

November 6, 2018

Submitted via email to ICE.Regulations@ice.dhs.gov

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Dear Ms. Seguin,

I am writing on behalf of the Children's Defense Fund of Texas in response to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking (proposed rule) to express our strong opposition to the proposed rule to amend regulations relating to the apprehension, processing, care, custody, and release of alien juveniles published in the Federal Register on September 7, 2018.

For over 15 years, the Children's Defense Fund-Texas has worked to ensure that every child has a Healthy Start and a Safe Start in life and successful passage to adulthood. CDF provides a strong, effective and independent voice for all the children of America who cannot vote, lobby or speak for themselves. We are committed to raising awareness about the challenges facing Texas children, connecting children and families to resources that help to meet their needs, and working with partners statewide to coordinate broad support for legislative action on behalf of Texas children and families.

For the reasons detailed in the comments that follow, DHS and the Department of Health and Human Services (HHS) should immediately withdraw their current proposal, and dedicate their efforts to advancing policies that safeguard the health, safety, and best interests of children and their families, not least through robust, good-faith compliance with the Flores Settlement Agreement.

As we write, thousands of vulnerable immigrant children are being forcibly held in detention centers under conditions that cause extreme distress and trauma. This is a violation of their human rights, and a violation of the commitments we, as a nation, have made about who we are and how we ought to treat people. As written, the proposed regulations would essentially permit indefinite detention of children, limit the family members to whom a detained child could be released, and roll back the minimal standards currently in place for children's access to health, education, and special needs accommodations. Furthermore, the regulations would allow detention centers to "self-certify" as child care facilities, a proposal that dismisses the concepts of oversight, accountability, and child care standards, and in the end represents a serious miscarriage of justice. Our main points of concern are the wellbeing and safety of immigrant children and families, the restrictions placed on children being released from detention centers, the potential for living conditions to considerably worsen in detention centers, and the unnecessarily high cost of the NPRM. We strongly urge you to consider these concerns before moving forward with the proposed changes.

To allow for the indefinite detention of migrant children is tantamount to child abuse. Any amount of time is too long for a migrant child to be held in a detention center. After fleeing a life filled with danger, violence, and fear, and then surviving the dangerous trek to the United States, to incarcerate these children is piling additional and unnecessary trauma upon them. Growing up in settings of

ongoing stress interferes with children's normal development, causing deep psychological stress as well as, intellectual and cognitive impairments.<sup>1</sup> These impacts can have harmful repercussions throughout a child's life.

According to medical experts, DHS detention facilities are not appropriate places for children to be housed. In 2017, the American Academy of Pediatrics published a policy statement titled *Detention of Immigrant Children* stating that immigrant children seeking safe haven in the United States should never be placed in detention facilities.<sup>2</sup> The American Medical Association has also adopted a policy opposing family immigration detention given the negative health consequences that detention has on both children and their parents.<sup>3</sup> In 2018, the American College of Physicians released a policy stating that “forced family detention—indefinitely holding children and their parents, or children and their other primary adult family caregivers, in government detention centers until the adults’ immigration status is resolved—can be expected to result in considerable adverse harm to the detained children and other family members, including physical and mental health, that may follow them through their entire lives, and accordingly should not be implemented by the U.S. government.”<sup>4</sup>

Despite these and many other warnings from medical experts, DHS proposes in this NPRM to substitute its own Immigration and Customs Enforcement (ICE) family residential standards where its family detention facilities cannot obtain licensing from state, municipal, or other appropriate child welfare entities.<sup>5</sup> This would have the effect of eliminating the critical Flores Settlement Agreement limitation on the detention of children in unlicensed facilities. As a result, and as explicitly intended by DHS in promulgating these proposed rules, DHS would detain children with their families for the entirety of their immigration proceedings--in effect, indefinitely.

The proposed rule would also include restrictions that will make it harder for children to be released from detention centers by changing the immediate release protocol by only allowing a child to be released to a parent or legal guardian. Since many parents of detained children are likely to be detained themselves, a majority of these children have little to no chance of seeing a speedy and just release. Immigrant children could spend months to years in detention while waiting for the release of their parent/guardian.

In Texas, the current living conditions in detention centers have been full of reports of negligence. There have been firsthand accounts in a [lawsuit](#) filed against the government's detention of children that included allegations of physical and verbal abuse, inedible food, undrinkable water, unhygienic bathroom facilities, and generally uninhabitable living conditions.<sup>6</sup> There are currently 13 detention centers across Texas, two of which are family detention centers. According to the report by the Unitarian Universalist Service Committee, [\*No Safe Haven Here: Children and Families Face Trauma in the Hands of U.S. Immigration\*](#), the centers are not equipped — in terms of appropriate staff training,

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<sup>1</sup> Linton, Julie M. et al. "Detention Of Immigrant Children". *Pediatrics*, vol 139, no. 5, 2017, p. e20170483. *American Academy Of Pediatrics (AAP)*, doi:10.1542/peds.2017-0483. <http://pediatrics.aappublications.org/content/139/5/e20170483>

<sup>2</sup> Julie M. Linton, Marsha Griffin, Alan Shapiro, American Academy of Pediatrics, *Policy Statement: Detention of Immigrant Children*, Apr. 2017, <http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>.

<sup>3</sup> American Medical Association, “AMA Adopts New Policies to Improve Health of Immigrants and Refugees,” June 12, 2017, <https://www.ama-assn.org/ama-adopts-new-policies-improve-health-immigrants-and-refugees>.

<sup>4</sup> American College of Physicians, “The Health Impact of Family Detentions in Immigration Cases,” July 3, 2018, [https://www.acponline.org/acp\\_policy/policies/family\\_detention\\_position\\_statement\\_2018.pdf](https://www.acponline.org/acp_policy/policies/family_detention_position_statement_2018.pdf).

<sup>5</sup> See 83 FR 45525

<sup>6</sup> United States District Court Central District of California, Western Division. *Jenny Lisette Flores, Et Al. vs. Jefferson B. Sessions, Attorney General of the United States, Et Al.* 27 July 2018., <https://www.documentcloud.org/documents/4609538-Flores-0716-459-4.html>

infrastructure, and policies — to house and care for children without causing significant physical and emotional harm to them.<sup>7</sup>

Any length of detention is known to have negative short and long-term effects on the health and well-being of refugees, many of whom are children and the survivors of multiple traumas. *Indefinite* detention is guaranteed to trigger severe medical and mental health consequences.<sup>8</sup> Numerous clinical studies have demonstrated that the mitigating factor of parental presence does not negate the damaging impact of detention on the physical and mental health of children.<sup>9</sup> In a retrospective analysis, detained children were reported to have tenfold increase in developing psychiatric disorders.<sup>10</sup> Studies of health difficulties of detained children found that most children since being detained reported symptoms of depression, sleep problems, loss of appetite, and somatic complaints such as headaches and abdominal pains; specific concerns include inadequate nutritional provisions, restricted mealtimes, and child weight loss.<sup>11</sup> DHS' own medical experts recorded a case in which a 16-month-old baby lost a third of his body weight over 10 days because of untreated diarrheal disease, yet was never given IV fluids.<sup>12</sup>

Indeed, in Texas the evidence shows that the family residential centers at Karnes and Dilley are no different. Women and children reported wait times of three to fourteen hours to receive medical care.<sup>13</sup> These wait times routinely occur in cases of serious and urgent conditions. In at least one instance, a mother who had to leave the medical line after waiting for hours was forced to sign a letter stating she refused medical care.<sup>14</sup> The children in these facilities have been through horrendously traumatic experiences such as rape; witnessing the murders of friends, family, and neighbors; death threats; kidnapping for ransom; widespread extortion; losing family members to gangland assassinations; and forced conscription of small children into violent gangs. Detention only serves to re-traumatize these already vulnerable children and families.<sup>15</sup> Dr. Amy Cohen, a child psychiatrist, has worked with trauma victims for over 30 years and has said that she has never spoken to more traumatized individuals.<sup>16</sup> Dr. Cohen worked with children and families in the McAllen, TX detention center and

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<sup>7</sup> O'Connor, Kathleen et al. "No Safe Haven Here: Children And Families Face Trauma In The Hands Of U.S. Immigration". *Uusc.Org*, 2018, [http://www.uusc.org/sites/default/files/no\\_safe\\_haven\\_here\\_-\\_children\\_and\\_families\\_face\\_trauma\\_in\\_the\\_hands\\_of\\_u.s.\\_immigration.pdf](http://www.uusc.org/sites/default/files/no_safe_haven_here_-_children_and_families_face_trauma_in_the_hands_of_u.s._immigration.pdf).

<sup>8</sup> Physicians for Human Rights, Punishment before Justice: Indefinite Detention in the US (June 1, 2011), <https://phr.org/resources/punishment-before-justice-indefinite-detention-in-the-us/>.

<sup>9</sup> Dudley, Michael, Zachary Steel, Sarah Mares, and Louise Newman. Children and Young People in Immigration Detention. *Current Opinion Psychiatry* 25, no. 4 (July 2012): 285-92. doi:10.1097/YCO.0b013e3283548676; Ehntholt, K., Trickey, D., Harris Hendriks, J., Chambers, H., Scott, M., Yule, W., & Tibbles, P. (2018). Mental health of unaccompanied asylum-seeking adolescents previously held in British detention centres. *Clinical Child Psychology and Psychiatry*, 23(2), 238–257; Kronick, R., Rousseau, C., & Cleveland, J. (2015). Asylum-seeking children's experiences of detention in Canada: A qualitative study. *American Journal of Orthopsychiatry*, 85(3), 287.

<sup>10</sup> Steel, Zachary, Shakeh Momartin, Catherine Bateman, Atena Hafshejani, Derrick M. Silove, Naleya Everson, Konya Roy, Michael Dudley, Louise Newman, Bijou Blick, and Sarah Mares. Psychiatric Status of Asylum Seeker Families Held for a Protracted Period in a Remote Detention Centre in Australia. *Australian and New Zealand Journal of Public Health* 28, no. 6 (September 25, 2004): 527-36. doi:10.1111/j.1467-842x.2004.tb00042.x.

<sup>11</sup> Lorek, Ann, Kimberly Ehntholt, Anne Nesbitt, Emmanuel Wey, Chipso Githinji, Eve Rossor, and Rush Wickramasinghe. The Mental and Physical Health Difficulties of Children Held within a British Immigration Detention Center: A Pilot Study. *Child Abuse & Neglect* 33, no. 9 (September 2009): 573-85. doi:10.1016/j.chiabu.2008.10.005.

<sup>12</sup> Dr. Scott Allen and Dr. Pamela McPherson, Letter to the Senate Whistleblowing Caucus, July 17, 2018, <https://www.whistleblower.org/sites/default/files/Original%20Docs%20Letter.pdf>.

<sup>13</sup> Feliz, Wendy, and Maria Frausto. "Deplorable Medical Treatment At Family Detention Centers". *American Immigration Council*, 2018, <https://www.americanimmigrationcouncil.org/news/deplorable-medical-treatment-family-detention-centers>. Accessed 5 Nov 2018.

<sup>14</sup> Feliz, Wendy, and Maria Frausto. "Deplorable Medical Treatment At Family Detention Centers". *American Immigration Council*, 2018, <https://www.americanimmigrationcouncil.org/news/deplorable-medical-treatment-family-detention-centers>.

<sup>15</sup> Lee, Esther Yu Hsi. "How Immigration Detention Centers Retraumatize Women And Children Fleeing From Violence". *Thinkprogress.Org*, 2015, <https://thinkprogress.org/how-immigration-detention-centers-retraumatize-women-and-children-fleeing-from-violence-5624ac39e0ec/>.

<sup>16</sup> Cohen, Amy. "Child Immigration: Mental Health Issues". *SERMO*, 2014, <http://blog.sermo.com/2014/08/15/child-immigration-mental-health-issues/>

recounted their stories, of trauma and violence in their home countries, PTSD from the initial separation and detention in the United States, and their uncertain living conditions in detention centers.<sup>17</sup> Dr. Cohen concludes that these separation and detention conditions are sites of extreme and continuous trauma. Instead of providing the trauma-informed care refugees deserve, these facilities treat refugees and children inhumanely. Allowing families to be detained in these facilities implicitly validates the inhumane treatment of migrant families.

By seeking to extend the lengths of stay for children, the Administration is endorsing a practice that is in violation of international conventions for the treatment of refugees and asylees. According Article 37 of the United Nations Convention on the Rights of the Child (CRC), detention of children should “be used only as a measure of last resort and for the shortest appropriate period of time.”<sup>18</sup> Additionally, the CRC states that children shall not be arbitrarily denied his or her liberty and should have “prompt access to legal and other appropriate assistance.”<sup>19</sup> The immigrant families and children who enter the United States to seek asylum have broken no law – indeed, they are following international conventions for asylum, which dictate that an individual must present themselves at the border and ask to be given a hearing for asylum. Under the detention guidelines set forth by the United Nations High Commissioner for Refugees (UNHCR), asylum seekers should only be detained under exceptional circumstances, *which does not include illegal entry*.<sup>20</sup> The UN Convention and Protocol on the status of refugees also states that there should not be penalties for illegal entry or presence for those refugees whose life or freedom was at risk.<sup>21</sup>

Our third concern focuses on the potential for these already inappropriate, often dangerous, and occasionally lethal conditions to worsen with the proposal for detention centers to self-certify. Under the proposed regulation that would supersede *Flores*, DHS would be able to detain children for prolonged periods in facilities that are not licensed by a state child welfare agency. The proposal would allow DHS to “employ an entity outside of DHS that has relevant audit experience to ensure compliance with the family residential standards established by ICE [Immigration and Customs Enforcement].”<sup>22</sup> DHS claims that this would provide “materially identical assurances about the conditions” of family detention centers while allowing for longer periods of detention.<sup>23</sup> However, as already discussed above in the comments about conditions in detention centers here in Texas, there is ample evidence of DHS’s record of oversight, transparency, and accountability leave much to be desired in the care and treatment of detainees. This sort of self-certification, or third-party contractor certification, is the recipe for a further deterioration of conditions, and seeds concerns among child advocates that DHS is neither capable nor desirous of taking seriously its responsibility for the well-being of the children and families in its custody.

The Trump Administration has claimed that a primary reason for the push towards increasing and lengthening detention of immigrant families is to deter more immigrants and asylum-seekers from

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<sup>17</sup> Cohen, Amy. ““They Are Struggling”: A Child Psychiatrist Writes From A Texas Shelter”. *Instyle*, 2018, <https://www.instyle.com/news/immigrant-children-trump-policy-longterm-effects>

<sup>18</sup> UN General Assembly. “Convention on the Rights of the Child.” Article 37. *United Nations Treaty Series*, vol. 1577, 1989, <https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>.

<sup>19</sup> UN General Assembly. “Convention on the Rights of the Child.” Article 37.

<sup>20</sup> UN High Commissioner for Refugees. *Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention*.” 2012, <http://www.unhcr.org/505b10ee9.html>.

<sup>21</sup> UN General Assembly. “Convention Relating to the Status of Refugees.” *United Nations Treaty Series*, vol. 189, 1951, <http://www.unhcr.org/en-us/3b66c2aa10>.

<sup>22</sup> Department of Homeland Security and Department of Health and Human Services, “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children,” *Federal Register*, Vol. 83, No. 174, Sept. 7, 2018, p. 45525. <https://www.gpo.gov/fdsys/pkg/FR-2018-09-07/pdf/2018-19052.pdf> (Downloaded Oct. 15, 2018)

<sup>23</sup> *Id.*, p. 45488.

entering the United States.<sup>24</sup> However, [data](#) shows that the flow of immigrant and asylum seekers to the U.S. has not decreased since the implementation of these harsh policies. Immigrant families continue to choose to seek asylum in the U.S. because of the dire circumstances they are fleeing in their home countries. As a result, these harsh policies result in only harming children without attaining any intended benefits. Unlimited detention also violates the prohibition against torture and ill-treatment under U.S. and international law. The UN Special Rapporteur on torture has unequivocally stated that ill-treatment can amount to torture if it is intentionally imposed “for the purpose of deterring, intimidating, or punishing migrants or their families, or coercing them into withdrawing their requests for asylum”.<sup>25</sup>

The United States does not have to engage in such problematic, ineffective, and expensive policies when effective and cost-effective alternatives exist. Before establishing family detention centers like Karnes in 2010 and Dilley in 2014, existing US policy allowed asylum seekers to be in community-based settings. Concerns about low rates of attendance for legal proceedings are easily answered. When an asylee is working with legal representation, asylum seekers attend their court date 98 percent of the time. Community-based organizations take care of asylum seekers in trauma free settings for only [\\$20 dollars a day](#) and have up to 99% court attendance rate. Even an ankle monitoring system, which CDF would oppose as unnecessary, could be implemented for \$8 a day. By contrast, the proposed regulations are estimated to cost approximately [\\$2.8 billion per year](#), which would constitute an unnecessary strain on the national budget. It seems self-evident that the only parties who reap the benefit of indefinite detention are the private prison corporations who maintain these facilities, and they will be raking in the profits in record hauls.<sup>26</sup> We should not opt to waste resources when there are less harmful and more sustainable options at our disposal.

Thank you for this opportunity to submit comments on the NPRM.

We implore you to reject the proposed changes to the Flores Amendment. Adopting it will put these families through incredible stress and force these children to suffer unnecessary trauma. We, as Americans, should not stand by and pass regulations that harm the innocent families and children seeking a better life in our country.

Sincerely,



Patrick Bresette  
Executive Director

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<sup>24</sup> Jordan, Miriam et al. "Trump's Plans To Deter Migrants Could Mean New 'Voluntary' Family Separations". *Nytimes.Com*, 2018, <https://www.nytimes.com/2018/10/22/us/migrant-families-crossing-border-trump.html>. Accessed 5 Nov 2018.

<sup>25</sup> Rapport of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, Migration-related Torture and Ill treatment, A/HRC/37/50 (February 2018).

<sup>26</sup>Zusha Elinson, The Wall Street Journal, "Trump's Immigrant-Detention Plans Benefit Private Prison Operators". <https://www.wsj.com/articles/trumps-immigrant-detention-plans-benefit-these-companies-1530523800>