



FIRST FOCUS

MAKING CHILDREN & FAMILIES THE PRIORITY

| 1400 Eye Street NW, Suite 650 | Washington, DC 20005 | T: 202.657.0670 | F: 202.657.0671 | www.firstfocus.org |

November 5, 2018

Submitted via www.regulations.gov

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, Comments in Response to Proposed Rulemaking:
Apprehension, Processing, Care, and Custody of Alien Minors and
Unaccompanied Alien Children

Dear Ms. Seguin:

I am writing on behalf of First Focus, a bipartisan children's advocacy organization dedicated to the health and well-being of all children, to express 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.

At First Focus we believe that all children, regardless of their immigration status should have the opportunity for healthy growth and development. We believe that as a nation, it is our collective responsibility to ensure that children who are seeking asylum in the United States are not deterred from doing so and that our government provides the best protections and services to these vulnerable children during every step of the process. We also agree with the long-standing child welfare principle that children should be placed in the least restrictive setting possible and that children do best when they are in the care of their family.

After years of litigation surrounding the treatment of children in immigration detention, the Flores Settlement Agreement (FSA) set national standards and protections for the detention, release, and treatment of both accompanied and unaccompanied children. We are deeply opposed to any changes that would undermine these protections for children and allow for their prolonged detention in family detention facilities. Additionally, we oppose any amendments that will allow immigrant children to be detained in facilities licensed by the Department of Homeland Security (DHS) which has proven time and time again to be woefully inadequate and dangerous for children.

Any changes to current standards should focus on the best interest of the child and build on the Flores protections. In every U.S. system that serves children—from the education system to the child welfare system—there is a recognition that policies and practices should be informed by research and seek to achieve the best possible outcomes for the children involved. Immigration enforcement and immigration policy decisions must consider the long-term consequences for children affected by these decisions. This proposed rule does not.

Thank you for the opportunity to submit the comments below on the NPRM. You may contact Kristen Torres at Kristent@firstfocus.org or by phone 202-866-0647 for more information.

Comments on the Proposed Rule

The proposed rule would cause significant harm to children by allowing them to be detained in family detention facilities.

The rule proposes to allow detention of children with their parent or legal guardians for an extended period of time. Despite the fact that we know that detention for any amount of time has negative life-long consequences for a child’s mental and physical well-being, and these consequences are compounded for children who have already experienced significant trauma. Children in detention facilities are ten times more likely than adults to experience symptoms of Post-Traumatic Stress Disorder (PTSD), and those rates increase the longer a child is in detention.¹ According to another study, the experience of being detained is “acutely stressful for children—even when detention is brief.”² In addition to harming a child’s mental and physical health, medical experts have also found that the conditions of detention can have life-long consequences for a child’s academic, economic, and social development.³ The American Academy of Pediatrics recommends discontinuing the general use of family detention and instead use community-based alternatives to detention for children and families.⁴ Experts at the United Nations Office of the High Commissioner urge that migrant children be treated first and foremost as children. While family unity needs to be preserved at all costs, it cannot be done at the expense of detaining entire families with children. Family-based alternatives to detention must be adopted urgently.⁵ The American Medical Association also opposes family detention due to the negative health outcomes on both the children and their parents.⁶

In addition to the harmful consequences for a child’s physical and mental well-being, detention has proven ineffective in deterring refugees from migrating and violates both international and U.S. law. Mothers who are fleeing extreme violence in order to protect their children will continue to seek refuge, even if that means risking long periods in detention. The alarming increase in gender-based violence and gang-related crime in the Northern Triangle continues to endanger the lives of children

¹ Australian Human Rights Commission. (2015). The Forgotten Children: National Inquiry on Immigrant Children in Detention. Available at: <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/forgotten-children-national-inquiry-children>.

² Kronick, R. and Rousseau, C. (2015) “Asylum-Seeking Children’s Experiences of Detention in Canada: A Qualitative Study, II.” American Journal of Orthopsychiatry, Vol. 85, NO. 3, 287-294.

³ American Academy of Pediatrics. (July 24, 2015). Letter to DHS Secretary Johnson. Available at: <http://bit.ly/1XXcHXD>

⁴ American Academy of Pediatrics Statement on Executive Order on Family Separation, June 20, 2018, <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/AAP-Statement-on-Executive-Order-on-Family-Separation.aspx>

⁵ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23245&LangID=E>

⁶ 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>

and families. Focusing on enforcement is a misguided approach that puts children's lives at risk and ignores the need to address the root causes of the violence in the countries that these families are fleeing. Former Secretary of Homeland Security Jeh Johnson recently stated, so long as the powerful "push factors" of poverty and violence in Guatemala, Honduras and El Salvador persist, the United States will continue to wrestle with the problem of migration on the border.⁷

The proposed rule to allow new DHS licensing schemes would subject children to harmful detention conditions in facilities not licensed for children.

Under the proposed rule DHS would be able to detain children in facilities that are not licensed by state child welfare agencies. Rather, a third party employed by DHS would ensure compliance with ICE family residential standards. DHS's current record of oversight and accountability for immigration detention facilities has been documented to be inadequate and harmful for children. The horrific conditions of past family detention facilities such as the Don Hutto facility in Texas caused the federal government to close the facility in 2009 due to dangerously inadequate conditions for children.⁸ The Berks County facility in Pennsylvania refused to renew their child care licensing and consequently children who have been detained for more than a year are exposed to poor medical conditions and have been reportedly suicidal due to the conditions of such prolonged detention.⁹

Additionally, a recent report by DHS's own Office of Inspector General (OIG) released a harrowing alert regarding the conditions for immigrant detainees at the Adelanto ICE Processing Center in California.¹⁰ Inadequate medical care, inappropriate use of solitary confinement, and serious issues related to detainee safety were among a few things found by the OIG. Similarly, ICE's own Advisory Committee on Family Residential Centers (ACFRC) issued as its first recommendation that ICE should discontinue the practice of family detention.^{11 12} It would be dangerous and misguided to allow DHS to certify its own standards for facilities that detain children.

The proposed rule would have a devastating impact on unaccompanied children and their access to humanitarian protections.

The proposed rule allows for ICE to re-determine whether someone who has previously been designated as an Unaccompanied Alien Child (UAC), meets the definition each time they come into contact with them. This adds a continuous level of uncertainty and fear for UACs and increases the burden of proof for children and youth who have already experienced significant trauma in their life. The Trafficking Victims Protection Reauthorization Act (TVPRA) sets the standards for caring for UACs and recognizes the vulnerability of children fleeing violence and persecution. A one-time

⁷Jeh Charles Johnson, *Washington Post*, "Trump's 'zero-tolerance' border policy is immoral, un-American, and ineffective," June 18, 2018, https://www.washingtonpost.com/opinions/trumps-zero-tolerance-border-policy-is-immoral-un-american-and-ineffective/2018/06/18/efc4c514-732d-11e8-b4b7-308400242c2e_story.html?utm_term=.1cee2d9e23e5

⁸ <https://www.aclu.org/news/dhs-plan-improve-immigration-detention-and-close-hutto-facility-good-first-step?redirect=cpredirect/40612>

⁹ <http://www.post-gazette.com/news/politics-nation/2018/07/09/Berks-county-residential-center-asylum-seekers-could-become-model-mass-family-detention/stories/201807070078>

¹⁰ <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>

¹¹Immigration and Customs Enforcement, Advisory Committee on Family Residential Centers (ACFRC), *Report on the DHS Advisory Committee on Family Residential Centers*, October 7, 2016, <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>

¹² American Psychological Association, *Joint Letter Opposing Family Detention Expansion*, September 14, 2018 [file:///Users/kristentorres/Downloads/APA-Joint-Letter-Opposing-Family-Detention-Expansion-09142018%20\(1\).pdf](file:///Users/kristentorres/Downloads/APA-Joint-Letter-Opposing-Family-Detention-Expansion-09142018%20(1).pdf)

determination of a child's status promotes due process, safety, and access to necessary protections. Additionally, a new definition proposes that when a minor reaches the age of 18 and a parent or legal guardian is the U.S. is available to provide care and physical custody for such an alien they are no longer eligible for the protections. The fact that a UAC may once be deemed as unaccompanied and then lose this status is concerning regardless of the changing circumstances. Any removal of protections for vulnerable children will result in government sanctioned harm by forcing such youth to continuously relive their traumatic life experiences. The proposed rule could also strip children and youth of critical access to legal counsel and social services dedicated for unaccompanied alien children. By stripping the minimal protections afforded to children and forcing them to defend the rights afforded to them by the TVPRA, their safety, well-being, and ability to meaningfully participate in immigration proceedings are severely undermined.

Additionally, the proposed rule adds the word "generally" with regards to FSA's requirement to segregate unaccompanied minors from unrelated adults while being detained. This addition reduces the absolute requirement of the provision and allows for opportunities for DHS to bypass this requirement. The proposed rule also adds an exception to the segregation of unaccompanied minors from unrelated adults, "*in the case of an emergency or other exigent circumstances.*" This will again allow for UACs to be housed with unrelated adults for extended periods of more than 24 hours if DHS determines the circumstances to be emergent or pressing.

The proposed rule will reduce standards of care and custody of both accompanied and unaccompanied children.

The proposed rule would define "emergency or influx" more broadly than current FSA provisions, which are limited to, "*circumstances that impact the placement of minors within the proper time frame.*" The broader definition would add that emergencies may also be deemed for circumstances which also delay compliance with other provisions such as the inability to give meals to children on schedule. This is problematic and concerning as it is an opportunity for DHS and HHS to excuse non-compliance of FSA provisions that provide time limitations currently set for transferring children out of DHS custody. This would expose more children to longer periods of time in dangerous conditions in DHS custody. Broadening this definition would also allow for more opportunities for the government to ignore standards of care include in the FSA.

Sincerely,

A handwritten signature in blue ink that reads "Bruce Lesley". The signature is written in a cursive, slightly slanted style.

Bruce Lesley
President