



October 31, 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: Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children

The Child Welfare League of America (CWLA) offers the following comments in response to **DHS Docket No. ICEB-2018-0002**:

The Child Welfare League of America (CWLA) strongly opposes the proposed regulatory changes to the Flores settlement/agreement and we urge the Administration to withdraw the regulation. The proposed regulations, whether or not they withstand legal challenge, continue a recent troublesome set of policies and actions by the Administration that are harmful to immigrant families: those crossing the border, documented and undocumented families living in communities across the land, and the almost nine million young children under the age of 8 living in families of immigrants with one or more members who are foreign-born.

As a coalition of private and public entities and individuals dedicated to ensuring the safety, permanency, and well-being of children, youth, and their families, CWLA advocates for policies, best practices, and collaborative strategies that advance positive outcomes for children and youth.

CWLA was established as an outcome of the first White House Conference on the Care of Dependent Children in 1909. We were proud to be part of similar conferences that were held approximately every ten years until the 1990s. We have seen the competitive, corrosive politics of our time overcome the spirit of that first White House Conference.

The proposed changes would expand the use of family detention and remove protections for migrant children and should be withdrawn because they are inconsistent with the requirements set out under the Flores agreement by the federal government.

The Flores settlement was established to ensure that migrant children in the custody of the federal government are afforded critical protections and are cared for in settings that are in the best interest of the child. This is consistent with international, federal, and state laws which all recognize that children are unique from adults and should be afforded special protections.

In this century, we have developed a greater understanding of how children can be harmed by childhood trauma. When we examine a formal definition of trauma, we see that it is:

“an experience or set of experiences that is emotionally painful, distressful, or shocking, which often results in lasting mental and physical effects; a serious or critical bodily injury, wound, or shock. A traumatic event is something life-threatening, very frightening, or life-altering that happens to or is witnessed by the individual.”¹

At its core, this proposed rule relies on flawed rationales and ignores relevant child welfare research to justify the expansion of family detention and/or the removal of protections for migrant children. Both cause trauma and would greatly undermine the safety, development, and well-being of children.

When children are separated from parents, they face short- and long-term psychological damage, including depression, post-traumatic stress, anxiety, feelings of abandonment, and suicidal thoughts. Being separated from their family members and their communities, cultural familiarities, and schools and other connections can cause children to struggle with their identity and face an undue sense of isolation, adding further stress to an already traumatic situation.

As an alternative, the proposed regulations offer indefinite detention of Accompanied Children in federal immigration facilities pending resolution of the long process of their and their parents’ immigration proceedings. The proposed regulations provide that Accompanied Children can be kept in detention in FRCs indefinitely during the pendency of their and their parents’ immigration proceedings. These regulations mirror the Government’s request in [July 2017] to the court to modify the Flores agreement to

¹ *National Blueprint for Excellence in Child Welfare*, Child Welfare League of America, CWLA Press, Washington DC, 2013.

permit detention of children for up to the entire pendency of their and their parents' immigration proceedings. We note that these proceedings typically take many months and can take years. The court rejected that request for obvious reasons. Judge Dolly Gee noted that in July 2017, the government, "now seek[s] to hold minors in indefinite detention in unlicensed facilities, which would constitute a fundamental and material breach of the parties' Agreement."

CWLA agrees with the Judge's summary. The Government now seeks, through the proposed regulations that it contends materially implement the Flores agreement, to accomplish the modification of the Flores settlement/agreement that the Government sought from the court and the court under Judge Gee rejected.

CWLA is concerned with many aspects of what you are proposing within these multi-department regulations and feel your actions would exacerbate trauma in many other ways based on the population you are targeting.

One example are the not infrequent instances of the many asylum-seeking mothers and children who flee to the United States having survived horrific violence such as domestic violence, child abuse, rape, sexual slavery, and human trafficking. These children and their parents would not be helped by what you are seeking to implement.

As an organization that is committed to furthering the well-being and equal rights of lesbian, gay, bisexual, and transgender (LGBT) people, we are concerned that the proposed rule will put LGBT immigrants, including LGBT immigrant children, at increased risk of discrimination and abuse. Furthermore, the proposed rule will endanger their lives by negatively impacting their immigration cases for reasons unrelated to the strength of their cases.

CWLA opposes the harmful and dangerous practice of detaining children—alone or with their parents—because it undercuts what is in the best interest of these children. We also firmly believe that all facilities overseeing the care of children should be subject to standards established by an agency with expertise in child welfare.

We are particularly opposed to expanding the Department of Homeland Security's ability to detain children given DHS's history of mistreating families and children in its detention centers.²

² Immigration and Customs Enforcement, Report of the DHS Advisory Committee on Family Residential Centers, 2016, <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>; American Civil Liberties Union, ACLU Challenges Illegal Detention of Immigrant Children Held in Prison-Like Conditions, 2007, <https://www.aclu.org/news/aclu-challenges-illegal-detention-immigrant->

The increased use of family detention, because of this proposal, will have numerous negative effects. Findings from multiple researchers indicate that the increased use of family detention will detrimentally impact the physical and mental health of children and families.³ Detention has also been shown to undermine parent-child relationships, which are of critical developmental importance.⁴ Detention, and the toxic stress and instability associated with it, can have negative and long-lasting effects for young children and their development.⁵

The rule proposes an alternative federal licensing scheme, consistent with ICE standards, for family residential centers that would govern the operation of family detention. The Department of Homeland Security indicates that the challenges of state licensing of family residential facilities are a justification for eliminating the Flores agreement requirement of state licensing. State licensing standards for the care of children in out-of-home settings exist for the purposes of providing a baseline of protection for the health and safety of children in light of their particular needs and vulnerability.

Within child welfare, the primary purpose of residential services is to provide specialized therapeutic services in a structured environment for children with special developmental, therapeutic, physical, or emotional needs. The goal of these programs is to help families not to cause further trauma to the children and their parents.

CWLA believes that every child that comes into the custody of our government should be guaranteed the protection and services necessary to mitigate trauma and promote their healthy development.

children-held-prisonconditions?redirect=cpreirect/28865; Michael Matza, PA Fights to Shut Down Immigrant Family Detention Center in Berks, *The Inquirer*, 2017, <http://www.philly.com/philly/news/pennsylvania/Pa-renews-effort-to-revoke-the-license-of-immigrant-familydetention-center---.html>.

³ Megan J. Wolff, Fact Sheet: The Impact of Family Detention on Children, 2018, http://psych-history.weill.cornell.edu/pdf/Family_Detention_Sheet.pdf; Julie M. Linton, Marsha Griffin, Alan J. Shapiro, Detention of Immigrant Children, *American Academy of Pediatrics*, 2017, <http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483#ref-59>; Claire Hutkins Seda, Dr. Luis Zayas Provides Testimony on Family Detention, *Migrant Clinicians Network*, 2015, <http://www.migrantclinician.org/blog/2015/jul/dr.-luis-zayas-provides-testimony-family-detention.html>.

⁴ <https://www.migrationpolicy.org/article/trump-administration-new-indefinite-family-detention-policy>

⁵ Harvard University Center on the Developing Child, Key Concepts: Toxic Stress, <https://developingchild.harvard.edu/science/key-concepts/toxic-stress/>; National Scientific Council on the Developing Child, Persistent Fear and Anxiety; Jack P. Shonkoff, Andrew S. Garner, et al. "The Lifelong Effects of Early Childhood Adversity and Toxic Stress," *Pediatrics* 129 (2012); Harvard University Center on the Developing Child, InBrief:Early Childhood Mental Health,2013, <https://developingchild.harvard.edu/resources/inbrief-early-childhood-mental-health/>.

From a medical and mental health perspective, the changes proposed by Homeland Security and Health and Human Services to replace the standards of the Flores settlement agreement are neither safe nor humane.

Family residential centers, all located in remote areas far from urban centers, according to reports by organizations monitoring the situation, have consistently failed to recruit adequate health staff, including pediatricians, child and adolescent psychiatrists, and pediatric nurses.

Families released through non-custodial measures have access to providers based in the community, but in detention their access to qualified medical and mental health professionals has been demonstrated to be dangerously inadequate.

According to one example documented, a 27-day-old infant who was born during his mother's journey was not examined by a physician until he had a seizure due to undiagnosed bleeding on the brain. In another facility, numerous children were vaccinated with adult doses of a vaccine, as the providers were not familiar with labels on pediatric vaccines.

Another crucial factor in health care access is language: requests for medical care, information about available care, and access to care are all conditioned on being able to communicate with health professionals in an understandable language. Family residential centers consistently face difficulties in providing interpretation services to ensure access to health information and services, either through recruitment of an adequate number of bilingual staff or telephonic translation of indigenous languages, described as "a pervasive concern across facilities." In any emergency situation, there is no reliable mechanism to allow staff to communicate effectively with all detainees.

Legalizing prolonged and indefinite detention of families, eliminating the state licensing requirement, institutionalizing a permanent state of "emergency" to justify failure to meet the standards of care, and what has been reported as the increased use of inaccurate and unethical age determination procedures will compromise the treatment of migrant children and their families. Under these proposed changes, inadequate conditions of confinement are inevitable, heightening the risk of foreseeable health harms to the detained population. Once again, the trauma will be compounded.

CWLA asks that this proposed regulation be withdrawn. What is needed is a more comprehensive strategy and policy that can address the circumstances that are driving these families north. We understand it is complex and would take a significant investment in leadership and international cooperation to address the underlying

economic, human trafficking, exploitation and violence that is causing these population migrations but that challenge is much less costly than the damage done to children resulting from a policy that theorizes the threat of taking a parent's child away from them or locking them up together for years is a law enforcement tool.

Homeland Security has failed to provide any of the data or information that demonstrates this family separation policy is even effective in stopping this migration. Looking at the data on apprehensions before and after the July 2015 federal court ruling, Professor Tom K. Wong of the University of California, San Diego, finds no statistically significant increase in—nor any statistically significant relationship between—apprehensions of families at the southern border and the July 2015 ruling.

Professor Wong used two methodologies, interrupted time series analysis (ITSA) and autoregressive integrated moving average (ARIMA) ITSA to find that the 2015 Flores ruling had no statistically significant effect on apprehensions. This analysis is consistent with other work by Professor Wong which shows that family incarceration, as well as family separation, has not had a statistically significant impact on family arrivals, and as such is unlikely to be a deterrent in the future.

We have been called a nation of immigrants. CWLA also believes we can be a nation that makes children a national priority. This policy doesn't. We encourage the Administration to withdraw this proposed rule without delay.

Sincerely,

A handwritten signature in cursive script that reads "Christine James Brown".

Chris James-Brown
President and CEO