



Senators Feinstein and Hagel Continue Effort to Protect Unaccompanied Alien Children

March 13, 2007

Washington, DC – U.S. Senators Dianne Feinstein (D-Calif.) and Chuck Hagel (R-Neb.) have reintroduced legislation to reform the treatment of undocumented immigrant children who are in federal immigration custody.

Every year, more than 7,000 undocumented and unaccompanied children are apprehended.

“Imagine the fear of an unaccompanied alien child, in the United States alone, without a parent or guardian. Imagine that child being thrust into a system he or she does not understand, provided no access to *pro bono* counsel or a child advocate, placed in jail with adults or housed with juveniles with serious criminal convictions,” Senator Feinstein said.

“I find it hard to believe that our country would allow children to be treated in such a manner. This legislation will help our country fulfill the special obligation to these children to treat them fairly and humanely.”

The “Unaccompanied Alien Child Protection Act of 2007” is supported by:

- The United Nations High Commissioner for Refugees,
- National Immigrant Justice Center
- The United States Conference of Catholic Bishops,
- The Women’s Commission on Refugee Women and Children,
- The Lutheran Immigration and Refugee Service, and
- Immigrant Children’s Advocacy Center at the University of Chicago

The legislation, reintroduced yesterday, March 12, is also co-sponsored by Senators Edward Kennedy (D-Mass.), Russ Feingold (D-Wis.), Maria Cantwell (D-Wash.) and John Kerry (D-Mass.).

Background

In 2002, as a result of Senator Feinstein's efforts, Congress transferred the authority over

the care and custody of unaccompanied alien children from the Immigration and Naturalization Service (INS) to the Department of Health and Human Services' Office of Refugee Resettlement (ORR). This transfer took effect on March 1, 2003, but, the transfer of authority to ORR, by itself, is not enough to ensure that these children are properly protected.

“I am pleased that the provision transferring responsibility for the care and custody of unaccompanied alien children was included in the Homeland Security Act, and that by all accounts, the transition in the care of children between the affected agencies has gone well,” Senator Feinstein said.

“Congress now has a responsibility to go beyond the simple transfer of children from one agency to another to actually laying out the process and steps to ensure that unaccompanied alien children are treated fairly and humanely.”

During the 108th and 109th Congress, Senator Feinstein introduced legislation to provide clear direction on protecting these children from human traffickers and smugglers; isolating criminal juvenile offenders from other children; and ensuring that each child, including refugee minors, has access to a guardian ad litem and pro bono legal representation in immigration proceedings.

The Senate approved this legislation twice, however it stalled both times in the House of Representatives.

Bill Summary

The “Unaccompanied Alien Child Protection Act of 2007” would do the following:

- Build on the Unaccompanied Alien Child provisions that were enacted in the Homeland Security Act of 2002, which transferred responsibility for the care and placement of unaccompanied alien children to the Department of Health and Human Services Office of Refugee Resettlement (ORR).
- Provide guidance to the Department of Homeland Security (DHS), Department of Justice (DOJ) and ORR on how to handle unaccompanied alien children whom it encounters.
- Establish procedures to ensure that children who risk national security or who have committed serious crimes remain under the jurisdiction of DHS or DOJ rather than under ORR's jurisdiction.
- Establish procedures to ensure that unaccompanied alien children from Mexico or Canada who do not have claims of asylum can be safely returned to their countries without delay.
- Establish minimum standards for the custody (or, where appropriate, detention) of unaccompanied alien children.

- Require, whenever possible, family reunification or other appropriate placement for unaccompanied alien children. Expands shelter care facilities and foster care programs in which these children receive the care and services appropriate for their age and circumstances.
- Provide the Director of ORR with discretion to engage the services of child welfare professionals to act as child advocates and make recommendations regarding custody, detention, release and removal, based upon the best interests of each child.
- Establish a mechanism and infrastructure for providing pro bono legal representation for unaccompanied alien children in their immigration matters where possible
- Strengthen opportunities for permanent protection of unaccompanied alien children when such protection is warranted.

This legislation would not:

- Expand immigration benefits beyond the current scope of U.S. immigration law.
- Remove the jurisdiction and responsibility for adjudicating immigration status from the Department of Homeland Security or the Executive Office for Immigration Review, where such jurisdiction and responsibilities currently reside.
- Interfere with the custodial rights of a parent or guardian in situations where a parent or guardian seeks to establish custody and make family reunification possible.

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