

November 5, 2018

Debbie Seguin  
Assistant Director, Office of Policy  
U.S. Immigration and Customs Enforcement  
Department of Homeland Security  
500 12th Street SW  
Washington, DC 20536

**Re: DHS Docket No. ICEB-2018-0002 Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children**

As a research center within one of the largest children's hospitals in the country, with clinician researchers focused on identifying evidence-based policy solutions to improve the health and well-being of children and families, PolicyLab at the Children's Hospital of Philadelphia appreciates the opportunity to provide comments on the proposed rule regarding the detention of immigrant children and families.

While we recognize that the rule is intended to help prevent the harmful practice of separating children from their parents who are detained when they enter into the United States, the proposed rule includes a number of policy changes that will have the net effect of detaining children for significantly longer periods of time, which can be just as traumatic and damaging to their immediate and long-term health. The proposed rule states: "This rule would allow for detention at Family Residential Centers (FRCs) for the pendency of immigration proceedings... in order to permit families to be detained together and parents not be separated from their children." (Section C. Basis and Purpose of Regulatory Action). For many families, including those seeking asylum, this could result in children being detained for up to three years.

Our comments reflect our concern about the profound negative impact that these changes will have on the health and well-being of detained children based on a sound body of evidence and our expertise grounded in our clinical work with vulnerable children and families. We specifically address two sections of the proposed rule that would lead to these troubling outcomes. First, elimination of protections for minors under the Flores Settlement Agreement (FSA) that prevent them from being detained for extended periods of time, thus enabling family detention indefinitely. Second, Proposed 8 CFR 236.3(b)—Definitions, regarding the process of licensing family residential centers (FRCs).

**Eliminating FSA Limitations on Duration of Child Detention Could Dramatically and Unnecessarily Lengthen the Time Children Remain in Detention Facilities**

The proposed rule states that "The practical implications of the FSA...have effectively prevented the Government from using the third option [family detention] for more than a limited period of time. This rule would, when finalized, eliminate that barrier..." Eliminating the protections under the FSA that limit the length of time immigrant children are allowed to be detained facilitates the

Department's goal of detaining family units together for the pendency of their immigration proceedings, which can go on for multiple years.

Extended detention of children and adolescents is known to be detrimental to their physical and mental health and can have permanent negative impacts on their growth and development, as demonstrated by extensive research evidence from numerous countries that have studied its impact.<sup>i,ii,iii,iv,v,vi</sup> In the United States, previously detained children and adolescents experience high rates of posttraumatic stress disorder, anxiety and depression, and suicidal ideation.<sup>vii</sup> Alarming, experts agree that even brief detention can cause psychological trauma and long-term risk of additional mental health challenges.<sup>viii</sup>

Further, the inevitable environment that exists in any detention facility, with constant surveillance, lack of freedom, a confusion of authority, and stress and tension among other detainees, is itself damaging to children's development and psychosocial health.<sup>ix</sup>

The definitive study on the impact of immigrant child detention was completed in 2014 in the Australian government's report "The Forgotten Child."<sup>x</sup> This study involved hundreds of interviews with children and families who had previously been detained, and results from mental health assessments for the affected children who had, on average, been held in detention for 231 days.

The findings from this inquiry are conclusive and powerful: "prolonged, mandatory detention of asylum seeker children causes them significant mental and physical illness and developmental delays." Detention impeded the ability of mothers and babies to bond, and the setting deprived infants of the motor and sensory stimulation needed for healthy development. Preschoolers were found to have difficulty forming healthy family relationships, and 80% of parents reported negative emotional impacts of detention, including "always sad/crying", "fighting with others", and nightmares. Among primary school-aged children, 40% of children reported being "always sad/crying". Additionally, children reported worsening mood and increased sadness over time, even in comparison to their home countries which were generally places with high rates of violent conflict (e.g., Afghanistan).

From their home countries to arrival in detention to the time they were interviewed, the percentage of children who reported feeling happy fell from 42% to 15%. Among adolescents, emotional distress was nearly universal, and many of them engaged in self-harm.

The Department's justification that prolonged family detention will enable children to reap "numerous benefits" of family unity is simply inaccurate. Family detention is damaging to the family structure, and undermines the ability of parents to give their children the emotional and physical support, care and stability that they need. Detention can exacerbate parent stress and damage their mental health, which can impede the health and development of their children, and sometimes impose a psychological and emotional burden on children who feel compelled to take on the adult or caregiver role.<sup>xi,xii</sup>

Less restrictive options, such as releasing families into the community under such programs as the recently terminated Family Case Management Program, are much less damaging to family and child health and stability, and are less costly than detention and just as effective.<sup>xiii</sup> Most families who are released into the community are able to understand their rights and responsibilities, and comply with their immigration proceedings as required. For instance, under the Family Case Management Program, through which immigrant families remained in the community and received case management and community services, 99% of participants met all check-in and appointment requirements, and 100% attended their court hearings.<sup>xiv</sup> Such alternatives allow families to live their lives more normally and reduce the risk of additional trauma for their children.

It is clear that adoption of the proposed rule that would extend the length of time that families are detained would pose real and significant harm to children, and it is not necessary as there are alternative, effective, and less restrictive options for managing the cases of immigrant family units.

### Proposed 8 CFR 236.3(b) Does Not Create Adequate Protection for Children and Families in Detention Facilities

Proposed 8 CFR 236.3(b) alters licensing requirements for FRCs in a manner that does not adequately protect, and could affirmatively harm, children and families who are detained in these facilities. At present, FRCs must be licensed by the states in which they are located, typically by the state child welfare entity, in order for children to be held there for extended periods of time. Under the proposed rule, the lack of state-licensed facilities should result not in the careful review of facilities to meet state licensure requirements but in DHS determining its own licensing standard for these facilities. Self-licensure historically does not result in the highest standards and represents a clear conflict of interest contrary to the best interests of these children and families. While evidence makes clear that no long-term detention is good for children, doing so in facilities that do not satisfy state requirements and are instead self-licensed by DHS is likely to be even worse

Unfortunately, the Department's documented history involving the detention of children only reinforces our concern about whether self-licensed facilities would provide an adequate environment to protect the health and safety of children. In 2009, a DHS-run family detention center was forced to close due to poor conditions that were unsuitable for housing families with children.<sup>xv</sup> More recently, reports filed in federal court in July of this year documented unsafe and unhealthy conditions in DHS-run facilities where children were housed after being separated from their parents at the border. These reports included inadequate food and health care, cramped sleeping arrangements in small cells with inadequate bedding, as well as physical and psychological abuse or neglect.<sup>xvi,xvii</sup> Given this history, we cannot be certain that Department licensing and licensing enforcement would be sufficient to ensure facilities are safe and healthy environments for children. Rather, the Department should be required to meet state licensing standards established by entities with appropriate expertise in providing for the health and well-being of children.

## Recommendations

We respectfully request that the Department reconsider this proposed rule in order to protect the health and well-being of vulnerable children seeking refuge from unsafe conditions in their home countries. Although intended to reduce separation of a child from their family, the implementation of this rule would only further the trauma faced by these children and their families.

Rather, we encourage the Department to end the costly and inhumane practice of child and family detention altogether. The Department should invest in exploring and implementing alternative methods for managing the cases of immigrant families that avoid further harm to children.

Sincerely,



Ahaviah D. Glaser  
Director of Health Policy

- 
- <sup>i</sup> Lorek A, Ehntholt K, Nesbitt A, et al. (2009). The mental and physical health difficulties of children held within a British immigration detention center: a pilot study. *Child Abuse & Neglect*, 33(9):573–585.
- <sup>ii</sup> 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):287–294.
- <sup>iii</sup> Mares S, Jureidini J. (2004). Psychiatric assessment of children and families in immigration detention—clinical, administrative and ethical issues. *Australian and New Zealand Journal of Public Health*. 28(6):520–526.
- <sup>iv</sup> Dudley M, Steel Z, Mares S, Newman L. (2012). Children and young people in immigration detention. *Current Opinion in Psychiatry*. 25(4):285–292.
- <sup>v</sup> Fazel M, Stein A. (2003). Mental health of refugee children: comparative study. *BMJ*. 327(7407):134.
- <sup>vi</sup> Bailey C, et al. (2011) The psychosocial context of mental health needs of unaccompanied children in United States immigration proceedings. *Graduate Student Journal of Psychology*. 13:4–11.
- <sup>vii</sup> Bailey C, et al. (2011) The psychosocial context of mental health needs of unaccompanied children in United States immigration proceedings. *Graduate Student Journal of Psychology*. 13:4–11.
- <sup>viii</sup> Balcazar, F.E. (2016). Policy statement on the incarceration of undocumented migrant families: Society for Community Research and Action Division 27 of the American Psychological Association. *American Journal of Community Psychology*. 57(1–2):255–263.
- <sup>ix</sup> Human Rights and Equal Opportunity Commission. (2004). A Last Resort? National Inquiry into Children in Immigration Detention. Retrieved from: [https://www.humanrights.gov.au/sites/default/files/document/publication/alr\\_complete.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/alr_complete.pdf)
- <sup>x</sup> Australian Human Rights Commission. (2014). The Forgotten Child: National Inquiry into Children in Immigration Detention. Retrieved from: [https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten\\_children\\_2014.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf)
- <sup>xi</sup> Mares, S., et al. (2002). Seeking refuge, losing hope: parents and children in immigration detention. *Australian Psychiatry*. 10(2):91-96.
- Z Steel et al, 'Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia (2004) 28 Australian and New Zealand Journal of Public Health 527, 533-35
- <sup>xii</sup> Steel Z., et al. (2004). 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(6). 527-535.

---

<sup>xiii</sup> Department of Homeland Security: Immigration and Customs Enforcement. (2016) Report of the ICE Advisory Committee on Family Residential Centers. Retrieved from: <https://www.ice.gov/sites/default/files/documents/Report/2016/acfrc-report-final-102016.pdf>.

<sup>xiv</sup> Department of Homeland Security: Office of the Inspector General. (2017). U.S. Immigration and Customs Enforcement's Award of the Family Case Management Program Contract. Retrieved from: <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-22-Nov17.pdf>

<sup>xv</sup> American Immigration Lawyers Association. (2016). Due Process Denied: Central Americans Seeking Asylum and Legal Protections in the United States. Retrieved from: <https://www.aila.org/infonet/report-due-process-denied>

<sup>xvi</sup> Flores v. Sessions. Plaintiffs' Response to First Juvenile Coordinator Reports. (C.D. Cal., 2018). Retrieved from: <https://assets.documentcloud.org/documents/4609538/Flores-0716-459-4.pdf>

<sup>xvii</sup> Taxin, Amy. (2018, July 18). Immigrant children describe treatment in detention centers. *AP News*. Retrieved from: <https://apnews.com/1a8db84a88a940049558b4c450dccc8a>

