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By Electronic Submission to www.regulations.gov

The Honorable Kirstjen Nielsen
Department of Homeland Security
245 Murray Lane SW
Washington, D.C. 20528

The Honorable Alex Azar
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

DHS Docket ID No. ICEB-2018-0002

Re: A Proposed Rule, Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children (9/7/2018)

Dear Secretary Nielsen and Secretary Azar:

We, the signatories of this letter, are staff, nurses, social workers and physicians. We care for immigrants, refugees, and asylum seekers, children, adolescents, mothers, and fathers in our hospital and clinics at Massachusetts General Hospital for Children, and other healthcare facilities in Boston, Massachusetts. We have well-recognized expertise in the fields of child health and development, pediatric mental health, and trauma. We write this letter with the hope it will lead to a more productive conversation around immigration policy that recognizes the responsibility of our government and our citizens to protect the rights of children and families, regardless of their country of origin or the way in which they came to this country.

We offer comment on the proposed amendments by the Department of Homeland Security (DHS) to regulations relating to the apprehension, processing, care, custody, and release of children (referred to as “alien juveniles”), and the termination of the Flores Settlement Agreement (FSA). The proposed regulations allow for indefinite detention of families in family residential centers (FRC) until their immigration proceedings are concluded. This is a departure from the FSA, which limited detention to 20 days and stated children should be detained in the “least restrictive setting appropriate to the minor’s age and special needs.” Previous implementation under the FSA acknowledged the potential harms of the detention of children and released minors to an appropriate guardian in the community as soon as possible.

The new proposed regulations come following the implementation of a “Zero Tolerance Policy” starting in April 2018, leading to the separation of more than 2,500 children from their families. There have been countless reports of abuse, physical and mental harm, and emotional trauma suffered by children in detention. An unacceptable number of children remain separated from their parents, and poor infrastructure and information systems have led to chaos and delays in the re-unification of families.

The detention of a child is never safe. Detaining children leads to serious mental health problems and chronic medical illness, and can have long-lasting effects on the psychological well-being of both parents and children. Detaining families as a unit does not ameliorate the harm to children. Detention in all forms introduces physical and mental stress, denying children a safe and healthy environment for development.

Further, as stated by the American Academy of Pediatrics in their statement on the Detention of Immigrant Children,¹ “in accordance with internationally accepted rights of the child, immigrant and refugee children should be treated with dignity and respect and should not be exposed to conditions that may harm or traumatize them.” Immigrant children in detention deserve health care that meets internationally-recognized standards, treatment that mitigates harm or traumatization, and services that support their health and well-being.

Unfortunately, we have encountered specific cases of harm and traumatization in our work with children in Boston, MA. Additionally, widespread harm has been documented in DHS detention facilities during this period of recent family separation and in previous internal and external reports on the practice. In the Report of the ICE Advisory Committee on Family Residential Centers² dated October 7, 2016, the committee states, “DHS’s immigration enforcement practices should operationalize the presumption that detention is generally neither appropriate nor necessary for families—and that detention or the separation of families for purposes of immigration enforcement or management are never in the best interest of children.” Instead, the new proposed regulations codify the detention of families.

We cite the following research and examples of specific harm:

- Statements opposing the regulations have been released by professional organizations including the American Academy of Pediatrics, American Psychological Association, American College of Physicians, American Psychiatric Association. They cite evidence that, “young detainees may experience developmental delay, poor psychological adjustment,” and high rates of posttraumatic stress disorder, anxiety, depression, suicidal

¹ Linton JM, Griffin M, Shapiro AJ, American Academy of Pediatrics. Detention of Immigrant children. Pediatrics. 2017; 139(5): e20170483.

² Report of the ICE Advisory Committee on Family Residential Centers. October 7, 2016. Accessed at: <https://www.ice.gov/sites/default/files/documents/Report/2016/acfrc-report-final-102016.pdf>.

ideation, and other behavioral problems.³” They acknowledge that even brief detention can produce long-term mental health problems.⁴

- The ACLU has reported systemic abuse of unaccompanied minors by US Customs and Border Patrol (CBP) including one in four children report physical abuse, including sexual assault, beatings, and the use of stress positions, and more than half report various forms of verbal abuse including racially- and sexually charged comments and death threats.⁵ Detained children report prolonged detention, denial of adequate food and water including water from “a toilet tank,” and spoiled food.⁶ Examples detailed by an ACLU investigation include a mother whose infant was left without a diaper or pants in an cold room after he soiled his diaper, and a child with asthma for whom care was delayed during an acute asthma attack. There are numerous accounts of physical abuse including CBP officers hitting a child with a flashlight, stomping on a child, and kicking a child to get them into a patrol vehicle.
- A report by the Lutheran Immigration and Refugee Service (LIRS) following tours of FRC in Artesia, NM and Karnes, TX documents inadequate access to child care, medical and mental health care, and legal assistance.⁷ In addition, the group documents episodes of sexual assault by guards at the Karnes facility.
- A recent summary of ten investigations of the FRC at Karnes and Dilley, TX by medical and psychiatric experts for the DHS Office of Civil Right and Civil Liberties cited ongoing harm to children including documented significant weight loss in children, an instance of severe dehydration from diarrhea without the provision of medical care, and a case of a 1-month-old high-risk infant who received no medical evaluation until the child had a seizure five days after arrival at a facility.⁸ Temporary separation of families was being used as punishment within one facility. The report highlights systemic logistical problems at risk of exacerbation with increased detentions.
- An Amicus Brief filed by the American Academy of Child and Adolescent Psychiatry and the National Association of Social Workers described research showing an increased incidence of mental health disorders in refugee and immigrant children after only a couple of weeks of detention, and behavioral and mood changes in their children after the

³ Linton JM. American Academy of Pediatrics, 2017.

⁴ Society for Community Research and Action, American Psychological Association. Policy Statement on the Incarceration of Undocumented Migrant Families. *Am J Community Psychol* (2016) 57:255–263. DOI 10.1002/ajcp.

⁵ Huebner A, et al. Unaccompanied Immigrant Children Report Serious Abuse by US Officials During Detention. June 11, 2014. Accessed at: <https://www.aclu.org/news/unaccompanied-immigrant-children-report-serious-abuse-us-officials-during-detention>

⁶ ACLU Border Litigation Project. Neglect and Abuse of Unaccompanied Immigrant Children by US Customs and Border Patrol. May 2018. Accessed at: <https://www.aclusandiego.org/civil-rights-civil-liberties/>

⁷ LIRS and Women’s Refugee Commission. 2014. Locking up Family Values, Again. Accessed at: <https://www.womensrefugeecommission.org/rights/resources/1086-locking-up-family-values-again-the-detention-of-immigrant-families-full-report>.

⁸ Allen S and McPherson P. Letter dated July 17, 2018 Accessed at: <https://www.wyden.senate.gov/imo/media/doc/Doctors%20Congressional%20Disclosure%20SWC.pdf>

first days of detention.⁹ Evidence shows children of all ages exhibit signs of developmental regression in detention, which can have lifelong negative impacts on learning, emotional development, sociability, and attachment.

- In 2009 the T. Don Hutto Residential Center in Texas was closed following reports of abuse and poor living conditions.¹⁰ In 2014, another FRC in Artesia, New Mexico, was closed due to multiple allegations of abuse and mistreatment.

Specific Language in the Proposed Regulation

In addition to our objections with the core proposed action of detaining families indefinitely, we also have specific concerns with language and policies in the proposed regulations. The regulations do not offer “substantive protection to juveniles” as stated in the “Purpose of the Regulations,” nor do they protect the “dignity, respect, and special concern for their particular vulnerability as minors.”

Prior public statements cite one of the purposes of family detention is as a deterrent to family migration.¹¹ Further, the regulations state, the release of families pending immigration proceedings is a “powerful incentive for adults to bring juveniles.” The use of family detention, which causes known harm to children and families, as a method to achieve a policy goal, regardless of the merit of this goal, is dangerous and inappropriate.

The phrases “current operational realities” and “operational feasibility” are used many times in the proposed regulations to lessen the obligations of the government to comply with previous regulations for the safety and legal rights of children. For example, the FSA provided for transfer of children to “non-secure” facilities, however, the proposed regulations would allow for the detention of children in secure facilities — i.e., prisons — in response, “to operational realities of ICE's temporary detention of minors.”

The proposed regulations also excuse noncompliance with protections for children based on “operational feasibility” in the setting of an “emergency.” The example given in the regulations is, “access to a snack or meal may be delayed if a minor is being transported from a facility in the path of a major hurricane.” While this particular example may appropriately prioritize the safety of a child in the instance of a dangerous weather event, operationally the language of the regulations gives DHS wide berth to define what constitutes an “emergency” in order to justify the violation of existing measures in place to protect children, such as the lack of provision of basic health services.

⁹ Brief for the American Academy of Child and Adolescent Psychiatry and the National Association of Social Workers as Amici Curiae Supporting Appellees. CASE NO. 15-56434. *Flores v. Lynch*. Accessed at: <https://www.humanrightsfirst.org/resource/amicus-brief-flores-v-united-states>

¹⁰ Bernstein N. U.S. to Reform to Reform Policy on Detention for Immigrants. *New York Times* August 5, 2009. Accessed at: <https://www.nytimes.com/2009/08/06/us/politics/06detain.html>.

In 2015, the U.S. District Court for the District of Columbia ordered a preliminary injunction putting an immediate halt to the government's policy of locking up mothers and children from Central America to deter asylum seekers and migrants. <https://www.aclu.org/cases/rilr-v-johnson>

If, as the government says, there are logistical challenges posed by the number of migrant children and families, then emergency measures should *strengthen* the safeguards protecting children and families, rather than subjecting children to the harm of indefinite detention.

The proposed regulations offer family detention as a preferred alternative to the separate detention of children and parents, promoting, “several advantages to maintaining family unity.” We reject this false choice and call for the expeditious release of the more than 12,000 immigrant children currently in detention in the United States.

We call for an end to the detention of immigrant children and families and the closure of existing family residential centers. The following recommendations pertain to the treatment of immigrant families while they are in custody:

- Children should receive timely, comprehensive medical care including mental health and emergency services. Trained and licensed medical providers should provide consistent care throughout all stages of immigration proceedings.
- End the use of ‘Secure’ facilities for the detention of families.
- Separation of a parent or primary caregiver from his or her children should never occur, unless there are concerns for the safety of the child at the hand of the parent.
- Children should be provided with language-appropriate, year-round, educational services including special education.
- Children and families should have access to legal counsel including a list of free legal services.
- Facilities should undergo appropriate oversight to ensure minimum standards for the care of children are met. Cases of abuse should be investigated in a timely manner.
- Community based management with ‘Alternative to Detention’ programs such as intensive monitoring and case management programs should be implemented for children and families. These programs have been shown to be very effective, yielding greater than 95% appearance rates at immigration court hearings^{12,13}
- Improve screening procedures for families seeking asylum status. Families should have opportunities at all stages of the process to express a fear, and they should have full and fair access to the appropriate screening processes and legal information in a language they can speak and understand.

For the reasons described above, the proposed rule changes should be withdrawn.

Sincerely,

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¹² United States Government Accountability Office. Alternatives to Detention, November 2014. Accessed at: <http://www.gao.gov/assets/670/666911.pdf>.

¹³ American Civil Liberties Union. Alternatives to Immigration Detention: Less Costly and More Humane than Federal Lock Up at FN 9, available at <https://www.aclu.org/other/aclu-fact-sheet-alternatives-immigration-detention-atd>.

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