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

Dear Sir/Madam:

We are writing on behalf of the Harvard Immigration and Refugee Clinical Program (HIRC) and the HLS Immigration Project (HIP) at Harvard Law School in Cambridge, Massachusetts in response to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking (proposed rule) to express our strong opposition to the proposed rule to amend regulations relating to the apprehension, processing, care, custody, and release of immigrant children published in the Federal Register on September 7, 2018. The proposed rule is intended to terminate the 1997 Flores Settlement Agreement (FSA), as amended in 2001, and introduce new regulations that are more likely to result in the prolonged or indefinite detention of immigrant children. Such regulations are inconsistent with the FSA's mandate to favor the release of children from government custody, and thus cannot serve as a valid basis to terminate the FSA.

We, the signatories of this letter, are immigration lawyers and law students of HIRC and HIP. One of the first immigration and refugee clinics in the United States, HIRC has represented thousands of individuals from all over the world seeking humanitarian protection since its founding in 1984. HIRC, in partnership with Greater Boston Legal Services (GBLS), the largest legal services provider in New England, has won an overwhelming number of ground-breaking cases in immigration court, before the U.S. Citizenship and Immigration Service Asylum Office, the Board of Immigration Appeals, and in the U.S. Circuit Courts of Appeals. In the 1980s, our clinic began representing many Central American asylum seekers who at that time were fleeing civil conflicts in El Salvador and Nicaragua. Today, most of our clients are again Central American, predominantly from El Salvador, Guatemala and Honduras, an area known as the "Northern Triangle." Asylum seekers from these countries alone now represent the majority of the clinic's total caseload.

HIP is a student-practice organization under the supervision of HIRC, which provides students with the opportunity to gain practical, hands-on legal experience, starting their first year of law school. HIP represents clients seeking release from detention in Massachusetts, promotes policy reform, and provides representation to refugees and asylees who are seeking family reunification and legal residency. HIRC and HIP partner to offer Know Your Rights presentations and advice and counsel legal clinics throughout the greater Boston community.

HIRC and HIP oppose the proposed rule for three main reasons: (1) the proposal is based on flawed reasoning; (2) the proposal fails to take into account the mental and physical toll prolonged or indefinite detention can take, particularly on children; and (3) the proposal ignores the negative impact of detention of children on society at large.

First, in support of the proposed rule, the administration relies on the erroneous argument that it will deter children and families from making the journey to the U.S. border. In particular, the proposed rule claims that “although it is difficult to definitively prove the causal link, DHS’s assessment is that the link is real, as those limitations,” i.e. the Flores 20-day limit “correlated with a sharp increase in family migration.”¹ However, it is our strongly held belief, grounded in decades of practice, that punitive and detention measures will not deter families from seeking a refuge in the United States. “Our clients do not make their decisions to leave lightly,” Maggie Morgan, staff attorney at GBLS and Deborah Anker, director of HIRC, have said.²

The journey from Central America to the United States is perilous, especially for women. Up to 80 percent of women are sexually assaulted at some point of their journey, and cartels routinely kidnap and hold migrants for ransom, according to the UNHCR and human rights organizations.³ Last year, we represented a 21-year-old Salvadoran woman who, when fleeing abuse in El Salvador at age 17, was held for three days at gunpoint by gang members of Los Zetas in Mexico. Like the young Salvadoran, many of our clients often do not have the luxury of making a choice about whether to leave their home countries. Life-threatening violence related to powerful gangs and abusive security forces is a major problem throughout much of the Northern Triangle. This violence has pushed growing numbers of people from Honduras, Guatemala, and El Salvador to seek asylum. Furthermore, Central American women, children, and families often have no option but to flee the ongoing threat of gang or gender-related violence experienced back at home. New regulations will not deter these individuals who are trying to save their lives and the lives of their children.

¹ Notice of Proposed Rulemaking, “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children,” Federal Register, Vol. 83, No. 174, September 7, 2018, pgs. 45493-45494, <https://www.regulations.gov/document?D=ICEB-2018-0002-0001>.

² Morgan, Maggie and Deborah Anker. Protecting Central American Families: Harvard Immigration and Refugee Clinic. ReVista: Harvard Review of Latin America (Winter 2017). <https://revista.drclas.harvard.edu/book/protecting-central-american-families>.

³ Amnesty Int’l, Most Dangerous Journey: What Central American Migrants Face When They Try to Cross the Border, <https://www.amnestyusa.org/most-dangerous-journey-what-central-american-migrants-face-when-they-try-to-cross-the-border/>; UNHCR, Women on the Run (2015).

Second, prolonged or indefinite detention takes an especially damaging toll on the mental and physical health of children—a well-established fact that DHS and the Department of Health and Human Services (HHS) ignore. DHS and HHS propose regulations that would increase (1) the number of children and youth subjected to secure detention, and (2) the length of time children and youth would be subjected to secure detention.⁴ According to experts, prolonged or indefinite detention can have long-term effects on children, including increased rates of anxiety, depression and PTSD, and a heightened risk of self-harm in the future.⁵ Detention can also increase the likelihood a child will have difficulty regulating emotions and forming healthy relationships later in life.⁶ Studies have shown that children report sleep problems, loss of appetite, and somatic complaints long after being detained.⁷ Children and babies in detention are also often denied critical medical treatment.⁸ Worryingly, the administration has not exercised due diligence in analyzing any of the consequences of detention on children and their families.

Third, the impact of the indefinite detention of children extends to our society at large. Placement in detention significantly lowers a youth’s likelihood of attending and graduating from school, with studies finding that the majority of youth who have been incarcerated do not go back or end up dropping out of school after their return to the community.⁹ A 2013 study released by the National Bureau of Economic Research found that placement in detention “results in large decreases in the likelihood of high school completion and large increases in the likelihood of adult incarceration” when compared with similarly situated youth who are not detained.¹⁰ Moreover, minors who have been incarcerated have lower future earning potential and are less likely to remain in the workforce as taxpayers.¹¹

⁴ First, DHS’s proposal to substitute its own family residential standards where other licensing is not available will remove the current limitation under the FSA that most children may only be held temporarily in unlicensed, secure facilities, freeing DHS to hold children in its so-called family residential centers, which constitute secure detention, for prolonged periods or indefinitely. *See* 83 FR 45525. Second, HHS’s proposal includes significant and unjustified expansions of the qualifying circumstances for placing an unaccompanied child in secure ORR custody, which are juvenile jail settings. *See* 83 FR 45530. This is by no means an exhaustive list, as demonstrated by the additional harms posed in 83 FR 45507, *see* [Releasing a UAC from ORR custody \(sponsors\)](#).

⁵ Jamie Ducharme, Separating Kids From Parents Can Cause Psychological Harm, But Experts Say Detaining Them Together Isn’t Much Better, *Time* (June 21, 2018), <http://time.com/5317762/psychological-effects-detaining-immigrant-families/>.

⁶ *Id.*

⁷ Ann Lorek, Kimberly Ehntholt, Anne Nesbitt, Emmanuel Wey, Chipso Githinji, Eve Rossor, and Rush Wickramasinghe, The Mental and Physical Health Difficulties of Children Held within a British Immigration Detention Center: A Pilot Study, 33 *Child Abuse & Neglect* 573-85 (September 2009).

⁸ Scott Allen and Dr. Pamela McPherson, Letter to the Senate Whistleblowing Caucus, July 17, 2018, <https://www.whistleblower.org/sites/default/files/Original%20Docs%20Letter.pdf>.

⁹ *Id.* at 9 (stating that 60% of youth who have been incarcerated do not go back or end up dropping out of school altogether within five months of their return).

¹⁰ Anna Aizer and Joseph J. Doyle, Jr., *Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges*, 2013 Nat’l Bureau of Econ. Res. Working Paper Series (2013).

¹¹ Barry Holman and Jason Ziedenberg, Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* 2 (2006), <http://www.justicepolicy.org/research/1978>.



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For the reasons detailed above, DHS and HHS should immediately withdraw their current proposal and dedicate their efforts to advancing policies that safeguard the health, safety, and best interests of children and their families through robust, good-faith compliance with the Flores Settlement Agreement.

Thank you for the opportunity to submit comments. Please do not hesitate to contact HIRC or HIP for further information.

Sincerely,

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