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November 1, 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

Dear Assistant Director Seguin,

On behalf of the Anti-Defamation League (ADL), we write in strong opposition to proposed rules by the U.S. Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS) to amend regulations related to the *Flores* Settlement Agreement (“*Flores*”). We strongly urge that they be rescinded.

ADL, founded in 1913 to stop the defamation of the Jewish people and to secure justice and fair treatment to all, represents a community that has experienced the plight of living as refugees throughout its history. ADL has advocated for fair and humane immigration policy since its founding and has been a leader in exposing anti-immigrant and anti-refugee hate that has poisoned our nation’s debate.

The proposed rules, as drafted, would remove key safeguards put in place to ensure the health and safety of immigrant children held in government custody and would lead to the indefinite detention of immigrant children and families. In so doing, the administration is setting up a false choice between family separation and indefinite family detention, ignoring the availability and effectiveness of alternatives to detention as noted below. And it is attempting to circumvent federal court rulings interpreting *Flores*, including most recently by the U.S. District for the Central District of California, in which Judge Dolly Gee forcefully rejected an application by the Department of Justice (DOJ) to modify *Flores*, stating: “...what is certain is that the children who are the beneficiaries of the *Flores* Agreement’s protections and who are now in Defendants’ custody are blameless. They are subject to the decisions made by adults over whom they have no control. In implementing the Agreement, their best interests should be paramount.”¹

Flores requires that children be released without unnecessary delay to a family member or an adult seeking custody. Further, where a child cannot be released due to flight risk concerns, under *Flores* they should be held in the least restrictive

¹ *Jenny L. Flores, et al. v. Jefferson B. Sessions, III, et al.*, CV 85-4544-DMG, C.D. Calif. (July 9, 2018).

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setting—a non-secure facility licensed by a child welfare entity. *Flores* set national human rights standards regarding the detention, release, and treatment of all children in immigration detention based on underlying principles of child welfare, family unity, and human rights. Rather than furthering this goal, the proposed rules would give DHS unimpeded authority to detain families in poor and abusive conditions and dismantle long-settled human rights protections for immigrant children in federal custody.

Licensing Requirements for Detention Facilities

The proposal seeks to make a number of significant changes to DHS and HHS regulations and policy that will undermine protections for immigrant children. First, it would eliminate the *Flores* state licensing requirement for accompanied children and would replace it with an “alternative federal licensing scheme” for family detention facilities. It would allow DHS to write its own standards of conditions and identify its own external auditors. This is in spite of reports and evidence that overwhelmingly suggests that DHS detention facilities are already dangerous and subject children to abusive and inhumane conditions.² As recently as June 2018, the DHS inspector general found that “ICE’s inspections and monitoring of detention facilities do not lead to sustained compliance or systemic improvements.”³ The federal government should not be granted new and expanded authority to establish standards and certify humane conditions for the detention of children in its own facilities.

Further, this new licensing scheme is likely to be designed to facilitate the opening of additional family detention facilities. But, the use of detention facilities for children and families should not be expanded. Their wide use is inhumane and inappropriate as a deterrence strategy for migrants seeking asylum in the U.S. This is especially true when we know that alternatives to detention are less costly, readily available, and actually successful. Indeed, DHS reports that family incarceration costs up to 60 times more than using alternatives to detention, such as GPS monitoring devices, in-person or telephone check-ins, and case management. And full-service alternatives to detention involving case management have been found to be 95% effective.⁴

Removal of Limits on Length of Family Detention

² Blake Ellis, Melanie Hicken, Bob Orega, “Handcuffs, assaults, and drugs called ‘vitamins’: Children allege grave abuse at migrant detention facilities,” CNN, June 21, 2018, *available at* <https://www.cnn.com/2018/06/21/us/undocumented-migrant-children-detention-facilities-abuse-invs/index.html>; Amy Taxin, “Immigrant children describe treatment in detention centers,” AP News, July 18, 2018, *available at* <https://apnews.com/1a8db84a88a940049558b4c450dccc8a>.

³ Office of Inspector General, “ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements,” U.S. Department of Homeland Security, 2018, *available at* <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.

⁴ Alternatives to Detention, National Immigration Forum, *available at* <https://immigrationforum.org/article/infographic-alternatives-to-detention/>

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The proposed regulations would also permit the indefinite detention of families, eliminating the existing limitations imposed by *Flores* on the detention of children. Federal court rulings applying *Flores* barred the long-term incarceration of children in immigration detention for more than 20 days while removal proceeding continue when the government is experiencing an “influx.” The average wait time for an immigration case to be heard is 721 days—about two years. The prolonged and indefinite detention of immigrant children in detention facilities undermines the core values of the United States and the purpose of *Flores*—to ensure our country treats vulnerable children with humanity and dignity.

Psychologists, children’s health experts, and research shows emotional harm, including depression, post-traumatic stress, and other mental health problems could result from long-term stays by children in institutional settings.⁵ This trauma is compounded by the suffering these children have already experienced in their home country causing them to flee, or through their journey to the United States. Simply put, these are not places for children.

The New York Times recently reported that the number of migrant children being held at federal immigration facilities has skyrocketed more than fivefold since last summer, reaching a total of 12,800 last month. Against this backdrop, the proposal to detain more children indefinitely is particularly concerning.⁶

The proposed regulations would also allow DHS and HHS to weaken protections for children in the event of an “emergency” or during an “influx” of migrants, allowing these agencies to suspend basic needs from children, including meals and snacks. Finally, by limiting the use of “parole,” it would also make it more difficult for a child to be released for urgent circumstances.

The Center for American Progress estimates that over a decade, the proposed rule would cost DHS more than \$2 billion at the low end, and as much as \$12.9 billion at the high end.⁷ It is also unlikely that overturning *Flores* would lead to fewer children and families seeking asylum in the United States—instead, it would penalize children fleeing unimaginable violence and persecution, subject children to trauma and abusive and inhumane conditions, and would undermine both basic human rights and

⁵ Benedict Carey, “A Troubling Prognosis for Migrant Children in Detention: ‘The Earlier They’re Out, the Better,’” *NYTimes*, June 18, 2018, *available at* <https://www.nytimes.com/2018/06/18/health/migrant-children-mental-health.html>.

⁶ Caitlin Dickerson, “Detention of Migrant Children Has Skyrocketed to Highest Levels Ever,” *NYTimes*, Sep. 12, 2018, *available at* <https://www.nytimes.com/2018/09/12/us/migrant-children-detention.html>.

⁷ The High Costs of the Proposed *Flores* Regulation, Center for American Progress, October 19, 2018, *available at* <https://www.americanprogress.org/issues/immigration/reports/2018/10/19/459412/high-costs-proposed-flores-regulation/>.

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the values on which this country stands. We disagree in the strongest terms with the proposed regulations and urge you not to remove key safeguards for these children and families in the U.S.

Sincerely,

Erika Moritsugu

Vice President, Government Relations and Community Engagement

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