



Giving Every Child A Chance

November 6, 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: DHS Docket No. ICEB-2018-0002, RIN 0970-AC42 1653-AA75, Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children

Dear Ms. Seguin:

Advocates for Children of New Jersey (ACNJ) strongly opposes the proposed regulatory changes for the treatment of children in the immigration system, and we urge the Administration to withdraw the regulations. The proposed regulations will put children in harm's way and will upend decades of work to ensure that the special needs of children are met by government policy.

ACNJ is the premier statewide, multi-issue child advocacy organization in New Jersey. ACNJ's mission is to identify children's needs through research, policy and legal analysis, to raise awareness of those needs through strategic communications and to work with elected officials and other decision-makers to enact effective responses so that every child has the chance to grow up safe, healthy and educated. ACNJ is dedicated to protecting the wellbeing of all children and ensuring that government practices minimize harm to children in various areas, including child welfare, juvenile justice, and child health.

Current rules require the release of children, usually to family members or relatives, "without unnecessary delay." The proposed rules would place children in detention for indefinite periods pending removal procedures, which can last for years. They would also limit release to only non-detained parents or legal guardians, keeping more children in detention rather than appropriately releasing them to other family members or relative residents.

Additionally, the rules weaken regulations for the facilities holding these children, and reduce children's protections in the event of self-declared "emergencies."

The proposed regulations have four primary harms for children:

- 1.) The detention of minors is inherently harmful and should be minimized rather than made indefinite. These rules by their own admission "may result in additional or longer detention for certain minors."
- 2.) Children belong in homes with their parents and families whenever possible.
- 3.) The proposed rules remove child-appropriate protections for children in legal proceedings, treating them like adults rather than expediting their cases.

- 4.) Federal facilities housing children and families cannot be exempt from state child welfare regulations, which are carefully designed to protect children.

First, detaining children in family detention facilities for indefinite or extended periods causes them harm. New Jersey has gone to great lengths to minimize the amount of time that children are detained in the juvenile justice system, recognizing that even short stays in detention can have traumatic impacts that last a lifetime. A developing child's brain experiences trauma differently than an adult's, affecting their long-term growth and development.

Child welfare and juvenile justice law and policy have for decades moved away from placing children in congregate care or secured facilities precisely because of these harms. The federal government should do similarly in the immigration context.

The existing Flores agreement already protects children by requiring their release from detention "without unnecessary delay." The proposed set of procedures would add exactly those kinds of unnecessary delays. By requiring that children reside in detention pending resolution of their and their parents' immigration proceedings, the proposed regulations will extend the trauma children face by months, if not years.

Second, by restricting the adult relatives to whom children can be released, the proposed rules make reunification with family members more difficult and also extend detention for children. Particularly when children are accompanied by one parent, their familial connection to the United States is more often a grandparent, aunt or uncle, or sibling, all of whom may be an "adult relative" under the current rules. Child welfare principles recognize the importance of keeping children with families, and that families take many forms. Child welfare has long understood the importance of kinship care with non-parental relatives, who take on parenting and guardian roles for many children.

Beyond the impact this has on restricting children's right to be with family members, the proposed change will also prolong stays in detention. By limiting options for release, this proposal adds another obstacle to releasing a child detainee to a loving family.

Third, the proposals lift many special protections given to children to expedite their cases and protect them from harm, treating them instead as adults. In statutes, regulations and case law, policies have increasingly been forced to recognize children as a special class requiring special protections. Cognitive science has shown that children's brains are delicate, requiring careful considerations to avoid extended harm, whether in the juvenile justice, child abuse/neglect or health contexts. These proposals ignore these developments in law and science by treating children like adults in several ways, including:

- By holding children to the same standards as adults in parole decisions in expedited removal proceedings, by modifying 8 CFR 212.5;
- By limiting the extent to which immigration judges may consider risk factors in decisions regarding release in a child's removal proceedings; and
- By eliminating protections for an unaccompanied minor if a minor reaches the age of 18 and a parent or legal guardian can provide care or custody.

Everything we know about child development suggests that children need more protections to guard their more vulnerable developmental stage. These proposals instead treat children as adults or try to move them towards adult status (by repeatedly attempting to redetermine their age). By seeking to eliminate protections for children or remove them from the unaccompanied minor category, the

proposed rules would strip children of critical rights and protections such as access to counsel and social services.

Fourth, to the extent that detention may be necessary in certain cases, keeping children in detention facilities for extended periods undermines state and local protections for facilities holding children. Under the proposed rule, the Department of Homeland Security (DHS) could detain children in facilities that are not licensed by state child welfare agencies. State licensing standards have been designed to ensure minimal protection for child safety and wellbeing, considering their vulnerable status as children. By proposing an alternative licensing regime, the proposal undermines the carefully designed licensing standards for out-of-home care of minors.

The proposed rules also bypass protections against placing unaccompanied minors in facilities alongside unrelated adults, by stating that they must be segregated “generally” unless there is an “emergency or other exigent circumstances.” DHS’s willingness to waive a key protection for unaccompanied minors in an “emergency” situation helps to demonstrate why exempting facilities from child welfare regulations is so potentially harmful. The wellbeing of children is too critical to be subject to a vague emergency clause.

Federal regulations for ICE detention centers do not address key features of child protection. For example, children have unique needs at different ages. They also have developmental needs that evolve over time. Because local child welfare agencies have designed their regulations with the singular goal of protecting child wellbeing, they are better suited to governing facilities for children than DHS.

Conclusion

Based on its expertise and experience in the field of child advocacy and child wellbeing, ACNJ strongly opposes this rule. ACNJ urges the Administration to withdraw this rule in its entirety.

The proposed rule erases a century of research on the importance of protecting children and their unique needs. Policy in other areas of law, including juvenile justice, education, child welfare, and child health have been moving towards the common sense conclusion that children’s developmental stages require special protection and programming. Unnecessary detention and reduced protection for children undermines the fundamental public policy of protecting the best interests of the child. Rather than strip children of protections, the immigration system should instead reflect the types of expanded services and legal protections that now characterize other state systems with regard to minors, based on the best practices in the fields of child welfare, juvenile justice, health, and education.

Sincerely,



Cecilia Zalkind
President & CEO



Peter Chen
Policy Counsel