# SUPREME COURT OF THE UNITED STATES

No. 91–905

JANET RENO, ATTORNEY GENERAL, ET AL., PETITIONERS *v.* JENNY LISETTE FLORES ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[March 23, 1993]

JUSTICE SCALIA delivered the opinion of the Court.

Over the past decade, the Immigration and Naturalization Service (INS) has arrested increasing numbers of alien juveniles who are not accompanied by their parents or other related adults. Respondents, a class of alien juveniles so arrested and held in INS custody pending their deportation hearings, contend that the Constitution and immigration laws require them to be released into the custody of "responsible adults."

Congress has given the Attorney General broad discretion to determine whether and on what terms an alien arrested on suspicion of being deportable should be released pending the deportation hearing.[1]

[1]Title 8 U. S. C. 1252(a)(1), 66 Stat. 208, as amended, provides:

"[A]ny such alien taken into custody may, in the discretion of the Attorney General and pending such final determination of deportability, (A) be continued in custody; or (B) be released under bond . . . containing such conditions as the Attorney General may prescribe; or (C) be released on conditional parole. But such bond or parole . . . may be revoked at any time by the Attorney General, in his discretion . . . ."

The Attorney General's discretion to release aliens

The Board of Immigration Appeals has stated that "[a]n alien generally . . . should not be detained or required to post bond except on a finding that he is a threat to the national security . . . or that he is a poor bail risk." *Matter of Patel*, 15 I. & N. Dec. 666 (1976); cf. *INS* v. *National Center for Immigrants' Rights* (*NCIR*), 502 U. S. ___ (1991) (upholding INS regulation imposing conditions upon release). In the case of arrested alien *juveniles*, however, the INS cannot simply send them off into the night on bond or recognizance. The parties to the present suit agree that the Service must assure itself that someone will care for those minors pending resolution of their deportation proceedings. That is easily done when the juvenile's parents have also been detained and the family can be released together; it becomes complicated when the juveniles are arrested alone, *i.e.* unaccompanied by a parent, guardian, or other related adult. This problem is a serious one, since the INS arrests thousands of alien juveniles each year (more than 8,500 in 1990 alone)—as many as 70% of them unaccompanied. Brief for Petitioners 8. Most of these minors are boys in their mid-teens, but perhaps 15% are girls and the same percentage 14 years of age or younger. See *id*., at 9, n. 12; App. to Pet. for Cert. 177a.

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convicted of aggravated felonies is narrower. See 8 U. S. C. §1252(a)(2) (1988 ed., Supp. III).

For a number of years the problem was apparently dealt with on a regional and ad hoc basis, with some INS offices releasing unaccompanied alien juveniles not only to their parents but also to a range of other adults and organizations. In 1984, responding to the increased flow of unaccompanied juvenile aliens into California, the INS Western Regional Office adopted a policy of limiting the release of detained minors to "`a parent or lawful guardian,'" except in "`unusual and extraordinary cases,'" when the juvenile could be released to "`a responsible individual who agrees to provide care and be responsible for the welfare and well being of the child.'" See *Flores* v. *Meese*, 934 F. 2d 991, 994 (CA9 1990) (quoting policy), vacated, 942 F. 2d 1352 (CA9 1991) (en banc).

In July of the following year, the four respondents filed an action in the District Court for the Central District of California on behalf of a class, later certified by the court, consisting of all aliens under the age of 18 who are detained by the INS Western Region because "a parent or legal guardian fails to personally appear to take custody of them." App. 29. The complaint raised seven claims, the first two challenging the Western Region release policy (on constitutional, statutory, and international law grounds), and the final five challenging the conditions of the juveniles' detention.

The District Court granted the INS partial summary judgment on the statutory and international-law challenges to the release policy, and in late 1987 approved a consent decree that settled all claims regarding the detention conditions. The court then turned to the constitutional challenges to the release policy, and granted the respondents partial summary judgment on their equal-protection claim that the INS had no rational basis for treating alien minors in deportation proceedings differently from alien minors

in exclusion proceedings[2] (whom INS regulations permitted to be paroled, in some circumstances, to persons other than parents and legal guardians, including other relatives and "friends," see 8 CFR §212.5(a)(2)(ii) (1987)). This prompted the INS to initiate notice-and-comment rulemaking "to codify Service policy regarding detention and release of juvenile aliens and to provide a single policy for juveniles in both deportation and exclusion proceedings." 52 Fed. Reg. 38245 (1987). The District Court agreed to defer consideration of respondents' due process claims until the regulation was promulgated.

The uniform deportation-exclusion rule finally adopted, published on May 17, 1988, see Detention and Release of Juveniles, 53 Fed. Reg. 17449 (codified as to deportation at 8 CFR §242.24 (1992)), expanded the possibilities for release somewhat beyond the Western Region policy, but not as far as many commenters had suggested. It provides that alien juveniles "shall be released, in order of preference, to: (i) a parent; (ii) a legal guardian; or (iii) an adult relative (brother, sister, aunt, uncle, grandparent) who are [*sic*] not presently in INS detention," unless the INS determines that "the detention of such juvenile is required to secure his timely appearance before the Service or the immigration court or to ensure the juvenile's safety or that of others." 8 CFR §242.24(b)(1) (1992). If the only listed individuals are in INS detention, the Service will consider simultaneous release of the juvenile and custodian "on a discretionary case-by-case basis." §242.24(b)(2). A parent or legal guardian who is in INS custody

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[2]Exclusion proceedings, which are not at issue in the present case, involve aliens apprehended before "entering" the United States, as that term is used in the immigration laws. See *Leng May Ma* v. *Barber*, 357 U. S. 185, 187 (1958).

or outside the United States may also, by sworn affidavit, designate another person as capable and willing to care for the child, provided that person "execute[s] an agreement to care for the juvenile and to ensure the juvenile's presence at all future proceedings." §242.24(b)(3). Finally, in "unusual and compelling circumstances and in the discretion of the [INS] district director or chief patrol agent," juveniles may be released to other adults who execute a care and attendance agreement. §242.24(b)(4).

If the juvenile is *not* released under the foregoing provision, the regulation requires a designated INS official, the "Juvenile Coordinator," to locate "suitable placement . . . in a facility designated for the occupancy of juveniles." §242.24(c). The Service may briefly hold the minor in an "INS detention facility having separate accommodations for juveniles," §242.24(d), but under the terms of the consent decree resolving respondents' conditions-of-detention claims, the INS must within 72 hours of arrest place alien juveniles in a facility that meets or exceeds the standards established by the Alien Minors Care Program of the Community Relations Service (CRS), Department of Justice, 52 Fed. Reg. 15569 (1987). See Memorandum of Understanding Re Compromise of Class Action: Conditions of Detention, *Flores* v. *Meese*, No. 85–4544–RJK (Px) (CD Cal., Nov. 30, 1987) (incorporating the CRS notice and program description), reprinted in App. to Pet. for Cert. 148a-205a (hereinafter Juvenile Care Agreement).

Juveniles placed in these facilities are deemed to be in INS detention "because of issues of payment and authorization of medical care." 53 Fed. Reg., at 17449. "Legal custody" rather than "detention" more accurately describes the reality of the arrangement, however, since these are not correctional institutions but facilities that meet "state licensing requirements for the provision of shelter care, foster care, group

care, and related services to dependent children," Juvenile Care Agreement 176a, and are operated "in an open type of setting without a need for extraordinary security measures," *id.*, at 173a. The facilities must provide, in accordance with "applicable child welfare statutes and generally accepted child welfare standards, practices, principles and procedures," *id.*, at 157a, an extensive list of services, including physical care and maintenance, individual and group counseling, education, recreation and leisure-time activities, family reunification services, and access to religious services, visitors, and legal assistance, *id.*, at 159a, 178a-185a.

Although the regulation replaced the Western Region release policy that had been the focus of respondents' constitutional claims, respondents decided to maintain the litigation as a challenge to the new rule. Just a week after the regulation took effect, in a brief, unpublished order that referred only to unspecified "due process grounds," the District Court granted summary judgment to respondents and invalidated the regulatory scheme in three important respects. *Flores* v. *Meese*, No. CV 854544–RJK (Px) (CD Cal., May 25, 1988), App. to Pet. for Cert. 146a. First, the court ordered the INS to release "any minor otherwise eligible for release . . . to his parents, guardian, custodian, conservator, *or other responsible adult party*." *Ibid*. (emphasis added). Second, the order dispensed with the regulation's requirement that unrelated custodians formally agree to *care for* the juvenile, 8 CFR §§242.24(b)(3) and (4) (1992), in addition to ensuring his attendance at future proceedings. Finally, the District Court rewrote the related INS regulations that provide for an initial determination of prima facie deportability and release conditions before an INS examiner, see §287.3, with review by an immigration judge upon the alien's request, see §242.2(d). It decreed instead that an immigration-judge hearing on probable cause and

release restrictions should be provided "forthwith" after arrest, whether or not the juvenile requests it. App. to Pet. for Cert. 146a.

A divided panel of the Court of Appeals reversed. *Flores* v. *Meese*, 934 F. 2d 991 (CA9 1990). The Ninth Circuit voted to rehear the case and selected an eleven-judge en banc court. See Ninth Circuit Rule 35–3. That court vacated the panel opinion and affirmed the District Court order "in all respects." *Flores* v. *Meese*, 942 F. 2d 1352, 1365 (1991). One judge dissented in part, see *id.*, at 1372–1377 (opinion of Rymer, J.), and four *in toto*, see *id.*, at 1377–1385 (opinion of Wallace, C. J.). We granted certiorari. 502 U. S. ___ (1992).

Respondents make three principal attacks upon INS regulation 242.24. First, they assert that alien juveniles suspected of being deportable have a "fundamental" right to "freedom from physical restraint," Brief for Respondents 16, and it is therefore a denial of "substantive due process" to detain them, since the Service cannot prove that it is pursuing an important governmental interest in a manner narrowly tailored to minimize the restraint on liberty. Secondly, respondents argue that the regulation violates "procedural due process," because it does not require the Service to determine, with regard to *each individual* detained juvenile who lacks an approved custodian, whether his best interests lie in remaining in INS custody or in release to some other "responsible adult." Finally, respondents contend that even if the INS regulation infringes no constitutional rights, it exceeds the Attorney General's authority under 8 U. S. C. §1252(a)(1). We find it economic to discuss the objections in that order, though we of course reach the constitutional issues only because we conclude that the

respondents' statutory argument fails.[3]

Before proceeding further, however, we make two important observations. First, this is a facial challenge to INS regulation 242.24. Respondents do not challenge its application in a particular instance; it had not yet been applied in a particular instance—because it was not yet in existence—when their suit was brought (directed at the 1984 Western Region release policy), and it had been in effect only a week when the District Court issued the judgment invalidating it. We have before us no findings of fact, indeed no record, concerning the INS's interpretation of the regulation or the history of its enforcement. We have only the regulation itself and the statement of basis and purpose that accompanied its promulgation. To prevail in such a facial challenge, respondents "must establish that no set of circumstances exists under which the [regulation] would be valid." *United States* v. *Salerno*, 481 U. S. 739, 745 (1987). That is true as to both the constitutional challenges, see *Schall* v. *Martin*, 467 U. S. 253, 268, n. 18 (1984), and the statutory

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[3]The District Court and all three judges on the Court of Appeals panel held in favor of the INS on this statutory claim, see *Flores* v. *Meese*, 934 F. 2d 991, 995, 997–1002 (CA9 1991); *id.*, at 1015 (Fletcher, J., dissenting); the en banc court (curiously) did not address the claim, proceeding immediately to find the rule unconstitutional. Although respondents did not cross-petition for certiorari on the statutory issue, they may legitimately defend their judgment on any ground properly raised below. See *Washington* v. *Confederated Bands and Tribes of Yakima Indian Nation*, 439 U. S. 463, 476, n. 20 (1979). The INS does not object to our considering the issue, and we do so in order to avoid deciding constitutional questions unnecessarily. See *Jean* v. *Nelson*, 472 U. S. 846, 854 (1985).

challenge, see *NCIR*, 502 U. S., at ___ (slip op., at 4–5).

The second point is related. Respondents spend much time, and their *amici* even more, condemning the conditions under which some alien juveniles are held, alleging that the conditions are so severe as to belie the Service's stated reasons for retaining custody—leading, presumably, to the conclusion that the retention of custody is an unconstitutional infliction of punishment without trial. See *Salerno*, *supra*, at 746–748; *Wong Wing* v. *United States*, 163 U. S. 228, 237 (1896). But whatever those conditions might have been when this litigation began, they are now (at least in the Western Region, where all members of the respondents' class are held) presumably in compliance with the extensive requirements set forth in the Juvenile Care Agreement that settled respondents' claims regarding detention conditions, see *supra*, at 5. The settlement agreement entitles respondents to enforce compliance with those requirements in the District Court, see Juvenile Care Agreement 148a-149a, which they acknowledge they have not done, Tr. of Oral Arg. 43. We will disregard the effort to reopen those settled claims by alleging, for purposes of the challenges to the regulation, that the detention conditions are other than what the consent decree says they must be.

Respondents' "substantive due process" claim relies upon our line of cases which interprets the Fifth and Fourteenth Amendments' guarantee of "due process of law" to include a substantive component, which forbids the government to infringe certain "fundamental" liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest. See, *e.g.*, *Collins* v. *City of Harker Heights*, 503 U. S.

___, ___ (1992) (slip op., at 9); *Salerno*, *supra*, at 746; *Bowers* v. *Hardwick*, 478 U. S. 186, 191 (1986). "Substantive due process" analysis must begin with a careful description of the asserted right, for "[t]he doctrine of judicial self-restraint requires us to exercise the utmost care whenever we are asked to break new ground in this field." *Collins*, *supra*, at ___ (slip op., at 9); see *Bowers* v. *Hardwick*, *supra*, at 194–195. The "freedom from physical restraint" invoked by respondents is not at issue in this case. Surely not in the sense of shackles, chains, or barred cells, given the Juvenile Care Agreement. Nor even in the sense of a right to come and go at will, since, as we have said elsewhere, "juveniles, unlike adults, are always in some form of custody," *Schall*, *supra*, at 265, and where the custody of the parent or legal guardian fails, the government may (indeed, we have said *must*) either exercise custody itself or appoint someone else to do so. *Ibid.* Nor is the right asserted the right of a child to be released from all other custody into the custody of its parents, legal guardian, or even close relatives: the challenged regulation requires such release when it is sought. Rather, the right at issue is the alleged right of a child who has no available parent, close relative, or legal guardian, and for whom the government is responsible, to be placed in the custody of a willing-and-able private custodian rather than of a government-operated or government-selected child-care institution.

If there exists a fundamental right to be released into what respondents inaccurately call a "non-custodial setting," Brief for Respondents 18, we see no reason why it would apply only in the context of government custody incidentally acquired in the course of law enforcement. It would presumably apply to state custody over orphans and abandoned children as well, giving federal law and federal courts a major new role in the management of state

orphanages and other child-care institutions. Cf. *Ankenbrandt* v. *Richards*, 504 U. S. ___, ___ (1992) (slip op., at 14). We are unaware, however, that any court—aside from the courts below—has ever held that a child has a constitutional right not to be placed in a decent and humane custodial institution if there is available a responsible person unwilling to become the child's legal guardian but willing to undertake temporary legal custody. The mere novelty of such a claim is reason enough to doubt that "substantive due process" sustains it; the alleged right certainly cannot be considered "`so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" *Salerno*, *supra*, at 751 (quoting *Snyder* v. *Massachusetts*, 291 U. S. 97, 105 (1934)). Where a juvenile has no available parent, close relative, or legal guardian, where the government does not intend to punish the child, and where the conditions of governmental custody are decent and humane, such custody surely does not violate the Constitution. It is rationally connected to a governmental interest in "preserving and promoting the welfare of the child," *Santosky* v. *Kramer*, 455 U. S. 745, 766 (1982), and is not punitive since it is not excessive in relation to that valid purpose. See *Schall*, *supra*, at 269.

Although respondents generally argue for the categorical right of private placement discussed above, at some points they assert a somewhat more limited constitutional right: the right to an individualized hearing on whether private placement would be in the child's "best interests"—followed by private placement if the answer is in the affirmative. It seems to us, however, that if institutional custody (despite the availability of responsible private custodians) is not unconstitutional in itself, it does not become so simply because it is shown to be less desirable than some other arrangement for the particular child. "The best interests of the child," a

venerable phrase familiar from divorce proceedings, is a proper and feasible criterion for making the decision as to which of two parents will be accorded custody. But it is not traditionally the sole criterion—much less the sole *constitutional* criterion—for other, less narrowly channeled judgments involving children, where their interests conflict in varying degrees with the interests of others. Even if it were shown, for example, that a particular couple desirous of adopting a child would *best* provide for the child's welfare, the child would nonetheless not be removed from the custody of its parents so long as they were providing for the child *adequately*. See *Quilloin* v. *Walcott*, 434 U. S. 246, 255 (1978). Similarly, "the best interests of the child" is not the legal standard that governs parents' or guardians' exercise of their custody: so long as certain minimum requirements of child care are met, the interests of the child may be subordinated to the interests of other children, or indeed even to the interests of the parents or guardians themselves. See, *e.g.*, *R. C. N.* v. *State*, 141 Ga. App. 490, 491, 233 S. E. 2d 866, 867 (1977).

"The best interests of the child" is likewise not an absolute and exclusive constitutional criterion for the government's exercise of the custodial responsibilities that it undertakes, which must be reconciled with many other responsibilities. Thus, child-care institutions operated by the state in the exercise of its *parens patriae* authority, see *Schall*, *supra*, at 265, are not constitutionally required to be funded at such a level as to provide the *best* schooling or the *best* health care available; nor does the Constitution require them to substitute, wherever possible, private nonadoptive custody for institutional care. And the same principle applies, we think, to the governmental responsibility at issue here, that of retaining or transferring custody over a child who has come within the Federal Government's control, when the parents or guardians of that child are nonexistent or

unavailable. Minimum standards must be met, and the child's fundamental rights must not be impaired; but the decision to go beyond those requirements—to give one or another of the child's additional interests priority over other concerns that compete for public funds and administrative attention—is a policy judgment rather than a constitutional imperative.

Respondents' "best interests" argument is, in essence, a demand that the INS program be narrowly tailored to minimize the denial of release into private custody. But narrow tailoring is required only when fundamental rights are involved. The impairment of a lesser interest (here, the alleged interest in being released into the custody of strangers) demands no more than a "reasonable fit" between governmental purpose (here, protecting the welfare of the juveniles who have come into the government's custody) and the means chosen to advance that purpose. This leaves ample room for an agency to decide, as the INS has, that administrative factors such as lack of child-placement expertise favor using one means rather than another. There is, in short, no constitutional need for a hearing to determine whether private placement would be better, so long as institutional custody is (as we readily find it to be, assuming compliance with the requirements of the consent decree) good enough.

If we harbored any doubts as to the constitutionality of institutional custody over unaccompanied juveniles, they would surely be eliminated as to those juveniles (concededly the overwhelming majority of all involved here) who are aliens. "For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government." *Mathews* v. *Diaz*, 426 U. S. 67, 81 (1976). "`[O]ver no conceivable subject is the legislative power of Congress more complete.'" *Fiallo*

v. *Bell*, 430 U. S. 787, 792 (1977) (quoting *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U. S. 320, 339 (1909)). Thus, "in the exercise of its broad power over immigration and naturalization, `Congress regularly makes rules that would be unacceptable if applied to citizens.'" 430 U. S., at 792 (quoting *Mathews* v. *Diaz*, *supra*, at 79–80). Respondents do not dispute that Congress has the authority to detain aliens suspected of entering the country illegally pending their deportation hearings, see *Carlson* v. *Landon*, 342 U. S. 524, 538 (1952); *Wong Wing* v. *United States*, 163 U. S., at 235. And in enacting the precursor to 8 U. S. C. §1252(a), Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General. See *Carlson* v. *Landon*, *supra*, at 538–540. Of course, the INS regulation must still meet the (unexacting) standard of rationally advancing some legitimate governmental purpose—which it does, as we shall discuss later in connection with the statutory challenge.

Respondents also argue, in a footnote, that the INS release policy violates the "equal protection guarantee" of the Fifth Amendment because of the disparate treatment evident in (1) releasing alien juveniles with close relatives or legal guardians but detaining those without, and (2) releasing to unrelated adults juveniles detained pending federal delinquency proceedings, see 18 U. S. C. §5034, but detaining unaccompanied alien juveniles pending deportation proceedings. The tradition of reposing custody in close relatives and legal guardians is in our view sufficient to support the former distinction; and the difference between citizens and aliens is adequate to support the latter.

We turn now from the claim that the INS cannot deprive respondents of their asserted liberty interest

*at all*, to the "procedural due process" claim that the Service cannot do so on the basis of the procedures it provides. It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings. See *The Japanese Immigrant Case*, 189 U. S. 86, 100–101 (1903). To determine whether these alien juveniles have received it here, we must first review in some detail the procedures the INS has employed.

Though a procedure for obtaining warrants to arrest named individuals is available, see 8 U. S. C. §1252(a)(1); 8 CFR §242.2(c)(1) (1992), the deportation process ordinarily begins with a warrantless arrest by an INS officer who has reason to believe that the arrestee "is in the United States in violation of any [immigration] law or regulation and is likely to escape before a warrant can be obtained," 8 U. S. C. §1357(a)(2). Arrested aliens are almost always offered the choice of departing the country voluntarily, 8 U. S. C. §1252(b) (1988 ed., Supp. III); 8 CFR §242.5 (1992), and as many as 98% of them take that course. See *INS* v. *Lopez-Mendoza*, 468 U. S. 1032, 1044 (1984). Before the Service seeks execution of a voluntary departure form by a *juvenile*, however, the juvenile "must in fact communicate with either a parent, adult relative, friend, or with an organization found on the free legal services list." 8 CFR §242.24(g) (1992).[4] If the juvenile does not seek voluntary departure, he must be brought before an INS examining officer within 24 hours of his arrest. §287.3; see 8 U. S. C. §1357(a)(2). The examining officer is a member of the Service's enforcement

[4]Alien juveniles from Canada and Mexico must be offered the opportunity to make a telephone call but need not in fact do so, see 8 CFR §242.24(g) (1992); the United States has treaty obligations to notify diplomatic or consular officers of those countries whenever their nationals are detained, see §242.2(g).

staff, but must be someone other than the arresting officer (unless no other qualified examiner is readily available). 8 CFR §287.3 (1992). If the examiner determines that "there is prima facie evidence establishing that the arrested alien is in the United States in violation of the immigration laws," *ibid*., a formal deportation proceeding is initiated through the issuance of an order to show cause, §242.1, and within 24 hours the decision is made whether to continue the alien juvenile in custody or release him, §287.3.

The INS notifies the alien of the commencement of a deportation proceeding and of the decision as to custody by serving him with a Form I-221S (reprinted in App. to Brief for Petitioners 7a-8a) which, pursuant to the Immigration Act of 1990, 8 U. S. C. §1252b(a)(3)(A) (1988 ed., Supp. III), must be in English and Spanish. The front of this form notifies the alien of the allegations against him and the date of his deportation hearing. The back contains a section entitled "NOTICE OF CUSTODY DETERMINATION," in which the INS officer checks a box indicating whether the alien will be detained in the custody of the Service, released on recognizance, or released under bond. Beneath these boxes, the form states: "You may request the Immigration Judge to redetermine this decision." See 8 CFR §242.2(c)(2) (1992). (The immigration judge is a quasi-judicial officer in the Executive Office for Immigration Review, a division separated from the Service's enforcement staff. §3.10.) The alien must check either a box stating "I do" or a box stating "[I] do not request a redetermination by an Immigration Judge of the custody decision," and must then sign and date this section of the form. If the alien requests a hearing and is dissatisfied with the outcome, he may obtain further review by the Board of Immigration Appeals, §242.2(d); §3.1(b)(7), and by the federal courts, see, *e.g.*, *Carlson* v. *Landon*, *supra*, at 529, 531.

Respondents contend that this procedural system is unconstitutional because it does not require the Service to determine in the case of each individual alien juvenile that detention in INS custody would better serve his interests than release to some other "responsible adult." This is just the "substantive due process" argument recast in "procedural due process" terms, and we reject it for the same reasons.

The District Court and the en banc Court of Appeals concluded that the INS procedures are faulty because they do not provide for *automatic* review by an immigration judge of the initial deportability and custody determinations. See 942 F. 2d, at 1364. We disagree. At least insofar as this facial challenge is concerned, due process is satisfied by giving the detained alien juveniles the *right* to a hearing before an immigration judge. It has not been shown that all of them are too young or too ignorant to exercise that right when the form asking them to assert or waive it is presented. Most are 16 or 17 years old and will have been in telephone contact with a responsible adult outside the INS—sometimes a legal services attorney. The waiver, moreover, is revocable: the alien may request a judicial redetermination at any time later in the deportation process. See 8 CFR §242.2(d) (1992); *Matter of Uluocha*, 20 I. & N. Dec. ___ (Interim Dec. 3124, BIA 1989). We have held that juveniles are capable of "knowingly and intelligently" waiving their right against self-incrimination in criminal cases. See *Fare* v. *Michael C.*, 442 U. S. 707, 724–727 (1979); see also *United States* v. *Saucedo-Velasquez*, 843 F. 2d 832, 835 (CA5 1988) (applying *Fare* to alien juvenile). The alleged right to redetermination of prehearing custody status in deportation cases is surely no more significant.

Respondents point out that the regulations do not set a time period within which the immigration-judge hearing, if requested, must be held. But we will not

assume, on this facial challenge, that an excessive delay will invariably ensue—particularly since there is no evidence of such

delay, even in isolated instances. Cf. *Matter of Chirinos*, 16 I. & N. Dec. 276 (BIA 1977).

Respondents contend that the regulation goes beyond the scope of the Attorney General's discretion to continue custody over arrested aliens under 8 U. S. C. §1252(a)(1). That contention must be rejected if the regulation has a "`reasonable foundation,'" *Carlson* v. *Landon*, *supra*, at 541, that is, if it rationally pursues a purpose that it is lawful for the INS to seek. See also *NCIR*, 502 U. S., at ___ (slip op., at 11). We think that it does.

The statement of basis and purpose accompanying promulgation of regulation 242.42, in addressing the question "as to whose custody the juvenile should be released," began with the dual propositions that "concern for the welfare of the juvenile will not permit release to just any adult" and that "the Service has neither the expertise nor the resources to conduct home studies for placement of each juvenile released." Detention and Release of Juveniles, 53 Fed. Reg. 17449, 17449 (1988). The INS decided to "strik[e] a balance" by defining a list of presumptively appropriate custodians while maintaining the discretion of local INS directors to release detained minors to other custodians in "unusual and compelling circumstances." *Ibid.* The list begins with parents, whom our society and this Court's jurisprudence have always presumed to be the preferred and primary custodians of their minor children. See *Parham* v. *J. R.*, 442 U. S. 584, 602–603 (1979). The list extends to other close blood relatives, whose protective relationship with children our society has also traditionally respected. See *Moore* v. *East Cleveland*, 431 U. S. 494 (1977); compare *Village of Bell Terre* v. *Boras*, 416 U. S. 1 (1974). And finally, the list includes persons given legal guardianship by the States, which we have said

possess "special proficiency" in the field of domestic relations, including child custody. *Ankenbrandt* v. *Richards*, 504 U. S., at ___ (slip op., at 14). When neither parent, close relative, or state-appointed guardian is immediately available,[5] the INS will normally keep legal custody of the juvenile, place him in a government-supervised and state-licensed shelter-care facility, and continue searching for a relative or guardian, although release to others is possible in unusual cases.[6]

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[5]The regulation also provides for release to any person designated by a juvenile's parent or guardian as "capable and willing to care for the juvenile's well-being." 8 CFR §242.24(b)(3) (1992). "[To] ensur[e] that the INS is actually receiving the wishes of the parent or guardian," 53 Fed. Reg. 17449, 17450 (1988), the designation must be in the form of a sworn affidavit executed before an immigration or consular officer.

[6]The dissent maintains that, in making custody decisions, the INS cannot rely on "[c]ategorical distinctions between cousins and uncles, or between relatives and godparents or other responsible persons," because "[d]ue process demands more, far more." *Post*, at 25–26. Acceptance of such a proposition would revolutionize much of our family law. Categorical distinctions between relatives and nonrelatives, and between relatives of varying degree of affinity, have always played a predominant role in determining child custody and in innumerable other aspects of domestic relations. The dissent asserts, however, that it would prohibit such distinctions only for the purpose of "prefer[ring] *detention* [by which it means institutional detention] to *release*," and accuses us of "mischaracteriz[ing] the issue" in suggesting otherwise. *Post*, at 26, n. 29. It seems to us that the dissent mischaracterizes the issue. The INS uses the categorical distinction between relatives

Respondents object that this scheme is motivated purely by "administrative convenience," a charge echoed by the dissent, see, *e.g.*, *post*, at 1–2. This fails to grasp the distinction between administrative convenience (or, to speak less pejoratively, administrative efficiency) as the *purpose* of a policy—for example, a policy of not considering late-filed objections—and administrative efficiency as the reason for selecting one means of achieving a purpose over another. Only the latter is at issue here. The requisite statement of basis and purpose published by the INS upon promulgation of regulation 242.24 declares that the purpose of the rule is to protect "the welfare of the juvenile," 53 Fed. Reg., at 17449, and there is no basis for calling that false. (Respondents' contention that the real purpose was to save money imputes not merely mendacity but irrationality, since respondents point out that detention in shelter-care facilities is more expensive than release.) Because the regulation involves no deprivation of a "fundamental" right, the Service was not compelled to ignore the costs and difficulty of alternative means of advancing its declared goal. Compare *Stanley* v. *Illinois*, 405 U. S. 645, 656–657 (1972). It is impossible to contradict the Service's assessment that it lacks the "expertise," and is not "qualified," to do individualized child-placement studies, 53 Fed. Reg., at 17449, and the right alleged here provides no basis for this Court to impose upon what is essentially a law-enforcement agency the obligation to expend its limited resources in developing such expertise and qualification.[7] That

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and nonrelatives not to deny release, but to determine which potential custodians will be accepted without the safeguard of state-decreed guardianship.

[7]By referring unrelated persons seeking custody to state guardianship procedures, the INS is essentially

reordering of priorities is for Congress—which has shown, we may say, no inclination to shrink from the task. See, *e.g.*, 8 U. S. C. §1154(c) (requiring INS to determine if applicants for immigration are involved in "sham" marriages). We do not hold, as the dissent contends, that "minimizing administrative costs" is adequate justification for the Service's detention of juveniles, *post*, at 1; but we do hold that a detention program justified by the need to protect the welfare of juveniles is not constitutionally required to give custody to strangers if that entails the expenditure of administrative effort and resources that the Service is unwilling to commit.[8]

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drawing upon resources and expertise that are already in place. Respondents' objection to this is puzzling, in light of their assertion that the States generally view unrelated adults as appropriate custodians. See *post*, at 6, n. 7 (dissent) (collecting state statutes). If that is so, one wonders why the individuals and organizations respondents allege are eager to accept custody do not rush to state court, have themselves appointed legal guardians (temporary or permanent, the States have procedures for both), and then obtain the juveniles' release under the terms of the regulation. Respondents and their *amici* do maintain that becoming a guardian can be difficult, but the problems they identify—delays in processing, the need to ensure that existing parental rights are not infringed, the "bureaucratic gauntlet"—would be no less significant were the INS to duplicate existing state procedures.

[8]We certainly agree with the dissent that this case must be decided in accordance with "indications of congressional policy," *post*, at 15–16. The most pertinent indication, however, is not, as the dissent believes, the federal statute governing detention of juveniles pending delinquency proceedings, 18

Respondents also contend that the INS regulation violates the statute because it relies upon a "blanket" presumption of the unsuitability of custodians other than parents, close relatives, and guardians. We have stated that, at least in certain contexts, the Attorney General's exercise of discretion under §1252(a)(1) requires "some level of individualized determination." *NCIR*, 502 U. S., at ___ (slip op., at

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U. S. C. §5034, but the statute under which the Attorney General is here acting, 8 U. S. C. §1252(a)(1). That grants the Attorney General *discretion* to determine when temporary detention pending deportation proceedings is appropriate, and makes his exercise of that discretion "presumptively correct and unassailable except for abuse." *Carlson* v. *Landon*, 342 U. S. 524, 540 (1952). We assuredly cannot say that the decision to rely on universally accepted presumptions as to the custodial competence of parents and close relatives, and to defer to the expertise of the States regarding the capabilities of other potential custodians, is an abuse of this broad discretion simply because it does not track policies applicable outside the immigration field. See *NCIR*, 502 U. S. ___, ___ (1991) (slip op., at 9). Moreover, reliance upon the States to determine guardianship is quite in accord with what Congress has directed in other immigration contexts. See 8 U. S. C. §1154(d) (INS may not approve immigration petition for an alien juvenile orphan being adopted unless "a valid home-study has been favorably recommended by an agency of the State of the child's proposed residence, or by an agency authorized by that State to conduct such a study"); §1522(d)(2)(B)(ii) (for refugee children unaccompanied by parents or close relatives, INS shall "attempt to arrange . . . placement under the laws of the States"); see also 45 CFR §400.113 (1992) (providing support payments under §1522 until the refugee

11); see also *Carlson* v. *Landon*, 342 U. S., at 538. But as *NCIR* itself demonstrates, this does not mean that the Service must forswear use of reasonable presumptions and generic rules. See 502 U. S., at ___, n. 11 (slip op., at 12–13, n. 11); cf. *Heckler* v. *Campbell*, 461 U. S. 458, 467 (1983). In the case of each detained alien juvenile, the INS makes those determinations that are specific to the individual and necessary to accurate application of the regulation: Is there reason to believe the alien deportable? Is the alien under 18 years of age? Does the alien have an available adult relative or legal guardian? Is the alien's case so exceptional as to require consideration of release to someone else? The particularization and individuation need go no further than this.[9]

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juvenile is placed with a parent or with another adult "to whom legal custody and/or guardianship is granted under State law").

[9]The dissent would mandate fully individualized custody determinations for two reasons. First, because it reads *Carlson* v. *Landon*, *supra*, as holding that the Attorney General may not employ "mere presumptions" in exercising his discretion. *Post*, at 19–20. But it was only the *dissenters* in *Carlson* who took such a restrictive view. See 342 U. S., at 558–559, 563–564, 568 (Frankfurter, J., dissenting). Second, because it believes that §1252(a) must be interpreted to require individualized hearings in order to avoid "`constitutional doubts.'" *Post*, at 16 (quoting *United States* v. *Witkovich*, 353 U. S. 194, 199 (1957)); see *post*, at 22. The "constitutional doubts" argument has been the last refuge of many an interpretive lost cause. Statutes should be interpreted to avoid *serious* constitutional doubts, *Witkovich*, *supra*, at 202, not to eliminate all possible contentions that the statute *might* be unconstitutional. We entertain no serious doubt that the Constitution does not require any more

Finally, respondents claim that the regulation is an abuse of discretion because it permits the INS, once having determined that an alien juvenile lacks an available relative or legal guardian, to hold the juvenile in detention indefinitely. That is not so. The period of custody is inherently limited by the pending deportation hearing, which must be concluded with "reasonable dispatch" to avoid habeas corpus. 8 U. S. C. §1252(a)(1); cf. *Salerno* v. *United States*, 481 U. S. 739, 747 (1987) (noting time limits placed on pretrial detention by the Speedy Trial Act). It is expected that alien juveniles will remain in INS custody an average of only 30 days. See Juvenile Care Agreement 178a. There is no evidence that alien juveniles are being held for undue periods pursuant to regulation 242.24, or that habeas corpus is insufficient to remedy particular abuses.[10] And the reasonableness of the Service's negative assessment of putative custodians who fail to obtain legal guardianship would seem, if anything, to increase as time goes by.

* * *

We think the INS policy now in place is a reasonable response to the difficult problems presented when the Service arrests unaccompanied alien juveniles. It may well be that other policies would be even better, but "we are [not] a legislature charged with formulating public policy." *Schall* v. *Martin*, 467 U. S., at 281. On its face, INS regulation 242.24 accords

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individuation than the regulation provides, see *supra*, at 10–12, 16, and thus find no need to supplement the text of §1252(a).

[10]The dissent's citation of a single deposition from 1986, *post*, at 5 and n. 6, is hardly proof that "excessive delay" will result in the "typical" case, *post*, at 6, under regulation 242.24, which was not promulgated until mid-1988.

with both the Constitution and the relevant statute.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*