



**Response to Request for Public Comments on Proposed Rule
DHS Docket No. ICEB-2018-0002**

**Submitted By
Education Law Center-PA**

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

Subject: **DHS Docket No. ICEB-2018-0002 - *Public Comment Opposing Proposed Rule***

Dear Ms. Seguin,

On behalf of the **Education Law Center-PA**, please accept the following comments regarding the Notice of Proposed Rulemaking pertaining to the *Flores Settlement*. For the reasons outlined below, the Education Law Center-PA opposes the proposed rule.

I. Who We Are

The **Education Law Center – PA (“ELC”)** is a statewide, non-profit, legal advocacy organization which advances the rights of Pennsylvania’s most educationally “at risk” students, including children who are immigrants, children experiencing homelessness, children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English language learners, and LGBTQ students. Over its more than forty-year history, ELC has helped thousands of individual immigrant children to obtain the educational services they desperately need to achieve life-long stability. We have also advanced effective state and national legislative and policy reforms to improve educational outcomes for vulnerable children, including immigrant students.

II. Importance of *Flores Settlement*

The 1997 decision in the case of *Flores v. Reno* required that children be reunited with their family members without delay, protecting them from being indefinitely held in detention. Currently, under the court issued *Flores Settlement*, children cannot be held in detention for longer than 20 days. The decision also outlined specific guidelines for children in government

custody ensuring that they are held under the “least restrictive conditions” possible and provided due process. This administration is using the federal regulation process to propose new standards for children in detention which are contrary to the *Flores* settlement. These standards, as outlined by the government could lead to children being jailed indefinitely and under dangerous and inhumane conditions. The proposed rule will also make it more difficult for children to be reunited with their parents or relatives.

The purpose underlying the *Flores Settlement* is the advancement of child welfare principles for immigrant children seeking protection in the United States; rather than furthering this goal, the NPRM is an unambiguous effort to expand the authority of the Department of Homeland Security (DHS) to jail families in poor conditions and dismantle established protections for immigrant children in DHS and Health and Human Services (HHS) custody.

Proposed Changes to DHS and HHS Regulations

Substantively, the NPRM proposes numerous significant changes to DHS and HHS regulations and policy that will undercut protections for immigrant children, including provisions that:

- Allow DHS to operate family jails under their own self-licensing scheme, removing existing Flores protections from the family detention system despite evidence showing that family detention facilities are inappropriate and dangerous places for children, and that ICE’s mechanisms for self-inspections are woefully deficient
- Grant DHS and HHS wide discretion to suspend all protections for children in the case of an “emergency”
- Heighten the standard for release on parole for children in expedited removal proceedings
- Limit release options for children in government custody
- Set vague and potentially harmful standards for age determinations for children in DHS and HHS custody
- Require repeated redeterminations of a child’s status as an “unaccompanied alien child,” meaning that vulnerable children who arrived alone at a tender age will be stripped of minimal due process protections throughout their immigration proceedings
- Reject the right to a bond hearing guaranteed by *Flores*, instead proposing an asymmetrical administrative process making HHS jailer and judge.

III. Why We Oppose The Proposed Changes

On September 7, 2018, the Departments of Homeland Security (DHS) and Health and Human Services (DHHS) proposed these regulations to remove key protections which ensure the health and safety of immigrant children held in government custody and would lead to the indefinite detention of immigrant children and families. The proposed rule undermines the fundamental purpose of legal protections enshrined in the 1997 *Flores Settlement Agreement*: to protect immigrant children in government custody and ensure their expeditious release from detention.

ELC implores you to defend and implement in full the *Flores* Agreement. Immigrant children should be released from immigration detention as quickly as possible. Immigrant children are uniquely vulnerable and deserve special protections and treatment under law.

The separation and detention of immigrant families constitutes a form of child abuse. Seeking asylum is not a crime, and jailing children to punish their families for seeking safety is inhumane. Children shouldn't be detained in any circumstances, and especially not with weakened protections. Their basic health, safety, and well-being depend on their access to proper medical care, appropriate education, and safe living conditions - and being cared for by their families. Detention is no place for children, and families belong together.

The proposed regulations would lead to the indefinite detention of children and would directly contravene a core principle of *Flores* - that immigrant children must be released from detention as "expeditiously" as possible. *Flores* calls for the release of a child from immigration detention within days, stating that the government must generally release a minor "without unnecessary delay." This regulation, however, would allow children to be detained with their parents through the entirety of their removal proceedings, which could mean children are detained for months or even years in immigration detention facilities. ***Volumes of evidence show the traumatizing effects of detention on children, and the considerable and lasting harm it has on their physical and mental health. Allowing indefinite detention of children is unacceptable.***

The proposed regulations would also allow the government to sidestep state-licensing requirements of detention facilities holding children, leading to the removal of critical oversight over the conditions in these facilities. The *Flores* Agreement requires the government to expeditiously release children to a parent or other family member. If neither is available, the government must release the child to a program licensed by a state child welfare agency program. The government seeks to avoid this requirement by self-licensing the facilities that would hold children and parents together -- Family Residential Centers or FRCs, rather than requiring that they be licensed by a state child welfare agency. Such a self-licensure is unacceptable as a form of accountability. The government lacks the impartiality and expertise to ensure compliance with basic standards relating to the care and custody of migrant children, including addressing their educational needs.

For these reasons, the Education Law Center stands with other child advocates to strongly oppose the proposed regulations.

Thank you for the opportunity to comment.

Sincerely,



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