



AMERICAN  
PSYCHOLOGICAL  
ASSOCIATION

November 6, 2018

Ms. Debbie Seguin  
Assistant Director  
Office of Policy  
U.S. Immigration and Customs Enforcement  
Department of Homeland Security  
500 12<sup>th</sup> Street, SW  
Washington, DC 20536

RE: DHS Docket No. ICEB-2018-0002

Dear Ms. Seguin:

The American Psychological Association (APA) appreciates the opportunity to respond to the proposed rule of the Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS) published in the *Federal Register* on September 7, 2018 (Docket No. ICEB-2018-0002). Yet we are deeply concerned that the proposed rule would effectively terminate the *Flores* Settlement Agreement (FSA) and allow immigrant children to be detained indefinitely. It would also create an untenable alternative to the existing state licensure requirement for detention facilities. These proposed actions pose serious harm to the psychological well-being of immigrant children, their U.S.-born siblings, and other family members.

APA is the largest scientific and professional organization representing psychology in the U.S. and our nation's largest association of psychologists. Comprising 115,700 researchers, educators, clinicians, consultants, and students, our association works to advance the creation, communication, and application of psychological knowledge to benefit society and improve people's lives. We place a strong emphasis on, and are committed to, promoting and advocating for improved mental health for all.

We recognize and appreciate the complexities that exist when trying to develop and implement a comprehensive immigration policy. However, we oppose efforts to overturn the FSA, thereby undercutting protections for immigrant children. Any form of family detention can be expected to contribute to an increase in serious mental health problems for immigrants across the country.

Furthermore, under the proposed alternate licensing provision, DHS would be granted a way to circumvent the *Flores* Settlement's requirement that children be kept in secure licensed facilities for less than 20 days. The main purpose of the proposed change, that of legalizing indefinite

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detention of immigrant children with their families, which is prohibited under the *Flores* Settlement, is harmful. Numerous clinical studies have demonstrated that the mitigating factor of parental presence does not negate the damaging impact of detention on the physical and mental health of immigrant children.<sup>123</sup>

### *General Mental Health Concerns*

The mental health problems that children and families experience as a result of family detention are well documented. As you know, more than half of the children in U.S. family detention centers are under the age of six, and the large majority has experienced trauma prior to arriving at the immigration facility. We cannot underscore enough the importance of considering the mental health of the detainees and the strong possibility that the longer individuals are held in detention, the more likely their mental health will suffer -- this is especially the case for children.<sup>4</sup> Research has also shown a higher rate of anxiety, depression, and suicide attempts among families held at the Karnes or Dilley detention centers.<sup>5</sup>

In one study, detained children were reported to have a tenfold increase in developing psychiatric disorders when they were detained.<sup>6</sup> Studies of health difficulties of detained children found that most of them reported symptoms of depression, sleep problems, loss of appetite, and somatic complaints, such as headaches and abdominal pains. Other concerns include inadequate nutritional provisions, restricted meal times, and child weight loss.<sup>7</sup>

Prolonged family detention may also damage the primary relationship between parents and children because a child has many non-parental authority figures in detention centers.<sup>8</sup> Not only is the child likely to disregard the parents as strong authority figures the longer the period of detention, but this is also true for the parents' view of themselves.

Moreover, many asylum-seeking mothers and children who flee to the U.S. have survived violence, such as domestic violence, child abuse, rape, sexual slavery, and human trafficking. Meaningful access to trauma-informed mental health care is critical to ensure that both adult and

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<sup>1</sup> Dudley, M., Steel, Z., Mares, S., & Newman, L. Children and young people in immigration detention. *Current Opinion Psychiatry*. July 2012. 25(4): 285-92. doi:10.1097/YCO.0b013e3283548676.

<sup>2</sup> Ehntholt, K., Trickey, D., Harris Hendriks, J., Chambers, H., Scott, M., Yule, W., & Tibbles, P. Mental health of unaccompanied asylum-seeking adolescents previously held in British detention centres. *Clinical Child Psychology and Psychiatry*. (2018). 23(2), 238–257.

<sup>3</sup> Kronick, R., Rousseau, C., & Cleveland, J. Asylum-seeking children's experiences of detention in Canada: A qualitative study. *American Journal of Orthopsychiatry*. (2015). 85(3), 287.

<sup>4</sup> Cervantes, W. (2015). Family detention: The harmful impact on children, *First Focus*, <https://firstfocus.org/wp-content/uploads/2015/07/Family-Detention.pdf>.

<sup>5</sup> Hutkins, S. C., (2015). Dr. Luis Zayas provides testimony on family detention, migrant clinicians network, <http://www.migrantclinician.org/blog/2015/jul/dr.-luis-zayas-provides-testimony-family-detention.html>.

<sup>6</sup> Steel, Z., Momartin, S., Bateman, C., Hafshejani, A., Silove, D., Everson, N., Roy, K., Dudley, M., Newman, L., Blick, B., & Mares, S. Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia. *Australian and New Zealand Journal of Public Health*. September 25, 2004. 28(6): 527-36. doi:10.1111/j.1467-842x.2004.tb00042.x.

<sup>7</sup> Lorek, A., Ehntholt, K., Nesbitt, A., Wey, E., Githinji, C., Rossor, E., & Wickramasinghe, R. The mental and physical health difficulties of children held within a British immigration detention center: A pilot study. *Child Abuse & Neglect*. September 2009. 33(9): 573-85. doi:10.1016/j.chiabu.2008.10.005.

<sup>8</sup> Cervantes, W., (2015).

child survivors of trauma heal and ultimately achieve self-sufficiency. The longer survivors go without such desperately needed services, the more challenging the healing process may be.<sup>9</sup>

### *DHS - Due Process and Immigrant Children*

The proposed rule would require repeated redeterminations of a child's status as an "unaccompanied alien child." We are concerned that this would cause vulnerable young children who arrived in the U.S. alone to be deprived of full due process protections in their immigration proceedings. More specifically, the proposed rule does not make clear what legal protections a child will have in their immigration proceedings, nor does it specify details about the guardians throughout the legal process. We are particularly concerned given the complexity of the immigration legal system. Consider a study where adults were asked about due process while in U.S. custody. They did not fully understand the complexity of the documents they were signing, especially when the process involved complex legal terms in a foreign language. More specifically, this study found that 30% of immigrants who signed official documents indicated that no one had explained the form to them, 29% indicated that they did not know what document they had signed, and 28% felt forced or pressured to sign.<sup>10</sup> The negative impact on children is surely even stronger since, because of their age, experience, and cognitive development, they will not understand the complex legal structure of an immigration proceeding.

### *HHS - Due Process and Immigrant Children*

As with our stated concerns about DHS relative to the proposed rule, HHS also proposes to institute a policy of continually re-determining the unaccompanied minor status of each immigrant child and will continuously redetermine the protections provided to minors. This process will occur until HHS determines the minor designation is no longer valid. APA is concerned about the impact on children's mental health once these protections are lifted. Children who are held in detention centers will be at risk of suffering extensive trauma if forced to stay longer in such facilities.<sup>11</sup>

### *Self-Licensing Alternative*

Some of our APA members with expertise related to the mental health of immigrant children have visited some of the DHS and HHS detention centers. They shared with us and the HHS Inspector General's Office the following troubling observations: inadequate medical and mental health staff; lack of provision for adequate language interpretation; inappropriate physical facilities that are not child-friendly or safe for young children; and inadequate preparation for emergency situations. The self-licensing approach is unrealistic and unfeasible, given the recent

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<sup>9</sup> Barbash, E., Overcoming sexual assault: Symptoms and recovery. *Psychology Today*. April 18, 2017. <https://www.psychologytoday.com/us/blog/trauma-and-hope/201704/overcoming-sexual-assault-symptoms-recovery>

<sup>10</sup> Slack, J., Daniel, M., Whiteford, S., & Peiffer, E. In the Shadow of the Wall: Family Separation, Immigration and Enforcement and Security. The Center for Latin American Studies University of Arizona (2013). 1-37.

<sup>11</sup> Brief for the American Academy of Child and Adolescent Psychiatry and the National Association of Social Workers as *Amici Curiae* Supporting Appellees and in Support of Affirmance of District Court Judgement Flores et al. v. Lynch, No. 15-56434 (9<sup>th</sup> Cir. Feb. 23, 2016).

DHS Office of Inspector General report, which stated that current audits “do not ensure adequate oversight or systemic improvements in detention conditions.”<sup>12</sup>

Furthermore, it is not sufficient to staff a family detention center with licensed mental health professionals. While being licensed should be a prerequisite, mental health providers working with Latinx children must at a minimum speak Spanish and have training in cultural diversity. In addition, providers should be expected to have trauma-informed expertise and a background in working with children and families. These basic competencies on the part of providers will help to ensure that the children receive appropriate psychotherapeutic services that they desperately need.

In closing, we thank you for your efforts to minimize the separation of immigrant families. As you consider how best to move forward, we request that you strongly consider the potentially severe negative mental health impact of holding immigrant children and families indefinitely in detention centers. Most immigrants who are now coming to the U.S. are Central American families who are fleeing gang violence, abuse, and other trauma. The circumstances are sufficiently dire for them to risk their lives for a better life. We ask that you release families from detention as quickly as possible while awaiting immigration proceedings. They should not be held in detention for longer than 20 days, as specified in the *Flores* Settlement Agreement.

If we may provide any further information, please contact Serena Dávila, J.D., in APA’s Public Interest Government Relations Office at 202-336-6061 or [sdavila@apa.org](mailto:sdavila@apa.org).

Sincerely,



Arthur C. Evans, Jr., Ph.D.  
Chief Executive Officer

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<sup>12</sup> Department of Homeland Security Office of Inspector General. (June 26, 2018). ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements, OIG-18-67, <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.