



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

RE: DHS Docket No. ICEB-2018-0002, Comments in Response to Proposed Rulemaking: Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children  
*Submitted via [www.regulations.gov](http://www.regulations.gov)*

Dear Assistant Director Seguin:

On behalf of ASISTA Immigration Assistance, I am submitting this response to the Department of Homeland Security's (DHS) and the Department of Health and Human Services (HHS) Notice of Proposed Rulemaking (proposed rule) published in the Federal Register on September 7, 2018.

ASISTA is a national organization dedicated to safeguarding and advancing the rights of immigrant survivors of violence. ASISTA worked with Congress to create survivor-based forms of immigration relief through the Violence Against Women Act (VAWA) and for 15 years has provided attorneys and advocates nationwide with valuable resources to help survivors access the services and status they need to achieve safety and independence. Given our mission and work on behalf of immigrant survivors of violence, we stridently oppose the proposed rule as it is antithetical to preserving the rights and dignity of survivors and their families.

I. Family Detention is Not a Deterrent

DHS' and HHS' attempt to implement the Flores Settlement Agreement (FSA) through rulemaking falls short of the spirit and intent of the agreement, which was to "treat all minors in its custody with dignity, respect, and special concern for their particular vulnerability as

minors.”<sup>1</sup> The proposed rules are based on a false and troubling misconception that family residential centers (FRCs) are necessary as a deterrent to family arrivals at the border.<sup>2</sup>

The proposed rule corrolates the implementation of family detention in 2014 to a decrease in border crossing by families in 2015, and similarly posits that the 2015 Flores court order led to a sharp increase in family border crossing. Yet in both instances, the proposed rule acknowledges that it is “difficult to prove a direct causal link.”<sup>3</sup> Moreover, recent research disputes the claim that family incarceration is a deterrent to family arrivals.<sup>4</sup> Even if true, it is unconsonable that our government's policy is to detain families for purposes of deterrence, especially as this undermines our obligations to asylum seekers under the law.

The proposed rule also suggests that family incarceration is necessary to ensure families attend all immigration proceedings in their cases. To justify this, however, DHS and HHS cite no data that specifically examines family units.<sup>5</sup> The proposed rule presents a false dilemma: incarcerating families or separating them are not the only options available to the government to ensure attendance at proceedings. There are alternatives that are community-based, operated by non-profit agencies, and that allow survivors to get access to the care and services that they need. These programs are more humane and less costly than detaining families.<sup>6</sup>

## II. The Proposed Rule Ignores the Root Causes of Migration from Northern Triangle Countries

The proposed rule ignores the ample evidence demonstrating that the Northern Triangle countries of El Salvador, Guatemala and Honduras are some of the most violent regions in the

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<sup>1</sup> The Flores Settlement Agreement (January 17, 1997) Case No. CV 85-4544-RJK (C.D. Cal. 1996); available at: <https://www.aclu.org/legal-document/flores-v-meese-stipulated-settlement-agreement-plus-extension-settlement>;

<sup>2</sup> Notice of Proposed Rulemaking, “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children,” (hereinafter “Proposed Rule”) Federal Register, Vol. 83, No. 174, September 7, 2018, pgs. 45493,

<https://www.regulations.gov/document?D=ICEB-2018-0002-0001>.

<sup>3</sup> *Id* at 45493 and 45494.

<sup>4</sup> See Tom K. Wong, Center for American Progress, *Do Family Separation and Detention Deter Immigration?* July 24, 2018, <https://www.americanprogress.org/issues/immigration/reports/2018/07/24/453660/family-separation-detention-deter-immigration/>. See also Tom K. Wong, Center for American Progress, *Did a 2015 Flores Court Ruling Increase the Number of Families Arriving at the Southwest Border?* October 16, 2018, <https://www.americanprogress.org/issues/immigration/news/2018/10/16/459358/2015-flores-court-ruling-increase-number-families-arriving-southwest-border/>.

<sup>5</sup> Proposed Rule at 45494, *Cf* Human Rights First, *Immigration Court Appearance Rates* (Feb 2018), available at [https://www.humanrightsfirst.org/sites/default/files/Immigration\\_Court\\_Appearances\\_Feb\\_2018.pdf](https://www.humanrightsfirst.org/sites/default/files/Immigration_Court_Appearances_Feb_2018.pdf)

<sup>6</sup> See Women’s Refugee Commission. “Backgrounder: Family Case Management Program”, available at: <https://www.womensrefugeecommission.org/rights/resources/1653-family-case-management-program> ASISTA affirms WRC’s position that if re-instated, the Family Case Management Program should contract directly with qualified community-based organizations.

world.<sup>7</sup> In recent years, numerous studies have evidenced that violence is one of the principal causes of forced migration from this region and a central reason that individuals from this area seek international protection.<sup>8</sup> Indeed, the number of asylum seekers from these Northern triangle countries quintupled from 2012 to 2015.<sup>9</sup>

Many of the women and children arriving at the border come to the United States may be fleeing horrific violence at the hands of intimate partners and criminal gangs, as well as increased risks of human trafficking.<sup>10</sup> Sexual and gender-based violence was reported as a significant reason that causes women and girls from this region to seek asylum protections.<sup>11</sup> These individuals undertake dangerous journeys because their abusers are able to commit atrocities without accountability, and government institutions fail to provide survivors with protection.

It has been widely reported that “gangs in Northern Triangle countries employ sexual violence as a strategy to maintain control over territories and populations.”<sup>12</sup> The United Nations has categorized this violence and the forced recruitment of girls and women as a form of slavery.<sup>13</sup>

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<sup>7</sup> David Gagne. *InSight Crime’s 2016 Homicide Round-up*. (January 16, 2017), available at <https://www.insightcrime.org/news/analysis/insight-crime-2016-homicide-round-up/>

<sup>8</sup> See, e.g., United Nations High Commissioner for Refugees, *Children on the Run* (May 13, 2014), <http://www.unhcr.org/56fc266f4.html>; United Nations High Commissioner for Refugees, *Women on the Run* (Oct. 26, 2015), <http://www.unhcr.org/en-us/publications/operations/5630f24c6/women-run.html>; Jonathan T. Hiskey, Abby Cordova, Diana Orces, Mary Fran Malone, American Immigration Council, *Understanding the Central American Refugee Crisis: Why They are Fleeing and How U.S. Policies are Used to Deter Them* (Feb. 2016), [https://www.americanimmigrationcouncil.org/sites/default/files/research/understanding\\_the\\_central\\_american\\_refugee\\_crisis.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/understanding_the_central_american_refugee_crisis.pdf); Michael Clemens, Center for Global Development, *Violence, Development, and Migration Waves: Evidence from Central American Child Migrant Apprehensions* (July 27, 2017), available at: <https://www.cgdev.org/sites/default/files/violence-development-and-migration-waves-evidence-central-american-child-migrant.pdf>

<sup>9</sup> Rocio Cara Labrador and Danielle Renwick. Counsel on Foreign Relations. *Central America’s Violent Northern Triangle* (June 26, 2018), available at <https://www.cfr.org/backgrounder/central-americas-violent-northern-triangle>

<sup>10</sup> Kids in Need of Defense, *Neither Security nor Justice: Sexual and Gender Based Violence in El Salvador, Honduras, and Guatemala*, May 4, 2017, [https://supportkind.org/wp-content/uploads/2017/05/Neither-Security-nor-Justice\\_SGBV-Gang-Report-FINAL.pdf](https://supportkind.org/wp-content/uploads/2017/05/Neither-Security-nor-Justice_SGBV-Gang-Report-FINAL.pdf).

<sup>11</sup> United Nations High Commissioner for Refugees, *Women on the Run* (Oct. 26, 2015), <http://www.unhcr.org/en-us/publications/operations/5630f24c6/women-run.html>;

<sup>12</sup> Kids in Need of Defense, Latin America Working Group, Women’s Refugee Commission, *Sexual and Gender Based Violence (SGBV) & Migration Fact Sheet*, July 2018, <https://supportkind.org/wp-content/uploads/2018/08/SGBV-Fact-sheet.-July-2018.pdf>.

<sup>13</sup> Nina Lakhani. *It’s a crime to be young and pretty girls flee predatory Central American Gangs*. The Guardian. (November 23, 2016), available at <https://www.theguardian.com/global-development/2016/nov/23/central-america-gangs-migrants-sexual-exploitation-prostitution> See also Kids in Need of Defense, Latin America Working Group, Women’s Refugee Commission, *Sexual and Gender Based Violence (SGBV) & Migration Fact Sheet*, July 2018, <https://supportkind.org/wp-content/uploads/2018/08/SGBV-Fact-sheet.-July-2018.pdf>.

Domestic violence is also widespread in this region,<sup>14</sup> and El Salvador, Honduras and Guatemala have some of the highest rates of femicides in the world.<sup>15</sup>

Family incarceration in the United States would increase the trauma that these individuals have already experienced before arriving at the border, and many may have grounds for asylum based on these conditions.

### III. Family incarceration re-traumatizes survivors of gender-based violence and delays the healing that they need

We are deeply concerned that the proposed rule permits the indefinite incarceration of children, including those arriving with their parents, and imposes very narrow criteria for release. In addition, the proposed rule's stricter standards for parole will further exacerbate survivors' existing trauma.<sup>16</sup> As mentioned above, many asylum-seeking women and children who flee to the United States may have experienced domestic and child abuse, sexual assault, or human trafficking. Survivors of such abuses overwhelmingly suffer Post-Traumatic-Stress-Disorder (PTSD) and trauma which can manifest itself through anxiety, depression, and trouble sleeping.<sup>17</sup>

Incarceration significantly exacerbates this trauma. According to the American Academy of Pediatrics, "[t]he act of detention or incarceration itself is associated with poorer health outcomes, higher rates of psychological distress, and suicidality making the situation for already vulnerable women and children even worse."<sup>18</sup> Similarly, the American College of Physicians stated that forced family detention "can be expected to result in considerable adverse harm to the detained children and other family members, including physical and mental health, that may follow them through their entire lives and accordingly should not be implemented by the U.S. government."<sup>19</sup>

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<sup>14</sup> Kids in Need of Defense, Latin America Working Group, Women's Refugee Commission, *Sexual and Gender Based Violence (SGBV) & Migration Fact Sheet*, July 2018, <https://supportkind.org/wp-content/uploads/2018/08/SGBV-Fact-sheet.-July-2018.pdf>

<sup>15</sup> Geneva Declaration of Armed Violence and Development, "Lethal Violence Against Women and Girls" in *Global Burden of Armed Violence 2015: Every Body Counts*, May 8, 2015, 87-120, [http://www.genevadeclaration.org/fileadmin/docs/GBAV3/GBAV3\\_Ch3\\_pp87-120.pdf](http://www.genevadeclaration.org/fileadmin/docs/GBAV3/GBAV3_Ch3_pp87-120.pdf).

<sup>16</sup> Proposed Rule at 45495.

<sup>17</sup> See e.g. Nicole Yuan et al. *The Psychological Consequences of Sexual Trauma* (March 2006), available at [https://vawnet.org/sites/default/files/materials/files/2016-09/AR\\_PsychConsequences.pdf](https://vawnet.org/sites/default/files/materials/files/2016-09/AR_PsychConsequences.pdf)

<sup>18</sup> American Academy of Pediatrics. *Letter to Secretary Jeh Johnson*, July 24, 2015, <https://www.aap.org/en-us/advocacy-and-policy/federal-advocacy/Documents/AAP%20Letter%20to%20Secretary%20Johnson%20Family%20Detention%20Final.pdf>  
*Detention of Asylum-Seeking Mothers in America Must End Now* (Oct. 28, 2015), <https://www.tahirih.org/wp-content/uploads/2015/10/Righting-the-Wrong-Why-Detention-of-Asylum-Seeking-Mothers-and-Children-Must-End-Now-Web-Copy.pdf>.

<sup>19</sup> American College of Physicians. *The Health Impact of Family Detention in Immigration Cases*. (July 3, 2018), available at [https://www.acponline.org/acp\\_policy/policies/family\\_detention\\_position\\_statement\\_2018.pdf](https://www.acponline.org/acp_policy/policies/family_detention_position_statement_2018.pdf)

Incarcerating survivors is also inhumane because it deprives them of access to trauma-informed mental health providers and community networks. Access to trauma-informed mental health care, particularly in cases of sexual assault, is essential to ensure that survivors heal and achieve self-sufficiency. The longer survivors go without adequate care, the more challenging the healing process may be.<sup>20</sup>

Furthermore, incarcerating families in remote facilities impedes access to critical legal services. Advocates report that only 14% of detained immigrants obtained an attorney to help with their case.<sup>21</sup> Studies have shown that immigrants with legal counsel are more likely to be released from detention and to seek and obtain relief from deportation.<sup>22</sup> Because families in remote facilities lack the necessary access to counsel and adequate mental health services, and are vulnerable to re-traumatization while in detention, they are not able to adequately prepare their cases.

#### IV. DHS' federal licensing proposal will not provide adequate oversight and standards of care for survivors.

While the rule proposes a federal licensing scheme for immigration prisons, it does not explain who will develop such a scheme. At a minimum, the rule should prohibit DHS from taking on this role. This is essential given that DHS has been accused of harming children in its custody, including committing sexual, verbal, and physical assaults, depriving children of food and water, and subjecting them to extreme temperatures.<sup>23</sup> The rule also requires “third party oversight of compliance” with the scheme, but likewise does not describe the authority and required level of objectivity of the third party responsible for oversight.<sup>24</sup> Moreover, no amount of oversight

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<sup>20</sup> Elyssa Barbash, PhD., *Psychology Today*, “Overcoming sexual assault: symptoms and recovery,” Apr. 18, 2017, <https://www.psychologytoday.com/us/blog/trauma-and-hope/201704/overcoming-sexual-assault-symptoms-recovery>

<sup>21</sup> Ingrid Eagly and Stephen Shafer. American Immigration Council. *Access to Counsel in Immigration Court* (September 2016), available at [https://www.americanimmigrationcouncil.org/sites/default/files/research/access\\_to\\_counsel\\_in\\_immigration\\_court.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf)

<sup>22</sup> *Id.*

<sup>23</sup> Blake Ellis, Melanie Hicken, Bob Ortega, CNN, *Children allege grave abuse at migrant detention facilities*, June 21, 2018, <https://www.cnn.com/2018/06/21/us/undocumented-migrant-children-detention-facilities-abuse-invs/index.html>; University of Chicago Law School International Human Rights Clinic *et al.*, *Neglect and Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection* (May 2018), [https://www.dropbox.com/s/lplnnufjbcwi0xn/CBP%20Report%20ACLU\\_IHRC%205.23%20FINAL.pdf?dl=0](https://www.dropbox.com/s/lplnnufjbcwi0xn/CBP%20Report%20ACLU_IHRC%205.23%20FINAL.pdf?dl=0); Guillermo Contreras, *My San Antonio*, “Complaint: Women at Karnes Immigration Facility are Preyed upon by Guards,” Oct. 3, 2014, <http://www.mysanantonio.com/news/local/article/Complaint-Women-at-Karnes-immigration-facility-5797039.php>.

<sup>24</sup> DHS's current inspections and compliance processes for immigration detention are inadequate and result in grave harm to those the agency detains. *See, e.g.*, DHS Office of the Inspector General (OIG), *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, OIG -18-67, June 26, 2018, <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>; DHS OIG, *Management Alert – Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California*, OIG 18-86, Sept. 27, 2018, <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>; Spencer

mitigates the traumatizing effects of imprisonment on children and survivors of gender-based violence. As a 2016 assessment made by a DHS-appointed advisory committee concluded, “DHS’s immigration enforcement practices should operationalize the presumption that detention is generally neither appropriate nor necessary for families – *and that detention or the separation of families for purposes of immigration enforcement or management, or detention is never in the best interest of children.*”<sup>25</sup>

For the reasons proposed above, ASISTA calls on DHS and HHS to withdraw their current proposed rule and to dedicate agency efforts to creating policies that protect the health, safety, and best interests of survivors and their families. Thank you for the opportunity to submit comments on this critical issue. If you require further information, please contact Cecelia Friedman Levin, Senior Policy Counsel at ASISTA, at 202.505.5140 or [cecelia@asistahelp.org](mailto:cecelia@asistahelp.org).

Respectfully submitted,

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Woodman and Jose Olivares, The Intercept, *Immigrant Detainee Called ICE Help Line Before Killing Himself in Isolation Cell*, Oct. 8, 2018, <https://theintercept.com/2018/10/08/ice-detention-suicide-solitary-confinement/>.

<sup>25</sup> Immigration and Customs Enforcement, *Report of the DHS Advisory Committee on Family Residential Centers, 2016*, available at <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf> [Emphasis added].