

HOUSTON IMMIGRATION
LEGAL SERVICES COLLABORATIVE

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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: Comments in Response to Proposed Rulemaking: Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, DHS Docket No. ICEB-2018-0002, RIN 1653-AA75, F.R. Doc. 2018-19052

Dear Sir/Madam:

I respectfully submit this comment on behalf of the Houston Immigration Legal Services Collaborative (HILSC), which opposes the proposed regulations relating to the implementation of the Flores Settlement Agreement (FSA), DHS Docket No. ICEB-2018-0002.

HILSC is a consortium made up of over forty immigration legal services providers, social services agencies, and advocacy organizations serving Houston's immigrant communities. Our mission is to create a coordinated network of effective and efficient services to assist low-income immigrants access the information and legal representation that allows them to make choices in their own best interest. Our member legal services organizations regularly advise and represent adult and minor immigrants and asylum seekers in their proceedings before U.S. Citizenship and Immigration Services and the Executive Office for Immigration Review. Our staff members have years of experience working with immigrant children and families, both in the legal context and in social services and mental health.¹

The proposed regulations are contrary to the principles of the FSA, which recognized that immigrant children are uniquely vulnerable and therefore deserve special protections and treatment under law and sought to ensure that immigrant children should be released from immigration detention as quickly as possible. HILSC opposes the government's proposal to discard the FSA's key safeguards, which were put in place to ensure the health and safety of immigrant children held in government custody. The proposed regulations would enable the indefinite detention of children and families with questionable standards of care and oversight. Equally concerning is that the proposed regulations will push asylum seekers away from available legal services, rendering it more difficult for immigrants to access due process protections and legal representation. The regulations themselves cite family detention as an "effective enforcement tool" — a clear admission that the Administration is focused not on protecting the basic safety and health of children under Flores but on discouraging families fleeing violence from pursuing their legal right to asylum.

¹ See attached document, "HILSC staff resumes.pdf."

Detention is Harmful to the Health of Immigrant Children

The FSA states that the government must release a minor “without unnecessary delay” and calls for releasing children from immigration detention within days. The FSA is built on the principle that long-term detention is harmful to children, but the proposed regulations would lead to the indefinite detention of children by detaining them with their parents throughout the pendency of removal proceedings. This means that children would be detained for several months and even years – far longer than envisioned by the FSA.

Detention – even for a short period of time – is traumatizing to children and has proven deleterious, long-lasting effects on the mental health and physical well-being of children. The American Academy of Pediatrics issued a policy statement in 2017 stating that immigrant and refugee children should be treated with dignity and respect, and not placed in settings that fail to meet basic standards for children’s physical and mental health or expose them to additional risk, fear and trauma. The American Academy of Pediatrics urged that children should never be detained or separated from a parent unless a competent family court makes that determination.²

Research has confirmed that “children forced to spend time behind bars—enduring the trauma, stress, and uncertainty of detainment—see lasting consequences, even if they are with their parents.”³ Children who are detained are more likely to experience anxiety, depression, recurrent nightmares, psychological distress, and post-traumatic stress disorder which manifests physically as weight loss, gastrointestinal issues, inability to sleep, and signs of regression in their cognitive skills. Furthermore, medical experts have found that detention can have life-long consequences for a child’s academic, economic, and social development.⁴ When young children endure trauma or prolonged periods of stress their bodies are flooded with hormones that can alter brain architecture and disrupt other aspects of healthy development.⁵

Even if families are detained together, children continue to suffer the traumatizing effects of detention. Research has consistently shown that a child’s mental health and well-being is tied to that of their parent or caregiver.⁶ Detained asylum seekers have high incidence of trauma, depression, and anxiety. One study found that more than three fourths of detained adult asylum seekers were clinically depressed, two thirds were clinically anxious, and one third had symptoms of PTSD.⁷ The trauma of parents also affects their children’s mental health and physical well-being.

² “Detention of Immigrant Children,” Policy Statement from the American Academy of Pediatrics in *Pediatrics* Volume 139, Issue 5, May 2017, available at <http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>, and attached to this comment as “AAP Policy Statement_Detention of Immigrant Children.pdf.”

³ Trump’s Family Incarceration Policy Threatens Healthy Child Development, Center for American Progress, (July 12, 2018), available at: <https://www.americanprogress.org/issues/early-childhood/reports/2018/07/12/453378/trumps-family-incarceration-policy-threatens-healthy-child-development>, and attached here as “Policy_Threatens_Child_Development.pdf”

⁴ Family Detention: The Harmful Impact on Children, First Focus Center for the Children of Immigrants (December 2015), at: <https://firstfocus.org/wp-content/uploads/2015/07/Family-Detention.pdf>, here as “Family_Detention_Harmful_Impact.pdf”

⁵ Excessive Stress Disrupts the Architecture of the Developing Brain, Center on the Developing Child at Harvard University (January 2014), available at: https://developingchild.harvard.edu/wp-content/uploads/2005/05/Stress_Disrupts_Architecture_Developing_Brain-1.pdf.

⁶ Maternal Depression Can Undermine the Development of Young Children, Center on the Developing Child at Harvard University (2009), at: <https://developingchild.harvard.edu/resources/maternal-depression-can-undermine-the-development-of-young-children>.

⁷ “Bill C-4: The impact of detention and temporary status on asylum seekers’ mental health,” Brief for submission to the House of Commons Committee on Bill C-4 (January 2012), attached hereto as “Impact_detention_on_asylumseekers.pdf.”

This long-lasting damage to children occurs even when children spend a short amount of time in detention. Numerous studies have shown that any detention of immigrant families is damaging to children as well as their parents, even short period of detention. One recent study found that detention of families for just under two weeks was “acutely stressful” for children – with symptoms mirroring those of children detained for much longer periods of time, leading to a finding that “any incarceration, even under relatively safe conditions, is damaging for immigrant children, especially those with high levels of previous trauma exposure.”⁸

The proposed standards would undermine existing child protections and place children’s physical and mental health at risk. Allowing the indefinite detention of children and families is unacceptable.

Removal of State Licensing Requirements will lead to longer detention times

The proposed regulation would remove the oversight of Department of Homeland Security (DHS) detention facilities holding children by removing the requirement of state licensing, in contravention of the FSA. The FSA requires that children be released “without unnecessary delay” to their parents and relatives or, if that is not possible, to a program licensed by a state child welfare agency program. By lifting the FSA requirement to house minors in state-licensed residential facilities, the proposed rule would allow and facilitate the detention of families for longer periods of time.

This proposed regulation would allow the government to avoid the 20-day detention stay limit when children are held in unlicensed family detention centers by rubberstamping licensure documents. The motivation for this provision is clear: in a statement, Homeland Security Secretary Kirstjen Nielsen said “legal loopholes” prevent her department from “appropriately detain[ing] and promptly remov[ing]” families.⁹ The government’s purpose in pursuing self-licensing is not to improve safety and care of the minors it detains, but rather to remove what the government sees as an “impediment” to the indefinite detention of families.

By lengthening the amount of time that immigrants can remain in detention, private prison companies stand to profit, which should not be motivating factor for these regulations. In May 2017, the Texas legislature considered a bill that would have licensed the two family detention centers in Texas – Karnes and Dilley – as childcare facilities by waiving any standards the agency deemed necessary to license the facilities, including letting children share rooms with unrelated adults. This would have permitted the detention of families over the 20-day limit, to the benefit of the private prison companies who house families. In fact, the bill was written by a lobbyist paid by GEO group.¹⁰

⁸ Family Detention: Still Happening, Still Damaging, Human Rights First (October 2015), at: <http://www.humanrightsfirst.org/sites/default/files/HRF-family-detention-still-happening.pdf>, attached as “Family_Detention_still_happening.pdf”

⁹ Trump administration to circumvent court limits on detention of child migrants, Washington Post (September 6, 2018), available at: https://www.washingtonpost.com/world/national-security/trump-administration-to-circumvent-court-limits-on-detention-of-child-migrants/2018/09/06/181d376c-b1bd-11e8-a810-4d6b627c3d5d_story.html.

¹⁰ Private Prison Corporation Wrote Texas Bill Extending How Long Immigrant Children Can Be Detained, The Intercept (May 2, 2017), available at: <https://theintercept.com/2017/05/02/private-prison-corporation-wrote-texas-bill-extending-how-long-immigrant-children-can-be-detained/>

GEO Group previously told its investors that attaining licensure for its Karnes County family detention facility would allow it to detain children for longer periods of time, saying: “Presently, the center operates as a short-term processing facility and this licensing process will allow for longer lengths of stay.”¹¹ Private prison companies paid Texas lobbyists \$220,000 to \$480,000 in 2017 and paid to advocate in the Texas legislature during the past session.¹² Companies like GEO Group have a lot to gain from the expansion of family detention – the family detention center in Karnes generates about \$55 million a year in profit for Geo Group.¹³

Ultimately, the bill died in the Texas House, likely due to the incredible opposition to the bill, which worried that the bill was a "profit-making scheme" which would cause severe harm to children and families if passed.¹⁴

Removal of State Licensing Requirements will lead to more abuses

The proposed regulations would avoid the requirement of state licensing for facilities that house children with their parents through the self-licensing of any family residential center. This self-licensure is insufficient to ensure compliance with basic standards of care and custody of children. DHS has demonstrated time after time that it lacks the impartiality, expertise, and ability to ensure the basic safety and health of people it detains.

Having state licensing is important to ensure that facilities are investigated, and violations are brought to light. Texas State health regulators documented roughly 150 standards violations at more than a dozen Southwest Key migrant children shelters across Texas.¹⁵ These violations include children left unsupervised and harming themselves, staff members belittling children and shoving them, keeping kids in un-airconditioned rooms in hot weather, and improper medical care from withholding care to improper care.¹⁶ In the past five years, police have responded to at least 125 calls reporting sex offenses at shelters in Texas that primarily serve immigrant children; though psychologists say that such records likely undercount the problems because many immigrant children do not report abuse for fear of affecting their immigration cases.¹⁷

¹¹ Private Prison Companies’ Plan to License “Baby Jails” Fails in Texas Legislature, Prison Legal News (September 2017), at: www.prisonlegalnews.org/news/2017/aug/30/private-prison-companies-plan-license-baby-jails-fails-texas-legislature/

¹² *Id.*

¹³ Bill to License ‘Baby Jails’ as Child Care Facilities Clears First Legislative Hurdle, Texas Observer (April 26, 2017), available at: www.texasobserver.org/family-detention-baby-jails-texas/

¹⁴ State Rep. John Raney’s family detention center bill dies in Texas House, The Eagle (May 14, 2017), available at: www.theeagle.com/news/local/state-rep-john-raney-s-family-detention-center-bill-dies/article_fc674e84-b8e2-54b2-8b10-97b5a6b5699c.html; and Death of ‘Baby Jails’ Bill a Win for Immigrant Families, Texas Observer (May 26, 2017), available at: www.texasobserver.org/death-baby-jails-bill-win-immigrant-families/

¹⁵ Texas has found 150 health violations at migrant children shelters, San Antonio Express News (June 9, 2018), available at: www.expressnews.com/news/local/politics/article/Texas-has-found-150-health-violations-at-migrant-12979471.php

¹⁶ *Id.*; and Handcuffs, assaults, and drugs called ‘vitamins’: Children allege grave abuse at migrant detention facilities, CNN (June 21, 2018), at: www.cnn.com/2018/06/21/us/undocumented-migrant-children-detention-facilities-abuse-invs/index.html

¹⁷ Immigrant Youth Shelters: “If You’re a Predator, It’s a Gold Mine,” ProPublica (July 27, 2018), available at: <https://www.propublica.org/article/immigrant-youth-shelters-sexual-abuse-fights-missing-children>.

Just south of Houston, the Shiloh Residential Treatment Center in Manvel, Texas, was recently ordered to remove children from its facility because it was using psychotropic drugs as a chemical straitjacket.¹⁸ Specifically, the allegations include the forced drugging of children, who were held down and injected with psychotropic drugs, as well as drugs administered in the guise of vitamins or under threats.¹⁹ Staff also mistreated the children – not allowing them to leave their rooms for water, often physically and violently preventing them from doing so.²⁰ These are not the first allegations at Shiloh: according to the Texas state licensing reports, children in custody at Shiloh have complained of physical abuses and painful restraints for years.²¹

State licensing is an important tool holding agencies accountable. An inspection of Immigration and Customs Enforcement (ICE) facilities conducted by the Office of Inspector General found that ICE's internal inspection and monitoring programs do not "ensure consistent compliance with detention standards, nor do they promote comprehensive deficiency corrections."²² In another independent study of ten visits to four family detention centers over four years, medical and psychiatric subject matter experts for the Department of Homeland Security's Office of Civil Rights and Civil Liberties (CRCL) found an "ongoing and future threat of harm to children posed by the current and proposed expansion of the family detention program."²³

Earlier this year, 18-month-old girl developed an infection and respiratory symptoms family detention center in Dilley, which ultimately led to her death. She died of viral pneumonitis six weeks after being released from the facility.²⁴ At the Karnes facility in 2017, a woman fleeing the Taliban with her two children attempted suicide due to depression. The dean of social work for the University of Texas commented that this deterioration of mental health is "not necessarily an intrinsic form of depression, based on brain chemicals or a longstanding depression – it's what we call 'reactive.' It's related to the environment the person is in, especially over a long period of time."²⁵

¹⁸ Trump administration must stop giving psychotropic drugs to migrant children without consent judge rules, Washington Post (July 31, 2018) available at: <https://www.washingtonpost.com/news/morning-mix/wp/2018/07/31/trump-administration-must-look-for-consent-before-giving-drugs-to-migrant-children-judge-rules/>.

¹⁹ Judge Orders Government to Release Immigrant Children from Shiloh Shelter, Houston Public Media (July 31, 2018), available at: <https://www.houstonpublicmedia.org/articles/news/politics/immigration/2018/07/31/297985/judge-orders-removal-of-undocumented-immigrant-children-from-shiloh-shelter>; and Migrant children sent to shelters with histories of abuse allegations, Reveal News from The Center for Investigative Reporting (June 20, 2018), available at: <https://www.revealnews.org/article/migrant-children-sent-to-shelters-with-histories-of-abuse-allegations/>, and attached hereto as ("Shelters with histories of abuse allegations.pdf").

²⁰ Judge Orders Government to Release Immigrant Children from Shiloh Shelter.

²¹ Federal agency's shelter oversight raises questions, Houston Chronicle (December 20, 2014), available at: <https://www.houstonchronicle.com/news/article/Federal-agency-s-shelter-oversight-raises-5969617.php>.

²² Office of Inspector General, "ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements," OIG-18-67 (June 26, 2018), available at: <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>, and attached to this comment as "OIGReport_06.26.18.pdf."

²³ Doctors Congressional Disclosures, Scott Allen, MD and Pamela McPherson, MD (July 17, 2018) available at: <https://www.wyden.senate.gov/imo/media/doc/Doctors%20Congressional%20Disclosure%20SWC.pdf>, and attached to this comment as "Senate_whistleblowing_caucus.pdf."

²⁴ Report: Toddler died after contracting infection at ICE family detention facility, The Texas Tribune (August 27, 2018), available at: <https://www.texastribune.org/2018/08/27/toddler-died-ICE-custody-vice-news-dilley/>.

²⁵ Mother Locked in Family Detention Attempts Suicide To Free Her Kids, Huffpost (May 26, 2017), available at: https://www.huffpost.com/entry/mother-family-detention-suicide-attempt_us_59271267e4b062f96a34da5c.

In 2016, DHS convened an advisory committee to inform the agency how to improve family detention. The committee conducted a study and recommended that DHS discontinue the practice of family detention, and that such detention “is generally neither appropriate nor necessary for families – and that the separation of families for purposes of immigration enforcement or management are never in the best interest of children.”²⁶ DHS’s own advisory committee has recognized that the detention of families, which the proposed regulations would further, is neither appropriate nor necessary.²⁷

Detention is a deterrent to legal representation

The proposed rule’s Sections 236.3(i)(4) and 410.402(c)(14) set out minimum standards for care of minors that recognize a right to counsel and access to attorney-client visits, yet the underlying purpose of the regulations – longer detention periods for families and children – raise significant barriers to access to counsel.

The importance of legal counsel is paramount. It is well documented that detention dramatically decreases an individual’s access to legal counsel. Indeed, from 2007-2012, 69% of non-detained respondents in the Houston Immigration Court were represented as opposed to just 13% of detained respondents.²⁸ Neither is a good figure, but the representation rate for detained individuals is particularly dismal. Studies have shown that immigrants who are represented are significantly more likely to win relief than those who go without representation.

A 2014 study found that detained immigrants with representation are three times more likely to win their deportation cases than those without attorneys.²⁹ For asylum-seeking women and children, the odds of winning an asylum case increases fourteen-fold with legal representation than without.³⁰

The most current research comes from the Vera Institute’s analysis, released in November 2017, of the New York Immigration Family Unity Project (NYIFUP), which provides free legal representation to every detained immigrant who is a New York City resident. Vera found that in the first 3 years of the NYIFUP project, 48% of cases will end successfully for clients, meaning they will have the right to stay legally in the United States. This is a 1,100% increase from the observed 4% success rate of unrepresented cases before NYIFUP.³¹ Put another way, for every 12 people who received counsel, 11 would have been deported without the attorney that was provided through the NYIFUP program.

²⁶ Recommendation 1-1, Report of the DHS Advisory Committee on Family Residential Centers (September 30, 2016), available at: <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>, and attached here as “FRC_Report.”

²⁷ *Id.*

²⁸ Access to Counsel in Immigration Court, American Immigration Council (2016), available at: https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf.

²⁹ Access to Justice for Immigrant Families and Communities Study of Legal Representation of Detained Immigrants in Northern California, Northern California Collaborative for Immigrant Justice (October 2014), available at: <https://media.law.stanford.edu/organizations/clinics/immigrant-rights-clinic/11-4-14-Access-to-Justice-Report-FINAL.pdf>.

³⁰ Data compiled for FY 2017 from TRAC: <http://trac.syr.edu/phptools/immigration/nta/>.

³¹ Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity, Vera Institute of Justice (November 2017), available at: https://storage.googleapis.com/vera-web-assets/downloads/Publications/new-york-immigrant-family-unity-project-evaluation/legacy_downloads/new-york-immigrant-family-unity-project-evaluation.pdf.

It is fundamentally unjust for anyone living in the United States to face a judge without an attorney to help them navigate a complex legal system. Access to counsel is fundamental to our legal system, with the Constitution making clear the right to counsel for all – regardless of immigration status. The Supreme Court has been clear regarding the gravity of the liberty interest at stake for immigrants facing removal, characterizing deportation as a “drastic measure.” The Supreme Court has recognized that all immigrants are entitled to due process in removal proceedings, nevertheless, there is no right to free attorney at government expense.³² Immigration laws likewise recognize that, while immigrants are entitled to counsel of their choosing, the federal government is not obligated to pay for such counsel.³³ For the vast majority of immigrants facing deportation, including children, federal law provides no clear path to a right to appointed counsel and most navigate the immigration system unrepresented, in clear violation of the United State’s commitment to due process.

The cost to taxpayers is too high

The proposed rule is an unnecessary burden on taxpayers and a poor and wasteful use of resources. There are proven, effective alternatives to detention, which cost a mere fraction of family detention. The Center for American Progress estimates that, over a decade, the proposed rule would cost DHS at least \$2 billion and as much as \$12.9 billion. They estimate a cost between \$201 million and just under \$1.3 billion each year. These estimates include the annual costs from increased detention time that would be necessary under the rule as more children and parents are detained together for longer, as well as the start-up costs for DHS to build family detention centers.³⁴

Breaking with long-standing requirements, the Trump administration declined to estimate the potential costs of this rule.³⁵ The administration argued there are too many factors – like the number of people kept in custody and average lengths of stay – to use for future projections. Yet private entities were able to do so through reasonable extrapolation and provide the financial ramifications of several possible scenarios. It is likely that by declining to estimate the costs, DHS was hoping to avoid additional scrutiny. CAP’s most conservative estimate crosses the \$100 million threshold, over which a regulation is considered economically significant and triggers additional review and analysis – which the government declined to undertake. The high costs would render the proposal a “major rule” under the terms of the Congressional Review Act, triggering a Government Accountability Office (GAO) report prior to the rule’s implementation and additional time before the rule takes effect. (The High Costs of the Proposed Flores Regulation, Center for American Progress). Given the extraordinarily high cost of implementation for these proposed regulations, this notice of proposed rule-making should not have gone forward without such reporting and additional time.

³² *Reno v. Flores*, 507 U.S. 292, 306 (1993) (“It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings”).

³³ INA §240(b)(4)(A).

³⁴ The High Costs of the Proposed Flores Regulation, Center for American Progress, (Oct. 19, 2018), available at: <https://www.americanprogress.org/issues/immigration/reports/2018/10/19/459412/high-costs-proposed-flores-regulation>, and attached here as “Flores_Regs_High_Costs.pdf.”

³⁵ Executive Order no. 12866, “Regulatory Planning and Review” (1993), available at: https://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf.

Meanwhile, alternatives to detention cost far less than detention. DHS estimated that it costs \$319.37 per day for an individual in family detention, yet the estimated average cost per ATD participant was a mere \$4.50 per day for that same year.³⁶ A GAO report found the daily rate of ATDs was less than 7% of that of detention; while a person is typically longer on ATDs than in detention, the cost of detention is still much higher than ATDs and does not reach parity until a person has been on ATDs for over three years. The average length of ATD participation time is just under 13 months.³⁷ ICE's now terminated Family Case Management Program cost only \$36 per day per family.³⁸ Lutheran Immigration and Refugee Service (LIRS) Family Placement Alternatives provided wrap-around case management services that included housing for families without support, orientations on compliance, access to legal representation and wrap-around case management. Even including housing costs, their program was significantly cheaper – it cost only \$50 a day for an entire family to receive housing and wrap-around services – a mere 6% of the over \$300 daily per person cost of family detention.³⁹

Alternatives to detention are effective at assuring compliance with court hearings and orders

The administration sees a benefit in detaining families during the pendency of proceeding, alleging in the proposed rulemaking that “In many cases, families do not appear for immigration court hearings after being released from an FRC, and even when they do, many more fail to comply with the lawfully issued removal orders from the immigration courts and some families engage in dilatory legal tactics when ICE works to enforce those orders.” (Supplementary Information (VI)(A)(4)). The data do not back up this allegation. Furthermore, there are several ways to ensure court appearances and compliance with court orders that do not share the high cost to taxpayers and the deleterious effects on children’s health and well-being.

Failure to show up to court and comply with orders is not so great a problem as the government alleges. In fact, the majority of immigrants do show up to court. A 2016 study of immigration court data by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University, found that the overall appearance rate for immigration court in 2015 was 76.6 percent. The report further concluded that “Court records so far demonstrate that the practical result of the release of increasing numbers of individuals on bond has not resulted in any significant increase in those who abscond and fail to show up for their immigration hearings. Trends, if anything, show declines.”⁴⁰

Furthermore, there are several alternatives to detention to ensure court appearances and compliance with court orders that do not share the high cost to taxpayers and the deleterious effects on children’s health and well-being. For over two decades, alternatives to detention

³⁶ DHS ICE Congressional Justification for FY 2018 (ICE Budget Justification), pgs 128, 180, available at: https://www.dhs.gov/sites/default/files/publications/CF0/17_0524_U.S._Immigration_and_Customs_Enforcement.pdf.

³⁷ United States Government Accountability Office, Alternatives to Detention, (Nov. 2014), available at: <http://www.gao.gov/assets/670/666911.pdf>.

³⁸ ICE shuts detention alternative for asylum seekers, ABC News (June 9, 2017), available at: <http://abcnews.go.com/Politics/wireStory/ice-shuttersdetention-alternate-asylum-seekers-47931693>.

³⁹ Family Placement Alternatives: Promoting Compliance with Compassion and Stability through Case Management Services, Lutheran Immigration and Refugee Service (April 2016), available at: http://lirs.org/wp-content/uploads/2016/04/LIRS_FamilyPlacementAlternativesFinalReport.pdf, and attached here as “Family_placement_alternatives.pdf.”

⁴⁰ What Happens When Individuals Are Released On Bond in Immigration Court Proceedings?, TRAC (Sept. 14, 2016), available at: <http://trac.syr.edu/immigration/reports/438/>.

(ATDs) programs have been incredibly effective at producing high rates of compliance with immigration check-ins, hearings, and removal orders. Over 95% of individuals on “full-service” ATDs, which include case management, appear for their final hearings.⁴¹ ICE’s Family Case Management Program, in which families received caseworker support without having to wear an ankle monitor, indicated compliance rates of 99% with court appearances, ICE appointments, and reported high compliance with removal orders.⁴² Data from 2013 from BI, Inc., the private contractor who operated some of the government’s full service ATD programming, showed a 99.6% immigration court appearance rate and 79.4% compliance with those ordered removed.⁴³

There are many more examples of high compliance rates for alternatives to detention programs. For instance, LIRS has provided community-based case management services to vulnerable immigrants and reported 97% compliance. A similar project from the U.S. Conference of Catholic Bishops (in partnership with ICE) ran an ATD program utilizing case management for vulnerable individuals without community ties and also reported a 97% appearance rate. Older programs run in partnership with the then Immigration and Naturalization Service (INS) had appearance rates from 91% to 97%.⁴⁴ The Department’s stated goal of ensuring attendance at immigration court hearings and compliance with final orders of removal can be met through other, more cost-effective methods than the proposed regulations.

Heightened standards on release for parole for children in expedited removal proceedings are expensive and detrimental to children

The proposed regulation amends 8 CFR 212.5 by removing an internal reference to the provisions that govern parole (8 CFR 235.3(b)) – this change means that children in expedited removal will be held to the same strict standard for release on parole as adults. However, Judge Gee has ruled that under 8 CFR 212.5 children subject to expedited removal may be considered for parole on a case-by-case basis for “urgent humanitarian reasons” or “significant public benefit” so long as the child is not a security or flight risk. This proposed regulation would remove this consideration and would limit release only for medical necessity or law enforcement need – a much higher standard. This regulation will lead to higher numbers of children being held for longer periods – in contravention of the spirit of the FSA, at higher cost to the taxpayers, and to the detriment of the health of the children detained.

The proposed regulations make it easier to revoke the legal protections for unaccompanied children through continual redetermination of unaccompanied child status by DHS or DHHS

Immigrant minors who enter the country without a parent are labeled “unaccompanied alien children,” a designation recognizing their vulnerability and affording them more legal protections than other immigrants: they are housed in child care facilities under DHHS rather

⁴¹ Alternatives to Detention, U.S. Government Accountability Office (Nov. 2014), at: <http://www.gao.gov/assets/670/666911.pdf>.

⁴² ICE shuts detention alternative for asylum-seekers.

⁴³ Alternatives to Immigration Detention: Less Costly and More Humane than Federal Lock Up, American Civil Liberties Union, FN9, available at <https://www.aclu.org/other/aclu-fact-sheet-alternatives-immigration-detention-atd>.

⁴⁴ The Real Alternatives to Detention, Women’s Refugee Commission, The American Immigration Lawyers Association, Lutheran Immigration and Refugee Service, National Immigrant Justice Center, and U.S. Conference of Catholic Bishops Migration and Refugee Services, available at: <https://www.womensrefugeecommission.org/images/zdocs/The-Real-Alternatives-to-Detention-FINAL-06-27-17.pdf>, and attached to this comment as “Real_alternatives.pdf.”

than ICE while a relative sponsor is found to house them; and they do not have to pass a credible fear interview but instead automatically can present their claim before an immigration judge.

The proposed 8 CFR 236.3(d) calls for immigration officers to redetermine whether a child “is a UAC (under 18, without lawful immigration status, and with no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide care and physical custody) each time they encounter the alien” (see p. 50). These proposed regulations would remove the protections that come with being designated an “unaccompanied alien child” as soon as they turn 18 or are released to the care of a guardian in the United States – these children would then be treated like any other unauthorized immigrant – and not like the vulnerable children and youth they are. Because the majority of “unaccompanied” minors are ultimately released from shelters under the Office of Refugee Resettlement and placed with parents or guardians, this would substantially reduce the number of children who benefit from the protections that were created especially for them and which ensure they have a fair hearing and opportunity to present their case. Children should be allowed to continue having access to asylum interviews that are non-adversarial and child-appropriate, rather than adversarial court procedures, which are intimidating to children.

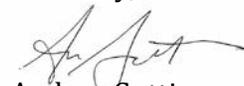
Under the proposed regulation, DHS could re-detain children without any burden of proof

The proposed regulation 8 CFR 236.3(n) would provide DHS with the authority to re-detain a minor after that child has been released from custody if DHS determines there has been a material change in circumstances that shows the child is an escape risk, danger to the community, or has a final order of removal. However, this provision neglects to place any burden on DHS of establishing the material change, thus undermining the requirements imposed on DHS by the U.S. District Court of Northern California in *Saravia v. Sessions*.

Conclusion

Rather than implement the principles of the FSA, this proposed regulation chips away at the special protections afforded to vulnerable immigrant children and will result in the prolonged detention of children – the opposite goal of the FSA, which is to ensure that immigrant children be released from immigration detention as quickly as possible. The Houston Immigration Legal Services Collaborative respectfully opposes the proposed regulation in its entirety and requests that it not be finalized.

Sincerely,



Andrea Guttin

Legal Director

Houston Immigration Legal Services Collaborative