

November 5, 2018

Ms. 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 RIN 0970-AC42 1653-AA75, Comments in Response to Proposed Rulemaking: “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children”

Dear Ms. Seguin,

ChildFund International, a global child protection and child development focused development organization headquartered in the United States, would like to respectfully offer the following comments to the Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS) regarding the Notice of Proposed Rulemaking (proposed rule) on "Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children" (DHS Docket No. ICEB-2018-0002).

ChildFund International is uniquely qualified to offer comments based on our 80 years of experience working with children in adversity in the United States and in 25 countries around the world, including in the Rio Grande Valley area in Texas and in Latin American countries of Mexico, Guatemala, and Honduras. ChildFund International expresses 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 and described in DHS Docket No. ICEB-2018-0002.

Detention is no place for a child. Both family separation and family detention are harmful, traumatic experiences that have lifelong consequences on children’s safety, well-being and development. The proposed rule will cause harm to children by inflicting unnecessary chronic stress and trauma; the regulations would erode legal protections for child safety and well-being. These child safeguards were established because of systemic child rights violations and disregard for child well-being in detention centers, made public in the [1985 case](#)¹ of 15-year-old Jenny Flores. After a decade of litigation, the United States government was mandated to implement child protection protocols to safeguard the well-being and protection of children in immigration custody. Under the [1997 Flores Settlement Agreement](#)² (FSA), these minimum care protocols include: the requirement to place children in state-licensed and child-appropriate facilities in the least restrictive setting possible; require the release of children to parents, guardians, relatives, or other properly vetted entities “without unnecessary delay” or within 20 days; provide basic education and routine medical care; and treat minors with dignity and respect with special concern for their particular vulnerability.

¹ <https://www.clearinghouse.net/chDocs/public/IM-CA-0002-0001.pdf>

² https://cliniclegal.org/sites/default/files/attachments/flores_v_reno_settlement_agreement_1.pdf

The FSA is intended to protect immigrant children by setting strict limits on the government's ability to detain children in immigration detention centers for lengthy periods of time. The proposed rule would change decades of this legal precedent and dismantle these established protections. The proposed rule would reduce minimum care standards by eliminating protective time limits, which would legally allow for the indefinite incarceration of children and families in conditions unfit for child safety and well-being, subjecting children to more harm and abuse. This is simply unacceptable and against our American values of protecting the most vulnerable. It is also opposite to the FSA's stated purpose, core principle, and requirement of expeditious release of children from detention.

All forms of family separation and detention of children are highly concerning, traumatic experiences that have lifelong detrimental consequences on child well-being, safety, and brain development. It is widely accepted in medical, academic, and child development research, [including by the American Academy of Pediatrics³](#), that children and parents can suffer negative physical and psychological symptoms from the trauma-inducing experience of detention. Detention creates an environment of toxic stress in children and adolescents that can profoundly impact their health and development for a lifetime. According to [Harvard University Center on the Developing Child⁴](#), toxic stress weakens the architecture of a child's developing brain, with long-term consequences for learning, behavior, and both physical and mental health.

Furthermore, detention of children puts them at greater risk of harm including physical and sexual violence and abuse. Children with disabilities, medical complexities, or who identify as LGBTQ are at even greater risk. The United States government is aware of the harms of detention on children; the U.S. Immigration and Customs Enforcement's own [Advisory Committee on Family Residential Centers⁵](#) reported in 2016 that, "DHS should discontinue the general use of family detention".

The proposed rule would also lead to the expansion of family detention centers and the establishment of a self-licensing scheme. These regulations have the potential to lead to similar systemic issues that put thousands of children at risk and led to the class action lawsuit resulting in the need for the Flores Settlement protections in the first place. The terms of the FSA require state licensing of family detention facilities; state licensing offers more rigorous standards for the protection of children than the proposed federal scheme and should remain in place. We are also concerned about the greatly expanded "emergency" exception, which would allow DHS and HHS to excuse noncompliance with various protections set forth in the FSA, which is counter to the best interests of children.

There are effective community-based alternatives to detention (ATD), such as Family Case Management, that are more humane, proven to be much more cost effective, and protect family unity and due process. The [average daily cost⁶](#) of detention per person is between \$127-\$319, whereas the average daily cost of ATDs is between \$5-\$6 per person; family detention can cost 60 times more

³ <http://pediatrics.aappublications.org/content/pediatrics/early/2017/03/09/peds.2017-0483.full.pdf>

⁴ <https://developingchild.harvard.edu/guide/a-guide-to-toxic-stress/>

⁵ <https://www.ice.gov/sites/default/files/documents/Report/2016/acfrc-report-final-102016.pdf>

⁶ <https://immigrationforum.org/article/math-immigration-detention-2018-update-costs-continue-multiply/>

than ATDs. [Studies](#)⁷ have proven ATDs to have a 95% effectiveness rate, and one federal U.S. Immigration and Enforcement ATD program demonstrated a 99% court compliance rate. These alternatives to detention allow for the protection of migrant children and families while also allowing for immigration enforcement.

Detaining vulnerable children in jail-like conditions for extended periods of time with limited access to education and proper healthcare services is a violation of children’s rights. A child is a child no matter which country they’re born in, or which border they cross. All children deserve to be treated fairly and humanely, to be protected from harm and violence so they can grow and develop into happy, healthy, educated, and confident adults. Furthermore, it is not in line with our country’s values and beliefs to cause further harm to children in our care; doing so would be a violation of children’s rights and our values as Americans.

Expanding family detention will not deter families from seeking safety and security in the U.S. Such a policy will not cure the pervasive root causes of migration existing in Central America, and instead would inflict unnecessary harm on vulnerable children and families.

In Mexico, Guatemala, and Honduras, ChildFund has worked for decades to address the root causes of irregular migration, which include high levels of crime and violence, limited employment and educational opportunities, poverty and social exclusion. In partnership with a fellow ChildFund Alliance member, we are implementing a five-country project in the region to improve the well-being of children and young people who are at risk of irregular migration. The project’s three-tiered approach aims to improve child protection and violence prevention at the community level, provide demand-driven economic strengthening opportunities and life skills for at-risk youth, and teach young people to raise their voices on their own behalf, especially to educate the public as well as local and national leaders on the risks and causes of irregular migration.

North of the border in the Rio Grande Valley, ChildFund has worked since 1989 in Brownsville and McAllen, Texas, to support children’s protection and well-being. Because children and families are primarily of Hispanic origin, heightened tensions around immigration have dramatically deepened their anxiety; children need safe spaces where they can process their feelings, learn coping skills and interact with others in positive ways. Our innovative school-based program in the Rio Grande Valley leverages reading materials and storytelling as tools to help 1,000 children from low-income communities develop the socio-emotional skills they need to manage stress and anxiety. In the process, we increase literacy, strengthen families and bolster children’s self-confidence in the face of adversity.

At the border, ChildFund offers two different initiatives to serve children and families who have recently crossed into the U.S. When asylum-seekers are released from U.S. Customs & Border Protection in McAllen, many of them stop in at the Catholic Charities Humanitarian Respite Center for a nutritious meal, a hot shower and a compassionate welcome. ChildFund works on an ongoing basis to provide necessities like shoes and blankets for children and families at the Respite Center, and to regularly stock the Children’s Corner with books in both English and Spanish, toys, puzzles, art supplies and other play items. We are working to enhance this transit experience for children by training staff to provide psychosocial support and making the space more inviting and comfortable.

⁷ <https://immigrationforum.org/article/infographic-alternatives-to-detention/>

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The legal process of applying for asylum can be arduous and traumatizing, even for adults. Children and youth, especially those who have arrived in the U.S. alone or who were separated from their families at the border, face unparalleled levels of toxic stress. Without caring, knowledgeable legal representation to help them navigate the complex U.S. justice system, these children are at risk for stress at levels high enough to damage their short- and long-term development, regardless of their legal fate.

Based on our 80 years of experience and child protection expertise, ChildFund provides rights-based psychosocial training to legal professionals working with children and adolescents. This training includes the impacts of trauma and stress on child development, skills and strategies for reducing stress around courtroom experiences, best practices for keeping the best interests of the child at the center of each case, how to work effectively with children and youth of various ages, and self-care to avoid burnout in working with victims of trauma.

ChildFund will continue our work on both sides of the border through programming and advocacy to address the root causes of migration and to protect children's best interests.

We believe it is the United States' responsibility and moral obligation to protect the human rights of immigrant children and not to cause harm. We strongly urge the Department of Homeland Security and the Department of Health and Human Services to withdraw the proposed rule and to put the protection and well-being of children first in all future policy decisions and actions. Please maintain existing protections for unaccompanied and accompanied immigrant children in federal government custody in compliance with the Flores Settlement Agreement and dedicate efforts to advancing policies that safeguard the health, safety, and best interests of children and their families.

This comment includes live links to supporting research and documentation; we respectfully request that all supporting materials be read in full as part of this public comment. Thank you for the opportunity to submit comments on the NPRM. Please do not hesitate to contact Erin Kennedy to provide further information.

Regards,

A handwritten signature in blue ink that reads "Erin Kennedy".

Erin Kennedy, on behalf of ChildFund International

Director of Advocacy and Strategic Partnerships

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