

# AMERICAN ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY

W W W . A A C A P . O R G

November 6, 2018

Kirstjen M. Nielsen  
Secretary, Department of Homeland Security  
Alex M. Azar, II, Secretary, Department of Health and Human Services  
c/o 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: Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children,  
Notice of Proposed Rulemaking, DHS Docket No. ICEB-2018-0002

*Submitted Electronically*

Dear Secretaries Nielson and Azar:

The American Academy of Child and Adolescent Psychiatry (AACAP) appreciates the opportunity to comment on the Department of Homeland Security (DHS) and Department of Health and Human Services (HHS) Notice of Proposed Rulemaking (NPRM) that would substantially modify the terms of the Flores Settlement Agreement (FSA), which promulgated the standards under which minor children, accompanied or unaccompanied, are detained and cared for while in U.S. custody. AACAP is the leading medical professional organization for 9,400 child and adolescent psychiatrists committed to the welfare of children, adolescents, and their families. We therefore have a strong interest in this proposed rulemaking that would adversely affect children, adolescents, and their families, and we strongly oppose the modifications to Paragraphs 14 and 19 of the FSA, which detail the release of minors in custody, and the licensing standards of DHS facilities, respectively.

## **Paragraph 14**

Paragraph 14 of the FSA outlines a “general policy favoring release” and currently requires DHS to release a minor “without unnecessary delay” when DHS determines that the detention of a minor is not required either to secure timely appearance before DHS or an immigration judge, or to ensure the minor’s safety or the safety of others.<sup>1</sup> “Without unnecessary delay” has been interpreted by the District Court for the Central District of California to mean within an average of 20 days from the day on which they arrive in the custody of immigration authorities.<sup>2</sup> Custodians to whom a minor can be released under the FSA are a parent, legal guardian, adult relative, or an individual designated by the parent. The

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<sup>1</sup>[https://www.aclu.org/sites/default/files/field\\_document/flores\\_settlement\\_final\\_plus\\_extension\\_of\\_settlement\\_011797.pdf](https://www.aclu.org/sites/default/files/field_document/flores_settlement_final_plus_extension_of_settlement_011797.pdf)

<sup>2</sup><https://www.aila.org/File/Related/14111359k.pdf>

proposed rule, if finalized without significant revision, would permit the detention of family units together for the pendency of their immigration proceedings, which could mean, in practical terms, the detention of children for undetermined periods of time, and would necessitate the allocation of substantial resources to establish additional facilities suitable for the detention of families. Such modification would significantly undermine the original intent of the FSA and is unacceptable.

AACAP believes that these resources could be put to better use and recommends the expeditious hiring and onboarding of additional immigration judges to help cut through the backlog of cases, given the developmental and emotional harm of incarcerating children for long periods of time, even if incarcerated with their parents. Incarceration for long periods of time interferes with the normal development of a child and can lead to lifelong emotional problems, including depression, anxiety, substance use disorders, developmental regression, and post-traumatic stress disorder. Parents who find themselves in this highly stressful situation are also at risk of developing similar emotional problems, in addition to being less available and responsive to their children. This situation, in turn, can severely interrupt the natural attachment between children and parents<sup>3</sup>. There is a substantial body of research linking the trauma of childhood detention with adverse outcomes, and AACAP has recently made available several peer-reviewed journal articles published in the *Journal of the American Academy of Child and Adolescent Psychiatry*.<sup>4</sup> This collection of articles discusses the harm done to children from toxic levels of stress and the disruption in normal development that are inherent in being detained in U.S. custody.

Expedited immigration proceedings would minimize the harm being inflicted on families being held in custody for long periods of time. AACAP believes that the federal government should prioritize this activity given the current backlog of immigration cases and the harm being done to children and families, many of whom have experienced war and violence in their home countries and are already at risk for stress and trauma. According to a recent study, 83% of Central American migrants who flee their countries report violence as the primary reason.<sup>5</sup> Minimizing time in custody in addition to meeting the mental health needs of detained families are both essential in mitigating the harm being caused to these vulnerable children and families.

#### **Paragraph 19**

Paragraph 19 of the FSA outlines licensing requirements for DHS detention facilities. Under the FSA, DHS can only detain children and families in facilities that meet state or local government standards. The proposed rule would modify this policy by permitting the federal government to deem a facility a licensed facility, if it were audited by a federal government-retained third-party. AACAP believes that this would significantly undermine standards of care and protections for children, as currently required by the FSA, and we oppose this change as contrary to the mental and physical health needs of children and families in federal custody. Further, AACAP recognizes that the NPRM would provide DHS and HHS wide discretion to suspend all protections for children in the case of an emergency. The proposed

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<sup>3</sup> [https://www.jaacap.org/article/S0890-8567\(11\)00199-7/fulltext](https://www.jaacap.org/article/S0890-8567(11)00199-7/fulltext)

<sup>4</sup> [https://jaacap.org/toxicstress?utm\\_campaign=STMJ\\_1538681475\\_CALLP\\_HYBNCON&utm\\_medium=BAN&utm\\_source=WEB&dgcid=STMJ\\_1538681475\\_CALLP\\_HYBNCON](https://jaacap.org/toxicstress?utm_campaign=STMJ_1538681475_CALLP_HYBNCON&utm_medium=BAN&utm_source=WEB&dgcid=STMJ_1538681475_CALLP_HYBNCON)

<sup>5</sup> <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0168692>

regulatory definition of “emergency” stipulates that not only could an emergency delay placement of minors, but that it could also delay compliance with other provisions of the NPRM.

The NPRM states that: “The impact, severity, and timing of a given emergency dictate the operational feasibility of providing certain items to minors and thus the regulations cannot contain every possible reality DHS will face. Thus, the definition of ‘emergency’ is flexible and designed to cover a wide range or possible emergencies.” As proposed, the revised definition of emergency would, in practical terms, provide DHS with the unfettered ability to declare emergencies when the agency is not able to meet the baseline needs of children in custody, for whatever reason, and we recommend that this definition be removed from the NPRM.

The FSA outlines several baseline standards for the treatment of children, including the provision of regular meals, medical care, counseling, educational opportunities, recreation, and religious services, among others, which the proposed rule retains. AACAP believes that these services, delivered by well-trained and caring individuals, are essential for the healthy development of children and must be retained.

In conclusion, AACAP is deeply concerned about the proposed modifications to the licensing process, the definition of “emergency,” and the proposed change to length of stay in custody of children. AACAP opposes holding children in U.S. custody for lengthier periods of time than under the FSA. We urge that the proposed rule be modified significantly, or withdrawn, and resources be directed toward more productive activities that would bring faster resolution to this humanitarian crisis, such as hiring and onboarding more immigration judges to address the excessive backlog of immigration cases.

Thank you for your serious consideration of our concerns. Should you have questions, please contact Karen Ferguson, Deputy Director of Clinical Practice, at [kferguson@aacap.org](mailto:kferguson@aacap.org) or Ronald Szabat, JD, LLM, Director of Government Affairs and Clinical Practice at [rszabat@aacap.org](mailto:rszabat@aacap.org).

Sincerely,



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