PREPARED TESTIMONY OF
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I. Introduction

Good afternoon. My name is Wendy Young. I am the Washington Liaison for the Women's Commission for Refugee Women and Children, a nonprofit organization which seeks to improve the lives of refugee women and children by acting as an expert resource and engaging ***in*** a vigorous program of public education and advocacy. On behalf of the Women's Commission, I would like to thank the Subcommittee for the opportunity to testify regarding the ***detention*** practices of the Immigration and Naturalization Service (***INS***) and their impact on women and children seeking asylum.
In 1996, the Women's Commission launched a two-year assessment of ***detention*** conditions ***in*** the United States that included visits to ***detention*** centers around the country and interviews with dozens of ***detained*** asylum seekers, as well as with the ***INS*** and local government officials charged with their care. ***In*** April 1997, we issued a comprehensive report on our findings, titled "Liberty Denied." We have continued to monitor ***detention*** conditions since that time, including facilities housing children asylum seekers. We also participated ***in*** an Amnesty International mission ***in*** 1997 to assess ***detention*** conditions; Amnesty International USA has joined the Women's Commission ***in*** its call for ***detention*** reform. ***In*** total, we have witnessed conditions ***in*** approximately 30 ***detention*** facilities across the country, including ***INS*** Service Processing Centers, ***INS*** contract facilities, and local jails.Ms. Kassindja's testimony offers a graphic snapshot of the rampant abuses which characterize ***detention***. I hope that my testimony will underscore that her experience does not represent an isolated incident but instead reflects a disturbing failure on the part of the ***INS*** to ensure that the safety and dignity of asylum seekers are protected while ***in*** ***detention***. ***In*** general, we have found that asylum seekers who are ***in*** ***detention*** are treated more like criminals than individuals deserving protection and assistance, and that women and children are particularly at risk of neglect and abuse. Moreover, ***detention*** frequently undermines the ability of an asylum seeker to access legal counsel and effectively pursue her asylum claim.

II. Background

The use of ***detention***, and its attendant problems, is growing rapidly. The ***INS*** is now ***detaining*** a daily average of 15,000-16,000 individuals, roughly a 90 percent increase from Fiscal Year (FY) 1995.1 Moreover, the agency plans to further expand its ***detention*** capacity; it estimates that it will need between 20,000 and 35,000 ***detention*** bed spaces ***in*** FY 1999 to ***detain*** everyone who might be subject to ***detention***.2 ***In*** fact, immigration ***detention*** has become the fastest growing federal prison program.

Approximately 7 percent of detainees are women and ***3***.5 percent are minors under age 18. Although the ***INS*** is not systematically tracking the number of detainees who are seeking asylum, it has estimated that 5 percent of

detainees are asylum seekers, which means that hundreds of asylum seekers who have no criminal record are ***in detention*** on any given day. Moreover, while the ***INS*** has projected that the average length of stay ***in detention*** for aliens ***in*** removal proceedings is 32 days for FY 1998 and 29 days for FY 1999, individuals who have raised an asylum claim often remain ***in detention*** for far longer. Some asylum seekers with whom the Women's Commission met had been incarcerated for almost five years.

The cost that ***detention*** represents to U.S. taxpayers is extremely high. ***In*** its interviews with facility administrators, the Women's Commission found that the ***INS*** is paying anywhere from $41 to $156 per day per detainee. ***In*** the case of county and local prisons, the ***INS*** is typically paying the facility twice the rate that is paid for the incarceration of criminal ***inmates***. This significant commitment of resources, combined with the human cost that ***detention*** often carries, makes it critical that the ***INS***, the Department of Justice, and Congress ensure that asylum seekers are not unnecessarily ***detained*** and that conditions of ***detention*** for those who must be held are humane.

Ill. Conditions of ***Detention***

In its investigation, the Women's Commission found that women asylum seekers face physical and verbal abuse ***in detention*** centers and frequently endure prolonged imprisonment ***in*** conditions that fail to meet international principles of refugee protection and basic standards of decency and compassion. Many of these women have fled genderbased persecution, including politically-motivated rape, female genital mutilation, and forced marriages. Some are survivors of torture.

Detention effectively removes asylum seekers from the public eye. Locked ***in*** cells, hidden behind concertina fences, forced to wear prison uniforms, subjected to pat and strip searches, handcuffed and shackled when transported, and never informed about how long their imprisonment will last, they often lose hope and abandon their asylum claims to risk return to their home countries.

Women asylum seekers are particularly at risk of neglect and abuse. The Women's Commission found that the physical, psycho-social, and legal needs of women are frequently ignored. ***In*** some cases, women are denied services provided to their male counterparts ***in*** the same facility, including ***in*** one case access to legal assistance, and ***in*** several cases, access to translation services and English classes. Moreover, women are more likely to be held ***in*** county prisons with which the ***INS*** contracts for ***detention*** space. The ***INS*** uses their relatively small numbers to justify this harsh treatment of women, frequently claiming that it cannot afford to provide women the same level of services as it provides to male detainees.

The Women's Commission evaluated the following conditions ***in*** the facilities we investigated: the physical settings used to ***detain*** asylum seekers; the treatment women experience at the hands of facility staff and criminal ***inmates***; the availability of translation services; health care; recreation and access to the outdoors; the availability of appropriate spiritual support; the level of access attorneys and others have to ***detention*** centers; and the implementation of the Asylum Pre-Screening Officer Program (APSO) and other release alternatives. We have also looked at the special issues facing children ***in*** the custody of the ***INS***.

Physical Settings Used to ***Detain*** Asylum Seekers

The ***INS*** utilizes three basic types of ***detention*** centers to house asylum seekers. Service Processing Centers, of which there are nine, are owned and operated by the ***INS*** itself. Six ***INS*** "contract facilities" are operated by private correctional companies on behalf of the ***INS*** solely to house immigration detainees. Finally, the ***INS*** relies on approximately 500 local jails and prisons to provide 60 percent of its bed space, a dependence the agency projects will increase ***in*** the coming years.***3***

All of the facilities visited by the Women's Commission--regardless of type--were prisons or the equivalent. Many were maximum security. Locked doors, cells or institutional dormitories, hi-tech security systems, and concertina wire fences define the detainees' living space.

Moreover, the remoteness of many ***detention*** centers creates a psychological barrier between detainees and the outside world. Many are located far from urban areas and strong immigrant or immigrant advocacy communities. For example, the Hancock County Justice Facility is located ***in*** a small community on the Gulf of Mexico, a 2.5 hour drive from New Orleans; the Port Isabel Service Processing Center is 1.5 hours outside the small community of Harlingen, Texas surrounded by the Texas desert; and the Wackenhut ***Detention*** Center is ***in*** the middle of a

warehouse district behind John F. Kennedy Airport, inconveniently located away from the legal services available ***in*** Manhattan and with no sign to identify its function.

The prisons and jails with which the ***INS*** contracts for ***detention*** space present special problems. Such facilities are designed to punish criminal offenders and protect the surrounding community, goals that are ***in*** no way compatible with meeting the critical legal and social service needs of asylum seekers.

The ***INS*** contracts with local prisons through its 33 district offices. The ***INS*** districts, ***in*** turn, almost completely relinquish their ***detention*** authority to the facility ***in*** question; ***INS*** officials at all levels refer to themselves as "guests" of the prisons. The intergovernmental service agreements entered into with these facilities fail to specify that any special provision be made to accommodate immigration detainees generally, let alone asylum seekers. The ***INS*** officials, moreover, declare themselves unable to influence prison policies, completely disregarding the fact that the ***INS*** retains custody of the individual, that the prison is under contract with the ***INS*** and therefore should be held accountable for meeting certain standards, and that the ***INS*** is paying the local government significant amounts of money. ***In*** most cases, the ***INS*** has failed even to communicate to the prison the reason for the asylum seeker's ***detention***; therefore, the prison is unaware of the person's needs and lacks the necessary information to provide appropriate services.

The tragic results of this breakdown ***in*** accountability and oversight are borne by the asylum seekers. The hands-off approach of the ***INS*** means that detainees housed ***in*** prisons become indistinguishable from the criminal ***inmates***. ***In*** many facilities, asylum seekers share living space, and even cells, with ***inmates*** accused or convicted of violent crimes. The mixing of the criminal population with detainees, moreover, is more common for women asylum seekers than for their male counterparts. The ***INS*** and prison officials typically justify this practice with the rationale that there are too few women to justify separating the living quarters for female detainees from the general prison population.

Women asylum seekers are frequently terrified of the "American ***inmates***." Many detainees reported being harassed by the criminal ***inmates*** when they spoke their own languages. ***In*** one facility, the criminal ***inmates*** who worked ***in*** the kitchen frequently drew obscene pictures on the food trays used to serve the ***INS*** detainees.

Prison officials often assume that the asylum seeker would not be ***in*** prison if she had not committed some crime. Moreover, even after learning that an asylum seeker lacks a criminal record, they often express a reluctance to differentiate among the people ***in*** their custody. The York County Prison warden stated to the Women's Commission, "As far as I'm concerned, when you come through that door, you're all the same. The worst thing you can do ***in*** a prison is separate a group out for special care."
In recent months, the ***INS*** has begun to develop standards for ***detention***. These standards represent a significant acknowledgment by the ***INS*** that ***detention*** centers should meet certain minimum criteria. However, the standards have two fundamental flaws. First, they allow the ***INS*** districts to retain the responsibility for overseeing implementation of the standards and investigating any violations. The practical effect of continuing to lodge this authority with the districts is that the very office violating the standards is the one charged with investigating the violation. Second, the ***INS*** is not requiring the prisons with which it contracts to meet the standards; they only apply to the Service Processing Centers and contract facilities. This means that over half of the detainees held by the ***INS*** are ***in*** facilities that are not required to comply with the standards.

Treatment of Detainees by ***INS*** and Prison Staff

Detainees whom the Women's Commission interviewed reported verbal and physical abuse, frequent strip searches, and excessive use of prolonged isolation for minor infractions of facility rules. The ***INS*** and prison staff who have direct contact with detainees exhibit mixed behavior, professionalism, and attitudes toward the women ***in*** their care.

A recent incident ***in*** the York County Prison ***in*** Pennsylvania exemplifies the harsh treatment experienced by many asylum seekers ***in*** ***detention***. Yudaya, a 20-year-old Muslim woman from Uganda, broke down crying after her transfer to the prison from the Wackenhut ***Detention*** Center ***in*** Queens, New York. A York prison guard placed Yudaya and five other women ***in*** the maximum security section of the prison, with the rationale that the women must have had criminal records ***in*** order to have been held ***in*** Wackenhut for so long (This misunderstanding

reflects the lack of information shared by the ***INS*** with the prisons; there are no criminal aliens housed ***in*** the Wackenhut facility.)

The confusion of the transfer from New York, combined with the trauma of being placed ***in*** a maximum security correctional facility, was too much for Yudaya. She began to sob and pound her head on the floor, crying "I want to die, I want to die." The prison staff responded by sending ***in*** a "quick response team." The team included three men wearing riot gear, accompanied by a dog. Their presence frightened Yudaya further, and she became more upset. The men stripped Yudaya of her clothing. She begged them not to remove her bra and panties. The guards tried to dress Yudaya ***in*** a paper gown, but she was too agitated. Instead of allowing her to dress herself, the guards placed her naked and spread-eagled ***in*** four point restraints on a cot ***in*** the "Behavioral Adjustment Unit" (the term used for solitary confinement). Yudaya was then injected with a powerful sedative and left chained to the bed for three days. When the guards removed her restraints on the final day, she reported that she was dizzy, shaky, and confused. She remained ***in*** solitary confinement for one week and then was placed back ***in*** maximum security. After a visit from the Women's Commission and BBC, Yudaya was suddenly transferred back to Wackenhut, where she remains incarcerated.

Also disturbing are reports that denial of basic needs, such as feminine hygiene, are used as a means to humiliate women. A Chinese woman ***in*** the Kern County Lerdo ***Detention*** Center ***in*** Bakersfield, California complained that she was punished for asking for a sanitary napkin. The guard twice refused her request. The guard then shoved the young woman against a wall and placed her ***in*** solitary confinement for several days. Reportedly, her offense was using "too much toilet paper."Finally, there have been reports of sexual harassment and abuse of women asylum seekers. According to the Florida Immigrant Advocacy Center (FIAC), a pregnant Angolan woman and her seven-year-old child were ***detained*** for one month ***in*** a hotel. Throughout her ***detention***, the woman alleges that a guard would wake her up at night and pressure her for sex.4 ***In*** a recent case that occurred ***in*** the Varick Street ***Detention*** Center, a Service Processing Center located ***in*** Manhattan, a doctor has pled guilty to sexually molesting a female detainee.

While the Women's Commission also met ***INS*** and prison officers who appeared to be genuinely concerned about the individuals ***in*** their care, the fact remains that most staff who have direct responsibility for asylum seekers are unaware of their special needs. The ***INS*** has implemented few measures to ensure that ***detention*** facility staff are trained ***in*** recognizing the special needs of asylum seekers, including recognition of symptoms of trauma. This failure to educate front line staff is particularly true ***in*** the case of prison officers, who often respond to behavior symptomatic of trauma with force rather than a more appropriate response.

Translation Services

The vast majority of detainees speak little or no English, and most ***detention*** facilities lack readily accessible translation services. Generally, the ***INS*** only provides interpretation during emergencies or medical examinations and that is frequently done by telephone. The inability to adequately communicate compounds many of the problems detainees face. First, it greatly exacerbates their fears about their ***detention*** and the status of their asylum cases. Second, it results ***in*** an inability to request medical assistance. Third, it leads to unnecessary disciplinary actions due to detainees' confusion about the facility rules. Fourth, it inhibits the ability of detainees to access the few services available, because they remain unaware of the existence of such services or are unsure about how to request them. Finally, detainees are effectively left with no recourse to raise complaints when abuses occur.

Moreover, while interpreters are not readily available to most detainees, ***in*** at least one facility, the Women's Commission found that women are disproportionately impacted. ***In*** the York County Prison, two Mandarin interpreters were posted ***in*** the male wing to provide translation to the 118 Chinese men from the Golden Venture, the smuggling ship that ran aground on the coast of New York five years ago. The six Chinese women ***in*** the same facility, however, had to formally request translation services whenever they needed them. The male interpreters were then made available and were used to translate even sensitive medical information for the women. ***In*** most facilities, the ***INS*** relies on detainees to translate for each other. This raises two concerns. First, detainees are not professional interpreters, and thus may miscommunicate critical information. Second, a detainee may wish

to convey information or inquire about issues of a confidential nature, such as health problems or harassment by an officer or ***inmate***. Forcing her to rely on a fellow detainee compromises her privacy.

The ***INS***, however, frequently downplays the need for translation. One officer stated it to the Women's Commission quite blatantly when he said about a Guatemalan detainee, "She can speak the universal language--sign language--and I know the sign language for pee, poop, sex, and fist fight." The District Director backed this approach, observing ***in*** a subsequent letter that "It is felt that the use of fellow detainees to help translate for emergent reasons is not inappropriate, and has well served all concerned ***in*** the past." Meanwhile, the woman ***in*** question told the Women's Commission that she had not been outside ***in*** four months, because no one had explained to her the rules dictating such access. She spent her days lying ***in*** her cell, too afraid to venture out.

Health Care

The inability of detainees to communicate, combined with the slow or inappropriate response of some facilities to medical complaints, has led to disturbing instances of serious health problems being ignored or mismanaged by both ***INS*** and prison authorities. ***In*** other cases, the stress and trauma of prolonged ***detention*** have caused individuals to develop physical and mental health problems. The Public Health Service (PHS) provides medical services ***in*** ***INS*** Service Processing Centers and contract facilities. ***In*** most of the prisons with which it contracts, the ***INS*** utilizes the health services provided to the criminal ***inmates***. Often, these services are provided by outside medical service contractors. These services typically do not include medical staff trained to care for patients from different cultures. Moreover, there is frequently a lack of female medical staff. This can undermine the treatment of women detainees, many of whom come from cultures ***in*** which it is considered inappropriate to reveal sensitive medical information to male strangers.

Following are three case examples ***in*** which the medical needs of women asylum seekers were mishandled:

- A Haitian woman who spoke little English misunderstood a prison officer during her intake at the Wicomico County Prison ***in*** Maryland. She mistakenly answered affirmatively when he asked her if she felt suicidal. She was then separated from her sister, who was also ***in*** ***detention***, and placed on suicide watch ***in*** a single cell, with no bedding and only a paper gown to wear. She remained there for five days struggling to communicate that she was not going to kill herself. Pregnant at the time of her apprehension, she suffered a miscarriage. Despite the fact that she ***in*** severe pain and bleeding profusely, she was handcuffed and shackled on the way to the hospital and into the operating room.

A Chinese woman was suffering from severe complications from an IUD that had been forcibly inserted by the Chinese authorities under that country's coercive family planning policy. Despite her repeated complaints and multiple requests by her attorney that she be paroled from ***detention*** so that she could join her family ***in*** New York and obtain appropriate medical care, the ***INS*** refused to release her. Finally, under a federal court order to either release her or provide appropriate medical care with a Whenzhou interpreter to assist her through the surgery and recovery, the ***INS*** brought ***in*** a New York-based interpreter for a fee of $10,000. The detainee's lawyer reported, however, that the interpreter was unfamiliar with the medical terminology used and returned to New York as soon as the operation was completed. The Chinese woman was immediately returned to her cell, where she lay bleeding and vomiting.

- A 20-year-old ethnic Albanian woman from Kosovo was held ***in*** the Wackenhut ***Detention*** Center for 10 months. She suffered from a chronic respiratory infection which resulted ***in*** her immigration hearing being postponed several times. She was brought to the emergency room of a local hospital at least twice, but the ***INS*** refused to release her into the care of her family or admit her into the hospital. When the Women's Commission met her, she was gaunt and coughing uncontrollably. Her sister reported that she had coughed up blood and had fainted ***in*** the shower.

Most recently, FIAC has raised serious concerns about the living conditions ***in*** the Krome Service Processing Center ***in*** Miami and the medical care being provided by the Public Health Service ***in*** that facility. This includes exposure to bodily fluids from detainees with infectious diseases and a lack of basic medical supplies and medications. FIAC also reported that a callous disrespect for detainees with serious conditions has been exhibited by some staff, including an incident ***in*** which a PHS doctor told a detainee suffering an epileptic seizure to "stop it," and that the detainee "should not be doing that ***in*** here."

Many women to whom the Women's Commission spoke also complained that they were experiencing physical ailments because of their prolonged ***detention***. This included chronic stomach problems, such as nausea, heartburn, and diarrhea; dizziness; high blood pressure; irregular menstrual cycles; and significant weight changes. ***In*** some cases, women had been prescribed drags to address their conditions but were ignorant of the nature and properties of the drugs.

Asylum seekers who are ***fleeing*** violence and persecution ***in*** their homelands frequently are ***in*** poor health when they arrive ***in*** the United States. ***In*** addition, they may be suffering from Post Traumatic Stress Disorder and other mental health problems. It is critical that they be provided prompt, adequate, and culturally appropriate medical care.

Recreation And Access To The Outdoors

Detainees universally report boredom and listlessness as a result of the lack of recreational activities and outdoor access. Detainees frequently spend their days lying ***in*** bed or watching English language television. Reading materials are also often only ***in*** English.

Access to the outdoors is severely limited ***in*** most ***detention*** centers, as minimal as one hour per week. Many facilities offer only rooftop exercise areas or areas surrounded by high fences and covered by mesh fencing, through which little natural light filters. Many facilities also lack windows, adding to detainees' physical malaise and disorientation. A Chinese woman ***in*** the Kern County Lerdo ***Detention*** Center ***in*** Bakersfield, California reported that despite wanting to see the sun, she could not bear to go outside because she had to endure a pat search whenever she returned inside. ***In*** the Virginia Beach Jail, outdoor access is severely limited for much of the year because detainees are not allowed to go outside if the temperature is over 90 degrees or under 45 degrees.

Women are sometimes denied activities that are provided to men ***in*** the same facility. ***In*** the York County Prison, the Chinese men were supplied with craft materials and were actually selling their art work to the outside world. The Chinese women were not provided similar materials. ***In*** the Kern County Lerdo ***Detention*** Center, the men were provided the opportunity to participate ***in*** English classes. The women were not. The prison administrator justified this distinction by indicating that there were too few women ***in*** the prison to merit providing them English instruction. Ironically, the ***INS*** New Orleans District staff used just the opposite rationale to discontinue English classes that the women detainees ***in*** the New Orleans Parish Prison initially received. The ***INS*** Deputy District Director said that there were too many women ***in detention*** for the prison to continue to offer English classes.

Experience has shown that activities and outdoor access can make ***detention*** more tolerable. Some facilities, such as the Elizabeth ***Detention*** Center ***in*** New Jersey, allow charitable organizations to offer English classes.

Jesuit Refugee Services has reported that these classes have become a vital link to the outside world, helping detainees prepare for life ***in*** the United States if they are allowed to remain and giving them an activity to occupy their time.

The Availability Of Spiritual Support

Religious services are generally made available through the chaplain's offices at ***detention*** centers. Services for certain denominations are therefore readily available, while services for religious sects not common ***in*** the United States are unavailable or have to be arranged.

The Assistant Chaplain ***in*** the York County Prison conceded that his office had been unable to arrange visits from representatives of most of the women's religious sects. He was experiencing difficulty identifying an Islamic temple to assist Muslim detainees, and the Chinese women had not seen a Buddhist priest.
In the Kern County Lerdo ***Detention*** Center, the prison chaplain had initially refused access to a Chinese-speaking minister. Later, he allowed the minister to offer weekly services to the Chinese detainees, but only with the chaplain present. The minister was not allowed to offer individual counseling. When the Women's Commission requested an interview with the minister, he reported that the chaplain had forbidden him to talk to the delegation.

Also disturbing are reports of proselytizing directed at asylum seekers. The head chaplain ***in*** the York County Prison opposed the efforts of local advocates to achieve release of the Chinese detainees, arguing that the detainees should first convert to Christianity, then agree to deportation ***in*** order to carry Christianity back to China.

Attorney Access

Legal representation is critical for an asylum seeker to successfully pursue her case. The immigration bar typically considers asylum cases as among the most complex and time consuming of the various types of immigration problems its members address. Despite the critical need for assistance, however, the Executive Office for Immigration Review has reported that less than 11 percent of detainees actually have been able to procure representation.5 Several problems endemic to ***detention*** hamper the ability of asylum seekers to obtain representation. First, the lists of pro bono and low-cost legal service providers that the ***INS*** provides to an individual when she is first ***detained*** are frequently inaccurate or out-of-date. ***In*** 1996, Amnesty International found that of the 14 programs listed ***in*** the York and Berks County Prisons ***in*** Pennsylvania, only one actually represented asylum seekers and accepted collect calls. One number actually connected detainees to a local clothing store.

Second, ***in*** many facilities, even if a detainee has identified a service provider to assist her, she can only contact him or her by placing collect calls, a tremendous financial burden that deters many agencies from representing ***detained*** asylum seekers. ***In*** many ***detention*** centers, moreover, a legal representative cannot leave a message for his or her client, forcing the service provider to visit the ***detention*** center if he or she needs to communicate critical information to the client..
In some Service Processing Centers and contract facilities, detainees are now able to use phone cards. This alternative has somewhat improved detainees' ability to communicate with the outside world, but many detainees complain about the high cost of the phone cards. ***In*** a few facilities, such as the Elizabeth ***Detention*** Center, detainees are now able to make toll-free calls to their legal representatives, which is obviously an important step forward ***in*** facilitating the ability of detainees to obtain counsel.

Third, the remoteness of many ***detention*** centers deters attorneys from accepting detainees as clients. Many centers are located far from the legal services that are generally available ***in*** urban centers with strong immigrant traditions. ***In*** addition, attorneys visiting ***detention*** centers report having to wait hours before being allowed to see their clients. The combination of long commutes and time wasted to talk to a client effectively means that attorneys may have to devote an entire day to interview one client.

Fourth, the ***INS*** frequently transfers detainees from ***detention*** center to ***detention*** center for fiscal and logistical reasons. Detainees therefore often end up ***in*** centers hundreds or thousands of miles from their attorneys. The ***INS*** typically does not provide prior notification of such transfers. ***In*** one disturbing case, a Cuban couple interviewed by Amnesty International was split into two different county prisons. Between the two of them, they were transferred a total of eight times from county prison to county prison over a four-month period. They were not allowed to speak to each other until 15 minutes prior to the commencement of their removal proceedings. Although the wife had a stronger basis for asylum, because the Cuban authorities were harassing her after she left the Communist Youth Party, the immigration judge did not interview her directly, instead focusing on the husband's story. After the judge denied their asylum claim, an ***INS*** officer told the wife to withdraw her appeal of that decision or she would be transferred to a prison with worse conditions. He also told her that she might be released if she abandoned her case.

Finally, the county prisons pose special problems for attorney access. The Virginia Beach Jail refused access to an attorney because she could not display a bar card. The attorney was admitted to the New York Bar, which does not issue such cards; the prison was accustomed to interacting with attorneys practicing criminal law ***in*** Virginia, who typically have cards verifying their membership ***in*** the Virginia Bar. Moreover, the prison warden ***in*** the facility was unfamiliar with the concept of a non-attorney practicing law, as is the case with representatives accredited by the Board of Immigration Appeals (BIA). He indicated that he would normally refuse access to a BIA-accredited representative. Finally, while the telephones ***in*** the prison were programmed to provide toll-free access to criminal law pro bono programs, they had not been programmed to provide access to immigration pro bono programs. The warden, however, indicated that he would have willingly addressed these oversights if the ***INS*** had shared this information with him, thus underscoring the need for the ***INS*** to better communicate with the prisons with which it has contracted.

Legal representation is perhaps the most vital link that a detainee can have to the outside world. ***In*** addition to the critical role that attorneys play ***in*** presentation of an asylum claim, they also can act as an intermediary between the

detainee and the ***INS***. They also offer hope to the detainee, a not insignificant function since many asylum seekers otherwise may abandon their claims and agree to deportation.

We are encouraged by the ***INS***' more recent efforts to provide pro bono and low-cost legal service providers with regular access to Service Processing Centers and contract facilities. This cooperation is enabling service providers to offer group "Know Your Rights" presentations and to identify detainees who most need legal assistance. However, such access is not available ***in*** county prisons.

Visitor Access

Detainees are also often cut off from relatives, friends, agencies, and individuals willing to help them. Factors which hinder access to legal services also interfere with the ability of other parties to visit detainees, including the remoteness of facilities, limitations on phone calls, frequent transfers, and the slowness of some facilities to locate a detainee when a visitor requests to see them. Other limitations specific to non-attorney visitors also play a factor, including restrictions on who can visit a detainee and on how often and for how long a visit can take place.

The Wicomico County ***Detention*** Center serves as an example. The facility is located on the eastern shore of Maryland, approximately a three-hour drive from both Washington, DC and Baltimore, Maryland. Family members and friends are restricted to two 20-minute visits per week on Tuesdays and Thursdays, and not to occur on the same day. Minors under age 18 are not allowed to visit detainees at all, even if the detainee is their parent. The Women's Commission interviewed a Guatemalan asylum seeker ***in*** the Wicomico facility. We later interviewed her husband, an affirmative asylum applicant living ***in*** the Washington metropolitan area. Shortly after the ***INS*** apprehended the woman, her husband traveled three hours to deliver some toiletries and personal items to her. The facility refused to let her have them. The husband could not afford to take time off from work to visit his wife very often.

He then even had to tell her to stop phoning him, because the exorbitant rates charged for collect calls had cost him $400 one month, forcing him to choose between speaking to his wife or paying for her attorney. He returned one more time to the prison when his wife was beginning to give up hope and consider voluntarily departing the United States. He reported that he was denied permission to enter the facility and was told to "get lost" or risk deportation himself. After five months of incarceration, his wife abandoned her asylum claim and was deported to Guatemala.

Also problematic is the splitting of family members into different ***detention*** centers. A pregnant woman from the Ivory Coast was placed ***in*** a county prison ***in*** Pennsylvania while her husband remained ***in*** an ***INS*** contract facility. He was subsequently deported without her knowledge. A Cuban detainee ***in*** the Aguadilla Service Processing Center ***in*** Puerto Rico was distraught that his wife had been transferred from Aguadilla to the Metropolitan ***Detention*** Center, a federal prison ***in*** San Juan. The SPC staff had not allowed him to communicate with her even by telephone.

It is also difficult for organizations such as the Women's Commission to obtain access to ***detention*** centers. The rules dictating access were different for every facility we investigated, particularly ***in*** the case of county prisons. The ***INS*** district office would frequently indicate a procedure different from that laid out by the prison officials. Even within the ***INS*** itself, each district has its own procedures for permitting outside agencies to monitor ***detention*** centers. Fortunately, the process for obtaining such access is now more clearly defined under the new ***INS Detention*** Standards, but like all of the standards, these procedures only apply to SPCs and contract facilities.

IV. Implementation Of The Asylum Pre-Screening Officer Program (APSO)

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) recodified the parole authority of the ***INS***, so that it could continue to release people from ***detention*** "on a case-by-case basis for urgent humanitarian reasons or significant public benefit."6 Release from ***detention*** is allowed for certain categories of individuals, including those with serious medical conditions, pregnant women, minors, detainees who will be witnesses ***in*** certain proceedings, and those "whose continued ***detention*** is not ***in*** the public interest."7

In 1992, the ***INS*** Central Office issued non-binding guidelines to its districts on how their parole discretion should be exercised for asylum seekers. This program, known as the Asylum Pre-screening Officer Program (APSO),

allows for the release of asylum seekers from ***detention*** if they meet several criteria, including if their asylum claim is judged credible and if they are found not to pose a flight risk. The APSO program, at least implicitly, represents an acknowledgment by the ***INS*** that ***detention*** of asylum seekers is inappropriate and unnecessary ***in*** many cases.

Since enactment of IIRIRA, the ***INS*** has twice stated ***in*** memoranda that release continues to be an option for asylum seekers. On March 31, 1997, a memorandum from the Office of the ***INS*** Deputy Commissioner stated, "Once an alien has established a credible fear of persecution (under expedited removal)...release of the alien may be considered under normal parole criteria."8 This option was reemphasized ***in*** a memorandum from the ***INS*** Office of Field Operations on December 30, 1997. That memorandum stated, "Parole is a viable option and should be considered for detainees who meet the credible fear standard, can establish identity and community ties, and are not subject to any possible bars to asylum involving violence or misconduct … "9

Despite these policy directives, implementation of APSO remains inconsistent among districts. For example, the New York District maintains a virtual blanket ***detention*** policy, with a release rate of only 2.4 percent.10 Right next door, the Newark District has maintained a relatively generous release policy until recently. Disturbingly, its release rate has dropped significantly ***in*** recent months. ***INS*** District Directors, who retain the authority to make release decisions, often cite the use of faulty documentation as a justification for continued ***detention*** of an asylum seeker. This logic defies the reality faced by the vast majority of asylum seekers. Individuals concerned about persecution are the ones least able to take the time and risk the exposure to government authorities to complete the requisite paperwork before ***fleeing*** their homelands.

While the Women's Commission did not focus on the merits of the asylum claims of the women with whom we spoke, it was obvious that many were strong candidates for release under APSO. We interviewed women from many countries, including those experiencing conflict and human rights abuses. Many women stated that they had fled torture, threats to their lives, harassment for political activities, female genital mutilation, forced marriages, and coercive family planning. Moreover, many of the women were later granted asylum. Just last week, a 20-year-old ethnic Albanian woman, whom we first met when we visited the Wackenhut ***Detention*** Center and later saw again at the York County Prison after she was transferred, was granted asylum after enduring 16 months of incarceration.

APSO will remain vulnerable to the caprice of ***INS*** District Directors until it carries the force of law. Meanwhile, prolonged ***detention*** frequently erodes the physical, emotional, and mental energy of an asylum seeker. Even setting aside these humanitarian concerns, ***in*** the vast majority of cases, ***detention*** of asylum seekers is an unnecessary waste of taxpayer dollars and limited ***detention*** space.

V. Children ***in Detention***

Children held ***in detention*** face unique problems. Thanks largely to extensive advocacy by immigrant rights organizations as well as a national class action lawsuit, the Flores v. Reno case, the ***INS*** has slowly improved its practices with regard to children ***in detention***. However, inconsistent treatment is still evidenced and several serious issues remain outstanding.

First, the ***INS*** is unprepared to house family units and sometimes splits parents and other adult caregivers from children into separate ***detention*** centers, often only allowing limited contact between the family members. As is easily imagined, this causes extreme distress to both the child and the parent or caregiver.

Second, although the ***INS*** has opened several children' shelters around the country, which to varying degrees offer the legal and psycho- social services that children need, it also continues to allow its districts to make local arrangements with juvenile correctional facilities. The most striking example is the Liberty County Juvenile Correctional Center, 1.5 hours outside Houston. Liberty is a maximum security facility ***in*** which children wear prison uniforms, are frequently pat searched, and live ***in*** cells for 23 hours a day. The outdoor exercise area is the size of a basketball court, with little grass and no trees. The facility is surrounded by concertina wire. The only activity provided to the children is three hours of classroom instruction on weekdays, but that is offered ***in*** English. When the Women's Commission was ***in*** Liberty ***in*** June 1998, the ***INS*** had over 80 children incarcerated ***in*** the prison, commingled with juveniles with criminal records, even though the majority of ***INS***-***detained*** children had no criminal conviction or record of running away from a shelter facility (the two situations under the Flores settlement agreement ***in*** which children can be held ***in*** a secure setting).

Third, children often remain ***in*** ***detention*** for prolonged periods of time. The Women's Commission visited an 11-year-old Indian girl who had been abused by her parents and then sold to a smuggler for child labor. She had been housed ***in*** a group shelter under contract with the ***INS*** for 15 months. She was finally placed ***in*** a foster home after the ***INS*** appealed her grant of asylum. Uncertainty about the future and the lack of a stable family environment can have a devastating impact on a child's well-being and is clearly not ***in*** his or her best interests.

Fourth, ***in*** some districts children are subjected to handcuffing and shackling during transport. ***In*** El Paso, an ***INS*** officer stated, "This is for their protection. Otherwise, they might run out into traffic." Such restraints are highly inappropriate for all asylum seekers, but are particularly harmful to the well-being of children.

Finally, the Women's Commission has received multiple reports of teenagers being held ***in*** adult ***detention*** centers, after an unreliable dental radiograph has identified them as being 18 years of age. Dental experts have offered their opinion that relying on such exams for definitive age determinations is inappropriate. For example, Dr. Herbert H. Frommer, DDS, Chair of Radiology at the New York University College of Dentistry, stated ***in*** a letter to the Women's Commission that "lilt is impossible to make an exact judgment based on radiographs of whether an individual is above or below the age of 18 years."11
In recent months, the Women's Commission has been working with the ***INS*** to develop guidelines for the adjudication of children's asylum claims.

We have been tremendously encouraged by the agency's receptivity to ensuring that children are provided child-friendly asylum hearings and to developing legal, procedural, and evidentiary standards that are age-appropriate. We hope that the ***INS*** will extend this collaborative model to include efforts to ensure that children are not unnecessarily ***detained*** and that the care they are provided reflects their best interests.

VI. Conclusions and Recommendations

1. It is inhumane to ***detain*** asylum seekers. They may very well suffer further trauma if incarcerated. The ***INS*** lacks the expertise to care for populations at risk, including women, children, and torture victims. APSO represents a thoughtful attempt to ensure that asylum seekers are not unnecessarily ***detained*** and that limited ***INS*** ***detention*** space is not misused.

- The ***INS*** should rejuvenate APSO. Those individuals found to have a credible fear of persecution should be released promptly. The ***INS*** Central Office should exercise strict oversight of the implementation of APSO and hold its districts accountable for low release rates. Congress should incorporate APSO into law to ensure its continued availability and consistent implementation.

- For those few individuals who cannot be released, the ***INS*** should develop alternatives to ***detention***. This includes supervised release. The ***INS*** should also collaborate with voluntary agencies with expertise ***in*** assistance to refugees to develop half-way houses or reception centers that provide housing, food, orientation to the United States, and ready access to legal and social services. Such centers would allow the ***INS*** to meet its goal of discouraging absconding while at the same time allow asylum seekers to begin the process of healing and possible integration into the United States.

2. Local prisons fall woefully short of addressing the needs of detainees. It is unrealistic to expect that such facilities can revise their mission and programs sufficiently to ensure that asylum seekers receive the services they need. They fail to provide any service that would merit the exorbitant rates paid by the ***INS***. The ***INS***, ***in*** turn, is failing to exercise any oversight of these facilities and the treatment to which they subject asylum seekers.

- The ***INS*** should stop ***detaining*** asylum seekers ***in*** prisons.

- Asylum seekers should never be commingled with criminal ***inmates***.***3***. ***In*** some ***detention*** centers, services that are provided to men are not provided to women. ***In*** others, the basic needs of women are ignored, or worse, denied ***in*** order to humiliate a woman. This discrimination is unacceptable.

- The ***INS*** must adopt flexible release policies and provide appropriate facilities and staffing to meet the needs of women. Women should not be transferred to remote locations or more restrictive settings simply because a more appropriate facility is not staffed to meet their needs. The women should be released or staffing adjusted.

- Services made available to male detainees must be equally provided to women, including translation services, English classes, separation from criminal ***inmates***, and consultation with attorneys.

- Women should not be separated from family members while ***in*** ***detention***.

- Feminine hygiene products and appropriate medical care, including reproductive health care, should be provided to women detainees. Under no circumstances should denial of basic needs be used as a means to humiliate women.

4. The ***INS***' recent issuance of standards of ***detention*** represents a significant acknowledgment by the agency that ***detention*** centers should meet certain minimum conditions of ***detention***. However, the standards are fundamentally flawed. The ***INS*** districts retain too much authority for their implementation and oversight. Moreover, the standards do not apply to the prisons which the ***INS*** uses, thus effectively denying their application to more than half of the population ***in*** ***INS*** custody.

- Oversight of the implementation of ***detention*** standards should be lodged with the ***INS*** Central Office. ***Detention*** centers should be frequently inspected by officers trained to assess their implementation. Such inspections should be unannounced. Authority to require changes ***in*** facilities that fail to comply with the standards should also be retained by the Central Office.

- ***INS*** officers charged with oversight of the implementation of standards should consult with national and local nongovernmental organizations serving ***INS*** detainees to obtain their input.

- Compliance with the standards should be contractually required by all facilities used by the ***INS***, including prisons. New facilities should meet the requirements of the standards before they are allowed to open.

- The ***INS*** should invite consultation and input from organizations with expertise ***in*** refugee protection and assistance when promulgating standards of ***detention***. 5. Outside monitors, including agencies with expertise ***in*** meeting the needs of refugees, face difficulty ***in*** obtaining access to ***detention*** centers. Such monitoring can serve as an important vehicle for assessing conditions of ***detention*** and identifying problems confronting detainees.

- The ***INS*** should include outside experts and agencies when monitoring conditions of ***detention***.

- The ***INS*** should regularly consult with national and local nongovemmental organizations that serve detainees to ensure that it is aware of and can quickly address any problems that may arise ***in*** ***detention*** centers. Last year, the ***INS*** agreed to hold quarterly consultations with such organizations to discuss ***detention*** concerns. This is a useful process that should continue.

- Facilities with which the ***INS*** contracts, including prisons, should not retain the discretion to determine which organizations or individuals can visit a facility.

6. The vast majority of detainees lack legal representation. Representation is critical to the ability of an asylum seeker to succeed with her claim.

- The ***INS*** should support the establishment of legal representation projects at all ***detention*** facilities. Such programs should be allowed to conduct regularly scheduled "Know Your Rights" presentations.

- Lists of accurate pro bono and low cost legal service providers should be promptly provided to a detainee at every facility ***in*** which she is held.

- The ***INS*** should ensure that adequate and affordable telephone services are available ***in*** every facility, including toll-free legal service calls.

- The ***INS*** should avoid transferring detainees away from their attorneys. Under no circumstances should such transfers occur without prior notification of counsel.

- Consideration should be given to providing government-funded legal assistance, particularly to asylum seekers.

7. The ***INS*** continues to provide inconsistent care to children ***in*** its custody. Children are particularly vulnerable to the trauma that ***detention*** can cause.

- The ***INS*** should immediately discontinue the use of prisons to ***detain*** children. Under the auspices of its Central Office, it should continue to develop appropriate shelters and foster care placements for unaccompanied children ***in*** its custody. After appropriate home studies, family reunifications should be performed expeditiously. - The ***INS*** should give a child the benefit of the doubt when making an age determination. It should also accept a variety of evidence to demonstrate age and allow a child to appeal a finding of adulthood.

- The ***INS*** should never commingle children with adult detainees.

- Children should never be handcuffed or shackled.

- Children should never be divided from their parent or adult caregiver. Families should be released. For those isolated instances ***in*** which release is not an option, the ***INS*** should establish shelters designed to house family units.

8. The ***INS*** has failed to centralize its ***detention*** program. It is nonsensical from a management perspective and dangerous from a humanitarian perspective to allow 33 districts to implement 33 ***detention*** policies.

- Congress should move forward with ***detention*** reform legislation. Such legislation should include four main components: a) Codification of APSO and other release alternatives, including the development of comprehensive shelter and foster care alternatives for children; b) Development of comprehensive standards for ***detention*** that apply to all facilities used by the ***INS*** and a requirement that the ***INS*** report to Congress on their implementation on an annual basis; c) Creation of an oversight office within the Department of Justice but outside the ***INS*** structure with the authority to monitor conditions of ***detention*** and to take steps to ensure compliance; and d) Mandatory collection of comprehensive ***detention*** data by the ***INS***, including but not limited to, the number of people ***in detention***, the number of people seeking asylum ***in detention***, the length of ***detention***, the frequency of transfers, and a gender and age breakdown.

- Any reorganization of the structure and functions of the ***INS*** must carefully address ***detention***. ***Detention*** of asylum seekers should not be considered an enforcement function, but rather a service that ensures that refugees receive the care and assistance they deserve.

- If the ***INS*** continues to fail to meet the needs of asylum seekers, the ***detention*** of asylum seekers should be moved to a federal agency better able to address those needs, such as the Department of Health and Human Services. Particular care should be taken to ensure that the needs of populations at risk, including women and children, are provided appropriate care.

I would like to conclude by calling on Congress to play an active role ***in*** the design, implementation, and monitoring of U.S. ***detention*** policy. The degree of neglect and abuse that we have witnessed ***in INS*** Service Processing Centers, contract facilities, and local facilities is inexcusable. Congress should intervene and move forward with legislation that brings accountability, consistency, and compassion to ***detention***.

Again, we thank you for holding this hearing, which represents an important step forward ***in*** ensuring that the United States applies human rights standards and basic rules of decency and compassion as equally to its practices at home as we have to the practices of other countries. The Women's Commission stands ready to work with your offices to assist ***in*** this process. I would be happy to answer any questions you might have.

FOOTNOTES

1 Testimony of Commissioner Doris Meissner, Immigration and Naturalization Service, Senate Judiciary Subcommittee on Immigration (July 29, 1998).

2 "Second Report on ***Detention*** and Release of Criminal and Other Aliens," Immigration and Naturalization Service (1997).

3 It should be noted that the ***INS*** also sometimes utilizes hotels when it lacks space to hold an individual elsewhere or occasionally to house a family unit together. Very little is known about the conditions ***in*** such hotels, although anecdotal evidence suggests that outdoor exercise and food are frequently inadequate.

4 Mark Dow, "Our Daily Ordeal is Going Unnoticed."

5 Donald M. Kerwin, "Throwing Away the Key: Lifers ***in*** ***INS*** Custody," 75 Interpreter Releases 649 (May 11, 1998).

6 INA sec. 212(d)(5)(A).

7 8 CFR sec. 212.5(a),

8 Memorandum from Chris Sale, ***INS*** Deputy Commissioner, "Implementation of Expedited Removal" (March 31, 1997).

9 Memorandum from Office of Field Operations, "Expedited Removal: Additional Policy Guidance," (December 30, 1997). See generally, Arthur C. Helton, "A Rational Release Policy for Refugees: Reinvigorating the APSO Program," 75 Interpreter Releases 685 (May 18, 1998).

10 See Helton, p. 689.

11 Letter to Women's Commission for Refuge Women and Children from Herbert H. Frommer, DDS, New York University College of Dentistry (August 7, 1997); See also Letter to Women's Commission for Refugee Women and Children from Neill Serman, BDS DDS Ms(rad), Head of Division of Oral Radiology, Columbia University (July 21, 1997).

END

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