October 30, 2018

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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

To Whom It May Concern:

We are a group of medical faculty from Stanford University and the University of California, San Francisco (UCSF) who are psychologists, psychiatrists, and pediatricians, with extensive experience providing medical and mental health services for refugee and immigrant youth and their families. Our group are national experts in child health and development with particular expertise in the impact of psychological trauma and adversity on physical and psychological well-being. As faculty and program directors in the Stanford School of Medicine, Stanford Departments of Psychiatry and Behavioral Sciences and Pediatrics, Lucile Salter Packard Children’s Hospital, UCSF Department of Psychiatry, and UCSF Benioff Children’s Hospitals, we are committed to the well-being of all children. Thus, we believe we have an obligation to inform you of our concerns about the Department of Homeland Security’s (DHS) proposed rule for the apprehension, processing, care, and custody of noncitizen (i.e., alien) minors and unaccompanied noncitizen children (DHS Docket No. ICEB-2018-0002).

We are firmly and absolutely in opposition to the proposed regulations, which would eliminate the basic standards of care to which noncitizen children are entitled—whether they are detained with family members or unaccompanied—as established by the Flores Settlement Agreement (FSA). We take seriously the Department of Health and Human Services (HHS) Administration for Children and Families’ (ACF) stated mission to promote the well-being of children and families, including refugees and migrants.1 We cite this mandate as the guiding directive in our opposition to the proposed regulation changes that would ultimately result in the traumatization of those children and families in the custody and care of the Department of Homeland Security (DHS), HHS, and ACF’s Office of Refugee Resettlement (ORR).

Although the proposed rule superficially appears to be similar to the FSA because it copies some of its language, we are concerned by government agencies’ repeated historical non-compliance with basic FSA requirements already in place, as documented in numerous court proceedings (including those detailed in the preface to the proposed rules), journalistic accounts, and other investigative reports.2,3,4 Therefore, the simple repetition
of language in the newly proposed rule absent additional provisions for oversight and independent monitoring allows for the continuation of prohibited activities and violations of FSA, all of which pose acute risks for the safety, health, and psychological well-being of children and their families.

We are particularly concerned with new provisions that would allow both the detention of noncitizen families with children (family units) and unaccompanied noncitizen children for indeterminate and possibly indefinite periods of time in facilities without appropriate and independent licensing or regular and rigorous oversight. The indefinite detention of family units is of significant concern to us given the wealth of scientific research and knowledge that demonstrates the profound negative impact of detention on child and family health, mental health, and long-term functional outcomes. There is strong evidence that indefinite and unrestricted detention of family units presents significant risk to children and families that can result in catastrophic long-term psychological harm that can cross generations.

Our concerns below about the proposed new rule are based on the following principles and findings drawn from our own clinical experience and the established peer-reviewed scientific literature.

**Indefinite Family Detention is Trauma by Definition**

HHS’s Substance Abuse and Mental Health Service Administration (SAMHSA) states that “trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual’s functioning and mental, physical, social, emotional, or spiritual well-being.” Forced detention of children and families constitutes a source of such trauma and traumatic stress, according to SAMHSA’s definition, given the resulting negative impact on child and family well-being and psychosocial functioning – a finding that has been widely documented in the empirical research literature.

Families in detention experience emotional distress (including sadness, despair, worry, and frustration), physical restriction and poor health, social impairment, and spiritual despair. A key characteristic of the experience of trauma is an individual’s perceived loss of control or agency over his/her circumstances, safety, and well-being. Reduced sense of control or agency during a potentially traumatic event corresponds with increased trauma severity and poorer psychological and health outcomes. In the case of indefinite family detention, individuals are stripped of their autonomy and right to self-determination, and are left with little or no information about the possibility or timeline for release, leaving families in a state of psychological distress. The experience of forced detention in a government “family residential center” (FRC) can be expected to be physically, psychologically, and emotionally harmful for individuals and families, partially due to the coercive and imposed nature of placement, but also given the inherent restrictions on physical autonomy and limited opportunities for personal and family development.

Furthermore, there is a real risk that families subjected to long-term indefinite detention will be exposed to life-threatening circumstances (that accumulate with the trauma of detention). The record is replete with previously documented instances in which governmental facilities failed to provide adequate access to care and safety for
children in DHS and HHS custody, even though those facilities were presumably operating in accordance with current FSA stipulations.\textsuperscript{2, 3, 9} Given the less rigorous standards and oversight envisaged by the proposed regulations, these breaches are likely to continue and proliferate if the FSA is weakened.

**Trauma has Profound and Lasting Consequences**

The experience of trauma and resulting traumatic stress has been shown to have profound, lasting consequences for individuals, families, and their communities.\textsuperscript{5} In particular, exposure to trauma and adversity in childhood is associated with long-term negative health outcomes that correspond with the nation’s leading causes of death, early mortality, lost productivity, and high costs of care.\textsuperscript{10, 11, 12, 13}

Trauma (and especially trauma experienced in childhood) is associated with increased risk for psychological dysfunction, including emotional and behavioral problems, mood disorders, learning and executive functioning problems, substance abuse problems, relationship problems, and personality disorders.\textsuperscript{14, 15, 16} The scientific literature clearly establishes that the psychological health, physical health, and functional difficulties related to trauma exposure stem from the negative impact upon the development of neurological and biological systems, especially in children at all stages of their development.\textsuperscript{17, 18, 19, 20} In other words, childhood exposure to trauma literally changes the structure and functioning of children’s brains and undermines the performance of adaptive cognitive and physiological processes.

Neurobiological alterations stemming from childhood exposure to trauma and adversity can be extremely difficult – if not impossible – to reverse, as maladaptive neural and physiological pathways become engrained over the course of development. Furthermore, the biological impact of traumatic stress exposure is passed down across generations through alterations in gene expression.\textsuperscript{21} This harm thus becomes multi-generational.

**Detention has a Demonstrated Negative Impact on Physical and Psychological Health**

In addition to the broad and general consequences of trauma exposure, the specific experience of detention has been shown to exert severe negative impacts on children and adults. The conditions of detention are inherently sub-standard, as it is impossible to replicate the typical opportunities for accessing family, community, social, educational, and occupational resources that exist in society. Therefore, basic needs are inadequately met, and, as a result, detained children and families suffer negative psychological, physical, and developmental outcomes.\textsuperscript{3, 22, 23, 24}

The indefinite nature of family detention in the proposed changes to current regulations is of particular concern, as research has found that the duration of detention is positively correlated with increased deterioration of mental health and overall functioning.\textsuperscript{22, 24, 25} The lack of explicit limitations on the duration of family detention therefore increases risk for psychological and physical harm to children and families at the hands of the U.S. government.

Furthermore, adding to the risks and harms inherent to indefinite and long-term detention, we question the government’s ability to maintain oversight and compliance with
FRC regulations. In this regard, the elimination of the licensing requirements of the FSA is of deep concern. The newly proposed regulations would permit a form of “self-licensing,” and the elimination of state, local, and attorney inspections creates a complete lack of transparency and oversight to ensure that known violations and abuses are not perpetuated. Previous research and policy analysis has revealed that “DHS facilities do not meet the basic standards for the care of children in residential settings,” and there have been multiple instances of trauma and harm (including death) of noncitizen children in DHS custody while operating under the standards set by FSA. These documented violations and harms provide a substantial basis for our concerns. For example, an infant child, Mariée, died post-release from lack of medical care while detained at the Dilley, TX family residential center; a 14-year-old girl was sexually assaulted by an employee of an ORR-contracted shelter in Arizona; and multiple children have been repeatedly drugged at ORR facilities. Therefore, we oppose the proposed changes that include provisions for ‘self-monitoring’ of FRC facilities by federal agencies, given the associated added risk for further traumatization of noncitizen children and families.

Consistent with what is predicted by general trauma literature, a wide and growing body of research has documented the specific negative mental health impact of existing U.S. immigration policy and practices on immigrant youth and their families. Therefore, we state with confidence that the trauma of indefinite, forced family detention has broad and profound consequences that span multiple generations; these consequences for noncitizen children and families will be directly attributable to U.S. government policy and practice, should the proposed regulations changes be implemented.

Recommendations

SAMSHA offers guidelines for key principles of a trauma-informed approach, which include: (1) safety, (2) trustworthiness and transparency, (3) peer support, (4) collaboration and mutuality, (5) empowerment, voice and choice, and (6) sensitivity to cultural, historical, and gender issues. We suggest that HHS seek to adhere to its own recommendations and guidelines in developing policy and practices for receiving noncitizen children and families. In particular, the proposed changes to current regulations directly violate standards of trustworthiness, transparency, collaboration, and empowerment, as recommended by SAMSHA. Children and families in detention have little agency, knowledge, or control (if any) over the conditions of their residential placement, their legal proceedings, and/or their release from secured facilities. And, the U.S. government has already demonstrated an inability or unwillingness to provide appropriate oversight under existing FSA standards of care; eliminating these strictures will only put detained parents and children at greater risk of harm. Furthermore, the proposed regulations demonstrate a lack of sensitivity to cultural and historical issues, as they fail to attend to the sociopolitical factors that drive noncitizen children and families to seek refuge and asylum in the U.S. These violations of policy and practice recommendations (as provided by SAMHSA and additional professional organizations, such as the American Academy of Pediatrics) exacerbate the trauma imposed upon noncitizen children and families by DHS and HHS authorities.

In rejecting the proposed alterations to DHS regulations, we recommend that the current standards set by the FSA be upheld, rigorously enforced, and even strengthened.
We strongly oppose proposals that require the indefinite and indeterminate detention of noncitizen children, whether unaccompanied or in family units. We also strongly oppose the elimination of independent state and local licensing, and its replacement by an undefined internally-driven program that has none of the features of licensure. At a minimum, licensure requires pre-approval compliance with clearly articulated standards, provides for regular inspections, and has processes for complaint and enforcement, including the ability to suspend or revoke the license. The government has shown little if any success in self-regulating and policing any aspect of the separation, detention, and release of families and children. For example, Arizona is currently reviewing the statewide revocation of licenses granted to thirteen ORR shelters run by the Southwest Keys contractor.\textsuperscript{30}

Additional recommended alternatives for addressing the current influx of noncitizen children and family units include the following: (1) discontinue the use of family detention and family separation practices, except in extreme cases of danger or risk identified through comprehensive individualized assessment, (2) house families together in community settings or in ‘least restrictive’ environments (if needed, using available technologies to monitor individual’s whereabouts), (3) provide families with options and agency in determining their residential placement, including the option for release into the community, while maintaining their commitment to attendance at required court hearings, (4) allocate resources and services (including case management, health care, and mental health prevention and treatment services) for noncitizen families that are culturally- and historically-sensitive (acknowledging the U.S. government role in creating and exacerbating the current immigration crisis), and (5) provide a humane response to asylum-seeking children and families in accordance with U.S., international, and humanitarian law.

The U.S. government has a duty to protect children in its custody and care, rather than to punish, criminalize, and further traumatize children and families seeking refuge and asylum. The alternatives described above are in accordance with trauma-informed principles and practices, as defined by SAMHSA; any efforts to implement regulations and policy should be guided by trauma-informed principles in order to reduce U.S. government complicity in the traumatization of children and families. These recommendations are based on current objective scientific knowledge of the pervasive, lasting, and multigenerational impact of trauma exposure.

Conclusion

In summary, we unanimously and ardently oppose the proposed changes to DHS and HHS regulations that would overturn the FSA, and we request that they be withdrawn in total. We are gravely concerned about the potential negative physical and mental health impact of implementing these changes (particularly those allowing for indefinite detention of families and children), given current knowledge of the psychological, medical, and public health consequences (including high costs of care) associated with the trauma of family detention. The U.S. government should not and cannot be complicit in further traumatizing noncitizen children and families or anybody else, not only because of the inherent human rights violations involved in practices of indefinite detention, but also because of the high costs that will be imposed on our own health care systems and the damage to U.S.
international reputation. Here we express our concern that the U.S. government’s knowing and deliberate infliction of trauma on noncitizen and asylum-seeking children and families will have psychological consequences on neighboring and allied international political bodies resulting in increased anger and aggression to fuel anti-American sentiment.

If the proposed regulations are adopted, the U.S. government will be directly responsible for the continued traumatization of children and their families. This renders the United States susceptible to international censure while decreasing the security of the nation. We once again urge you to withdraw the proposed regulation changes that would overturn the Flores Settlement Agreement.

Signed,

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