge: Now wait a minute, now let me ask you this. So you're saying that she cannot be represented?

INS TA: No your honor, I'm saying that an attorney cannot represent a minor of that age before an immigration court absent a guardian.

Judge: So, all right, there's no guardian... The regulations seem to say the head of the [Krome Detention] camp is the guardian...

INS TA: Correct...

When Fega had been in INS custody for more than 13 months, the New York Times ran a front page Sunday story on her case. A follow-up story ran two days later. Kate Porterfield, a child psychologist with the Bellevue-New York University program for survivors of torture, who works with refugee children, told the New York Times when asked about Fega's case that, "It's very hard on a child's sense of trust and safety in the world to not have a home to live in. Children need to feel they have a home, and detention is not home." 29

Within days following the New York Times articles, the INS dispatched two officers to visit Fega's father in London in an apparent attempt to reunify her with him. As a result of growing public pressure, Fega was finally released to a cousin on August 14, 2001. She faces continued removal proceedings but a juvenile court judge with training in child welfare will finally have jurisdiction to review her allegations of abandonment, abuse and neglect. Fega lives in Connecticut and is currently represented by attorneys and students at the Yale Law School Legal Clinic. Following her release in February 2002, Fega attended a Senate hearing on the Unaccompanied Alien Child Protection Act, a bill which is now embodied in other legislation before the Senate. If passed, the bill would ensure that children like Fega would have a guardian ad litem and be appointed an attorney in their immigration proceedings.

Abdul Kher
Somalia, 17 years old

For six years, Abdul and his father searched for Abdul's mother and younger siblings. The family had been separated in the chaos of the war breaking out in Somalia in late 1990 and their search complicated by the ensuing clan violence. When he was fourteen years old, Abdul's father was brutally murdered in front of him. Abdul fled for his life, unable to even bury his father. Alone, he began a terrifying but courageous journey that would take him through several refugee camps, where he was targeted because he was from a certain clan, and eventually to the United States.

Abdul arrived in the United States three months shy of his eighteenth birthday. FIAC made an emergency request for INS' consent for Abdul to go to juvenile court to have a hearing on a request for dependency status. When she hand-delivered the request, Abdul's attorney was told by INS not to expect a quick response because FIAC should understand, "what boy [now] has the attention of the [INS] District Director," in reference to Elian Gonzalez. Indeed, the INS did not timely respond to Abdul's consent request even though when he turned 18, the juvenile court judge could no longer hear his case. In response to inquiries by FIAC, INS demanded excessive documentation from Abdul to prove his identity and age, although it is recognized that no such reliable public records exist in Somalia. The UNHCR asked that documentary evidence such as this generally not be required, "in view of the difficulty of proof inherent in the special situation in which applicants for refugee status find themselves. It is often difficult or impossible to obtain documentary support, especially from countries that have suffered and continue to suffer through periods of turbulence."30

FIAC found a caring Somali family who wished to take full responsibility for Abdul if INS released him from Boystown. The Deportation Officer (DO) in Abdul's case refused to even consider his release to this family and told FIAC that he would not release a boy only two weeks before his 18th birthday so that he could "take advantage" of relief which might exist before he turned 18. The DO also told Abdul's attorney that his job was enforcement of the immigration laws and that as an enforcer of the laws it may be in the INS' best interest to hold Abdul until he turned 18, and then take him to Krome to be detained with the "big boys."31

At Boystown, Abdul had a toothache that caused his mouth to swell and gave him a terrible headache. So when he was taken to a dentist the day before his 18th birthday, he was happy and thought that at least the pain in his mouth would finally be taken away. Instead of treating Abdul's toothache, however, the dentist performed a radiograph dental exam on Abdul to determine his age. As a result of the exam, the INS determined that Abdul was 18 on the day before his stated 18th birthday, immediately transferred him to Krome (an adult detention facility), and harshly questioned his credibility.

FIAC had an independent dental exam performed on Abdul after he turned 18, which not only showed that the INS dental exam did not take into account his cultural and racial background, but also that it had wrongly determined

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Abdul’s age.\textsuperscript{32} Abdul never received treatment for his toothache while in INS custody.

The INS eventually denied Abdul’s request for consent to go to juvenile court, stating that he was unable to prove his identity or age.

Although INS did not allow Abdul to appear in juvenile court, they could not prevent him from applying for political asylum, which he did. Abdul was eventually released from INS custody as an adult and his asylum case is pending. On October 11, 2002, the immigration judge indicated that he believes a grant of asylum is warranted in Abdul’s case. A decision is expected shortly.

Baby Margaret
Jamaica, 18 months old

The first time Baby Margaret entered a courtroom was in the arms of her INS Deportation Officer. She did not have an attorney or a guardian *ad litem*, and at just 18 months of age was unable to speak to the judge herself. The Immigration Judge asked the Deportation Officer (DO) if he was going to represent her, which he declined to do. In this case, the DO called FIAC, which took Baby Margaret’s case *pro bono*.

Baby Margaret’s identity was initially unknown because no one claimed any relationship to her after she was smuggled into the United States in early June 2000. Called “Jane Doe” by INS, and “Baby Jamaica” by everyone else who met her, Baby Margaret was detained by INS at Boystown.

According to press reports and public records, Baby Margaret arrived in Miami on a plane accompanied by a fifty-nine year old woman, Mrs. Fyffe. A record check by inspection officials at the airport revealed that Ms. Fyffe had previously brought unrelated children to the United States on at least two occasions. Ms. Fyffe presented documents for Baby Margaret and said she brought the baby to the U.S. as a “favor” for the child’s mother who lived in Ft. Lauderdale. Ms. Fyffe also said that another woman, Ms. Barnes, was waiting at the airport to pick up the child because the mother was ill. The officials investigated Ms. Fyffe’s claims and found that Baby Margaret’s documents, as well as the story regarding the alleged mother in Ft. Lauderdale, were false. Ms. Barnes, however, was located waiting at the airport. Both Ms. Fyffe and Ms. Barnes denied any relationship to Baby Margaret.

Ms. Fyffe and Ms. Barnes were both placed in federal custody in Miami and Baby Margaret was taken to Boystown. A little over a month later, Ms. Fyffe and Ms. Barnes were indicted by a Grand Jury on charges of conspiracy and alien smuggling. Baby Margaret remained unidentified and stateless in INS custody, and Jamaica refused to take Baby Margaret into its own child welfare system.

In August 2000, FIAC asked for INS consent to file a juvenile dependency petition in juvenile court for Baby Margaret, who appeared to have been abandoned.

After three and a half months in federal custody, on September 13, 2000, Ms. Barnes pled guilty to the charges of conspiracy and alien smuggling and for the first time, she claimed she was the mother of Baby Margaret. Ms. Barnes requested DNA testing to prove her relationship to Baby Margaret, who by then had been detained for more than three months.

The U.S. District Judge and the government prosecutor in Ms. Barnes’ case expressed serious concern that Baby Margaret did not have a guardian to consent to the collection of blood samples. Eventually, the government opted for a saliva test of Baby Margaret’s DNA, which established that Ms. Barnes was

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34 18 USC 371, Conspiracy, and 8 USC 1324 (a) (1) (A), Alien Smuggling.
36 ibid.
her mother. Ms. Barnes was sentenced to time served, placed in INS removal proceedings and transferred to Krome.37

At her court hearing in September 2000, Ms. Barnes also claimed that Ms. Fyffe was her mother and Baby Margaret’s grandmother. For more than three months Ms. Fyffe had said she was of no relation to Baby Margaret and had given INS officials false information. At her own hearing on smuggling charges, Ms. Fyffe argued that she did not know Baby Margaret was her granddaughter. She said she had been conned by her daughter, Ms. Barnes, who was “embarrassed by the child” because Baby Margaret was born out of wedlock. Ms. Fyffe said her daughter was responsible for the scheme to conceal Baby Margaret’s identity and bring her to the U.S. Ms. Barnes corroborated her mother’s story and Ms. Fyffe’s case ended in a mistrial. Ms. Fyffe was placed in INS removal proceedings.38

Since Baby Margaret was in INS custody she had no right to a guardian. When Ms. Barnes was ordered removed to Jamaica by an Immigration Judge, she requested that her daughter be deported with her. Without further inquiry as to what was in the best interest of Baby Margaret, she was deported to Jamaica with Ms. Barnes in December 2000. After Baby Margaret was deported, FIAC received a written decision from INS denying her consent to go to juvenile court.

37 ibid.
38 Kidwell, David. “Smuggling Case Ends in Mistrial,” The Miami Herald, October 19, 2000, p. 3B.
Ping Lei

China, 17 years old

Ping Lei was in detention at Boystown for nearly a year when around four o’clock one morning in March 2001, without warning, she was told she had half an hour to collect her things because she was being transferred from Boystown to another detention facility almost 1,500 miles away. Two boys were also transferred at the same time. FIAC represented all three children. FIAC only learned of the children’s transfer when one of the boys paged FIAC’s Miami office after they were transferred. FIAC was told the reason for the transfer was an “influx” of asylum seekers, particularly from Colombia. However, when FIAC visited Boystown shortly after the children’s transfer, only 19 of the facility’s 32 beds were in use and there were only three Colombian children there.

Ping’s release request was denied when she was at Boystown. Despite requests for further information, neither Ping nor FIAC were given any explanation regarding INS’s denial. Ping’s family had paid smugglers to bring her to the U.S. When Ping arrived in the United States, a private attorney was almost immediately retained for her in New York. Ping’s attorney filed an asylum application and supporting documentation for her. A few weeks later, her attorney was arrested, having been accused of working with smugglers to bring Chinese immigrants illegally into the U.S. On August 9, 2002, this attorney and his office manager/wife pled guilty to racketeering charges for what their former employees have said was an extremely profitable business where “extortion, beatings and human slavery are the norm.” When Ping asked FIAC to represent her she said that her family could find no other attorney willing to take a case that this attorney had previously represented. Among the claims against her former attorney was that he was filing frivolous asylum applications, although Ping emphatically stated her asylum claim was valid. Ping’s asylum case was denied, in all likelihood due to the cloud of suspicion over her application because of who her attorney was.

The INS is aware that Chinese children whose asylum claims are denied may be subject to “re-education” in forced labor camps if returned to China. When a child like Ping is smuggled to the U.S. and faces serious harm as a result, but is denied asylum, FIAC attorneys also talk to the child about alternative forms of relief from deportation such as applying for a “T” (trafficking) visa on their behalf. Ping’s transfer complicated any such conversations that might have occurred. Ping often cried when she called FIAC after her transfer because she felt isolated and was so afraid of deportation, and also because of her intense fear of her smugglers and fear for her family’s safety in China. While the T visa, if granted, would protect the child, it does not offer protection for the child’s family. Ping was deported to China and has not been heard from since.

Chinese Children in the Hands of “Snakeheads”

Detained children are in contact with many people who play conflicting and complicated roles in their lives, many of whom can influence decisions that will have a tremendous impact on their lives. Children from China often face additional challenges because of the smuggling operations that bring many of them here. The smugglers often hire private attorneys to represent the children. Ping’s family had paid smugglers to bring her to the U.S. Children are smuggled to the United States for fees of up to $50,000 and may be forced into bondage in order to pay the smugglers. The tremendous debt Chinese children incur to their smugglers—who are known to the Chinese as “snakeheads”—instills in them a great sense of fear and distrust, which makes them particularly vulnerable. Yet many of the Chinese children have truly been persecuted in China and have bona fide asylum claims.

30 According to other advocates across the country, the INS routinely says it has transferred children because of an “influx. The Flores agreement defined an influx as 131 children or more, and created an exception to the least restrictive setting principle in such a situation. However, at the time of the Flores agreement, there were only 130 shelter beds available, a number that has nearly tripled since.

40 DeStefan, Anthony M. “Pair Facing Jail For Smuggling / Couple made millions moving immigrants,” Newsday, Friday, August 9, 2002.

Alfredo
Guatemala, 16 years old

In January 2002, while detained in Pennsylvania, Alfredo struggled to speak through a telephonic interpreter, the only person in the country who was able to interpret his rare dialect, and explain how his father used to pin him to the ground and violently beat him. His father had physically abused Alfredo and his siblings for years, killing one of them, and his mother suffers from a serious mental illness and cannot care for herself, much less her children. While in a juvenile facility in Pennsylvania, Alfredo once again found himself pinned to the ground, but this time by facility staff because he could not effectively communicate with staff and did not understand that he had broken a rule earlier in the day. FIAC witnessed three large staff persons pin Alfredo, who is very slight and less than five feet tall, to a green plastic mattress they placed on the floor. The staff followed the shelter’s rules regarding “physical restraint” of minors when they held him face down on the mattress as he softly cried.

When Alfredo fled his rural indigenous community in Guatemala in fear for his life and arrived in the United States in June 2001, he thought he had finally escaped the nightmare of violence that had permeated his childhood. Unfortunately, Alfredo continues to languish in INS detention seventeen months following his arrival.

Alfredo is a Mayan child who speaks the rare Southern Low dialect of Mam, an indigenous language. Neither the immigration court nor Boystown staff were able to find an interpreter for him. Although he has slowly begun to learn basic Spanish and English, Alfredo’s initial months of INS detention were extremely isolating and frightening because of language barriers. After a nationwide search, FIAC was able to locate an interpreter in South Florida who works with indigenous children in the public school system and who has also offered to sponsor him should INS release him from detention. INS has never used a Mam interpreter to communicate with Alfredo. Boystown staff speaks Spanish, English, Creole and Mandarin. At Boystown, Alfredo was told he could only speak to his brother in Spanish, because staff needed to monitor his phone calls. Alfredo and his brother were therefore unable to communicate with one another, so they could no longer speak on the phone, further isolating Alfredo.

INS’ treatment of Alfredo while in detention has severely exacerbated his already fragile condition. A forensic psychologist met with Alfredo in preparation for his asylum case and diagnosed him as suffering from Post Traumatic Stress Disorder (PTSD) as a result of the abuse he suffered while in Guatemala. The expert also noted that his mental health had deteriorated severely due to the isolating and disruptive conditions of his detention. To date, Alfredo has received none of the appropriate intensive mental health services necessary to alleviate his suffering and prevent further deterioration of his PTSD illness.

Perhaps most traumatizing of all of his experiences while in INS detention have been the frequent transfers—nine to date—from one detention facility to another, which began with Alfredo’s abrupt removal

42 Affidavit of Charu Newhouse al-Sahi, March 8, 2002; Statement of Joseph Cackley, January 21, 2002. When Alfredo’s FIAC attorney visited him at Berks in August 2002, she noticed a marked change in Alfredo’s demeanor as he startled and jumped whenever he heard other children being reprimanded outside and repeated over and over his humiliation at being punished and forced to sit facing a wall.
43 FIAC made both informal and formal complaints about Alfredo’s treatment at Berks. In response to a letter signed by more than a dozen organizations on April 25, 2002 complaining about Alfredo’s treatment, including the use of a “restraint” on him, the Acting Director of the INS’ Office of Juvenile Affairs responded that Alfredo had been “restrained for a short period of time, using a technique approved by the Pennsylvania Department of Public Welfare called ‘non-threatening crisis intervention.’” (Letter from INS Acting Director of the Office of Juvenile Affairs Steven J. Farquharson, received May 7, 2002.) However, in a subsequent response to the same sign-on letter, the INS Executive Associate Commissioner wrote regarding the same incident that Alfredo had “only suffered loss of privileges for 1 day—nothing more.” (Letter from Johnny Williams, Executive Associate Commissioner, Office of Field Operations, INS, July 22, 2002.)
44 When Alfredo initially arrived at Boystown there was another boy who spoke his language as well as Spanish, who often interpreted for Alfredo. However, this boy was released within two months, after which Alfredo was extremely isolated. At that point, Boystown staff realized the need for an interpreter for Alfredo and initiated contact with the Guatemalan consulate in Miami in order to find one. However, an interpreter was never used, leading to countless miscommunications.
from Boystown to the Monroe County adult jail in Key West in November 2001. His FIAC attorney in Miami was given no advance notice of the transfer. While incarcerated in the Monroe County Jail, a facility designed to detain adult criminal offenders and occasionally juveniles charged as adult felons, Alfredo could not communicate his most basic needs and for several days did not shower, go outside or use a telephone and spent his time there with “just a clock looking at [him].” Alfredo was shackled and handcuffed to a chain around his waist while both entering and leaving the jail. FIAC attorneys wrote a detailed complaint to INS about detention conditions at the Monroe County Jail and requested he be brought back to Boystown.\(^4\) The INS only moved Alfredo from that facility after his attorneys advised the Monroe County Sheriff and the INS that the placement of a child with no criminal record in an adult county jail in Florida was illegal. The Sheriff’s attorneys agreed not only that the housing of a non-criminal child at the Monroe County Jail was not contemplated by its contract with INS, but also that Florida state law prohibits the placement of a child at an adult jail, unless that child had been convicted of a crime as an adult, which clearly was not the case with Alfredo.

Although Alfredo was taken out of the jail after his attorneys’ intervention, he was not transferred back to Boystown, but instead to the Berks County Youth Center (Berks) in Leesport, Pennsylvania. Berks is over 1200 miles from Alfredo’s attorney and from the only interpreter in the country able to understand him. Again, Alfredo’s attorney was not notified of his transfer until after the fact, in violation of the Flores agreement, and the INS did not use an interpreter to communicate with Alfredo. Alfredo, who was shackled and handcuffed when transported, said his “stomach came to [his] mouth” because he thought he was being deported to Guatemala where his life would be in danger.

While in Miami for his appearances in both federal and immigration court, Alfredo was detained by INS in a Miami hotel room. His last stay at the hotel lasted an entire month. Alfredo could not receive visits at the hotel and literally his only activity was watching television. Like all other children detained at the hotel, he was not provided any educational services, or even a pencil and paper. During his time at the hotel he was not allowed outside of his room, except when taken to court or for attorney visitation at Krome. While INS national policy limits the use of restraints on children, Alfredo was often shackled and handcuffed when transported.

Unable to read or write when he entered the U.S., Alfredo loves to draw. At Christmas, Alfredo was brought from the hotel to Krome for visitation with FIAC. When FIAC tried to deliver him Christmas gifts of an art set and jigsaw puzzle for use at the hotel, the gifts were denied for him on the basis that they were considered “contraband.” Only after many pleas from his attorneys and inquiries from the national media did the INS finally agree to provide Alfredo with educational services, a haircut, a change of clothing and some paper and a pencil, and then only during the last few days of his stay at the hotel.

FIAC, along with attorneys from the Florida Justice Institute and Florida

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\(^{45}\) Letter to INS Miami District Chief of Staff, John Shewaary, from Cheryl Little, December 20, 2001

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Excerpt from Alfredo’s District Court Hearing Regarding his Flores Enforcement Action:

The Judge directly asked Alfredo’s Deportation Officer, whom INS called as a witness at the hearing, how he would consider Alfredo’s request for release to one of three highly qualified residential placements.

Alfredo’s Deportation Officer (D.O.): “I would recommend denial of release in this case because...we already know that he has blood relatives in this country who are circumventing the law and refusing to come forward because they would be subjected to an immigration arrest... So I’m not going to allow release to a non-relative when we know that there are relatives in the United States.”

Judge: “I am outraged that someone would have made up his mind before hearing any evidence whatsoever...”

Alfredo’s D.O.: “Flores sets the law, sir.”

Judge: “I am the law until the Court of Appeals says anything else... He is not going away any place until I say otherwise, or three wiser judges from Atlanta say so. Because right now what I have heard is that the INS is telling the petitioner, ‘Don’t file any petition, because before we even consider whether to release him in accordance with the regulations, I made up my mind and I am not going to do it...’”
Legal Services, filed a lawsuit in District Court on February 6, 2002, challenging Alfredo’s transfer to Pennsylvania and his treatment while in INS custody. No child had ever filed a Flores Enforcement Action before. INS defended its frequent transfers of Alfredo and its denial of his release from custody alleging that he is a flight risk. Yet the federal court judge found that Alfredo poses no risk of flight.46 While the judge felt he himself could not order the INS not to transfer Alfredo, he stated:

“[T]his Court would disagree and could disagree and does disagree with the INS determination this young man as a flight risk... Do I think he would be better off with [one of his sponsors in South Florida]... yes. I think he would be better off. It would probably be a good thing for the young man... [To INS] You all, even after a legal victory can consider what is the right thing to do for this one single individual kid, and I leave it up to you to do what you think is right.”47

Immediately following his federal court hearing, Alfredo was taken away by U.S. Marshals, weeping, in shackles and handcuffs and flown to Pennsylvania. He was not placed in the more secure part of the facility where children believed to be flight risks are held.

Alfredo applied for political asylum in November 2001. Although the Immigration Judge did not grant him asylum, he found Alfredo completelycredible and concluded that he had been severely abused by his father, that his mother was incapable of caring for him and that street children in Guatemala, such as Alfredo, are typically denied protection by the Guatemalan government (see side box). Indeed, an INS public affairs officer in Miami told a Reuters reporter that INS “accept[s] that the father is an abuser and the mother is mentally ill.”48

Excerpt of the Immigration Judge’s Decision in Alfredo’s Asylum Case:

“If the Respondent has suffered severely at the hands of his father...and suffers today from that experience... No child should suffer the beatings, and hardship that [Alfredo] has... If this Court were deciding whether the respondent should be allowed to remain in the United States for humanitarian reasons, it would be a simple decision....

*Respondent’s attorney has submitted background information demonstrating that children are abused in Guatemala, and that the government is unable or unwilling to protect these children. The State Department confirms that abuse is a large problem.... Street children remain a big problem, and most of these are from abused families. The State Department says, 'The Government and a number of NGO’s operate youth centers, but funds devoted to them are not sufficient to alleviate the problem.'

February 14, 2002

In denying Alfredo asylum, the Immigration Judge treated Alfredo as if he were an adult.49 FIAC immediately appealed the denial of asylum to the Board of Immigration Appeals (BIA) and submitted a brief in support of the appeal on July 10, 2002. On July 19, 2002 a single member of the BIA issued a one sentence “summary affirmance” of the Immigration Judge’s decision.

In addition to applying for asylum on Alfredo’s behalf, FIAC requested INS’ consent for Alfredo to have his case of abuse, abandonment and neglect heard by a juvenile court judge. Given his credibility findings and the incredible abuse he has suffered, Alfredo presented an extremely compelling case for consent. Indeed, during Alfredo’s asylum hearing, the INS trial attorney felt compelled to inquire affirmatively if consent for juvenile court jurisdiction had been sought on his behalf. Alfredo submitted his written request for consent on January 7, 2002 and was interviewed by the INS Miami District office regarding his request in February 2002. FIAC submitted additional evidence for INS’ consideration, which demonstrates that Alfredo’s family situation in Guatemala has further deteriorated since his departure and that he faces certain harm if returned.

46 This assessment of Alfredo as a flight risk was based on a conversation overheard by Boystown staff in which a Spanish-speaking child allegedly told Alfredo that he (the Spanish-speaking boy) wished to escape. Although Alfredo did not speak Spanish well at the time, neither Boystown staff nor INS communicated with Alfredo in his language (Mam) regarding the incident. Instead, he was quickly transferred to the Monroe County Jail.


49 See Executive Summary of this report, p. 4.
On October 24, 2002, INS granted its consent for Alfredo to go to juvenile court to present his case of abuse, abandonment and/or neglect. Alfredo is the first child in South Florida to be granted such consent by INS. The new interim director of the INS’ Office of Juvenile Affairs (OJA) in Washington issued the decision. While this represents an extremely positive development in Alfredo’s case, he languished in detention for ten months while his request was considered.

In early February 2002, Alfredo filed an administrative petition with the INS requesting his release from custody as contemplated by paragraph 14 of the Flores agreement. In that petition, Alfredo requested that he be released to the custody of one of three highly qualified residential placements, including two licensed agencies and the sponsorship of Alfredo by his language interpreter. The INS summarily rejected his petition for release without considering any of the placement options on the basis that he had an undocumented brother in the United States (see box on previous page) and on the unfounded claim that he was a flight risk. An amended complaint regarding Alfredo’s release from INS custody was filed on March 29, 2002 in District Court and is pending.

Over a dozen local and national organizations have expressed their deep concern regarding Alfredo’s treatment in letters to the Attorney General. Representatives of Amnesty International USA, the Women’s Commission for Refugee Women and Children, and Alfredo’s attorneys in Miami spoke with OJA staff regarding Alfredo’s case in August 2002, and a temporary stay of deportation was issued while INS determined its decision on the consent request.

At time of publication, Alfredo was finally being transferred back to Florida in order to go to juvenile court. Although Alfredo’s attorneys are hopeful that justice will be served in this tragic case now that Alfredo will finally have the opportunity to present his case on his abuse, abandonment and neglect, seventeen months of detention and disruptive transfers have taken their toll on Alfredo. Despite the recent positive turn of events, Alfredo continues to suffer from a range of trauma-related symptoms, including frequent nightmares about being deported.

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50 Letter to Christina Kleiser (Alfredo’s FIAC attorney) from Wesley Lee, Krome Officer-in-Charge, February 25, 2002.
52 During this discussion, Steven Farquharson, the interim director of the OJA at the time, was particularly helpful and gave thoughtful consideration to Alfredo’s case. INS officials acknowledged they had been mistaken in earlier correspondence to FIAC, which erroneously stated that the Federal Court Judge found Alfredo to be a flight risk (the Judge had actually found the opposite). INS also admitted they had mistakenly claimed in written correspondence that Alfredo had only been transferred three times, when he had been transferred on nine separate occasions.