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, HEAL Trafficking, Inc., Comments in Response to Proposed Rulemaking: "Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children," 83 Fed. Reg. 45486 (September 7, 2018)

Dear Ms. Seguin:

HEAL Trafficking, Inc., offers the following comments to the Department of Homeland Security ("DHS") and the Department of Health and Human Services ("HHS") regarding the Notice of Proposed Rulemaking ("NPRM") to implement and amend regulations relating to the apprehension, processing, care, and custody of immigrant children under the Flores Settlement Agreement ("FSA")[1] published in the Federal Register on September 7, 2018 (83 Fed. Reg. 45,486).

HEAL Trafficking, Inc. is a united group of multidisciplinary professionals dedicated to ending human trafficking and supporting its survivors, from a public health perspective. HEAL Trafficking's mission is to mobilize a shift in the anti-trafficking paradigm toward approaches rooted in public health principles and trauma-informed care by expanding the evidence base; enhancing collaboration among multidisciplinary stakeholders; educating the broader anti-trafficking, public health, and health care communities; and advocating for policies and funding streams that enhance the public health response to trafficking and support for survivors. To this end, HEAL Trafficking engages in work that combats all forms of human trafficking and supports trafficked people of all genders, ages, races/ethnicities, religions, origins, cultures, and sexual orientations. HEAL Trafficking believes that all trafficked persons deserve access to a full range of health care including medical, mental/behavioral health, reproductive health, dental, and substance use disorder treatment services. HEAL Trafficking approaches human trafficking from a public health perspective that incorporates a socio-ecological framework and prevention strategies; and we promote a survivor-centered, trauma-informed, evidence-based, practice-based approach to anti-trafficking efforts. The HEAL Trafficking network includes approximately 2500 participants from all 50 states and the District of Columbia.

For the reasons detailed in the comments that follow, HEAL Trafficking strongly opposes the approach taken in the NPRM and urges DHS and HHS to withdraw the current proposal and dedicate their efforts to advancing policies that safeguard the health, safety, and best interests of children and their families,

[1] Stipulated Settlement Agreement, *Flores, et al. v. Reno, et al.,* Case No. CV 85-4544 (C.D. Cal., Jan. 1, 1997).

at minimum through robust, good-faith compliance with the FSA. The NPRM claims to "parallel the relevant and substantive terms of the FSA, consistent with the HSA and TVPRA, with some modifications…to reflect intervening statutory and operational changes."[2] In reality, however, it seriously weakens the substantive protections currently afforded by the FSA to child trafficking survivors and to children at risk of trafficking.

GENERAL COMMENTS

The NPRM will have an adverse effect on the health and safety of children and families

Implementation of the NPRM will have damaging effects on the safety and mental and physical health of migrant children and families. The NPRM would legalize prolonged and indefinite detention of families; eliminate the state licensing requirement; institutionalize a permanent state of "emergency" to justify failure to meet standards of care; and increase the use of inaccurate and unethical age determination procedures. Under these proposed changes, inadequate conditions of confinement are inevitable, heightening the risk of foreseeable health harms to the detained population. Many of these children and families are survivors of human trafficking or at risk of being trafficked. They have suffered severe trauma in their home countries, during their journeys, and following their arrival in the United States. The effect of the NPRM will be to magnify and prolong their suffering.

Child and family detention are contrary to the recommendations of medical organizations

According to medical experts, DHS detention facilities are not appropriate places for children to be housed. In 2017, the American Academy of Pediatrics published a policy statement titled "Detention of Immigrant Children" stating that immigrant children seeking safe haven in the United States should never be placed in detention facilities.[3] The American Medical Association has also adopted a policy opposing family immigration detention given the negative health consequences that detention has on both children and their parents.[4] In 2018, the American College of Physicians released a policy stating that "forced family detention—indefinitely holding children and their parents, or children and their other primary adult family caregivers, in government detention centers until the adults' immigration status is resolved—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."[5]

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[2] *See,* 83 Fed. Reg. 45486.
[3] Julie M. Linton, *et al.*, "Policy Statement: Detention of Immigrant Children", April 2017, http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483.
[4] American Medical Association, "AMA Adopts New Policies to Improve Health of Immigrants and Refugees", June 12, 2017, https://www.ama-assn.org/ama-adopts-new-policies-improve-health-immigrants-and-refugees.
[5] American College of Physicians, "The Health Impact of Family Detentions in Immigration Cases", July 3, 2018, https://www.acponline.org/acp_policy/policies/family_detention_position_statement_2018.pdf.

Despite these and many other warnings from medical experts, DHS proposes in this NPRM to substitute its own Immigration and Customs Enforcement ("ICE") family residential standards where its family detention facilities cannot obtain licensing from state, municipal, or other appropriate child welfare entities.[6] This would have the effect of eliminating the critical FSA limitation on the detention of children in unlicensed facilities. As a result, and as explicitly intended by DHS in promulgating these proposed rules, DHS would detain children with their families for the entirety of their immigration proceedings - in effect, indefinitely.

There is no evidence that any amount of time in detention is safe for children.[7] In fact, even short periods of detention can cause psychological trauma and long-term mental health risks for children.[8] Studies of detained immigrants have shown that children and parents may suffer negative physical and emotional symptoms from detention, including anxiety, depression and posttraumatic stress disorder.[9] Detention itself undermines parental authority and capacity to respond to their children's needs; this difficulty is complicated if parents experience mental health problems.[10] Parents in detention centers have described regressive behavioral changes in their children, including decreased eating, sleep disturbances, clinginess, withdrawal, self-injurious behavior, and aggression.[11]

Visits to family detention centers by pediatric and mental health advocates have revealed discrepancies between the standards outlined by ICE and the actual services provided, including: inadequate or inappropriate immunizations; delayed medical care; inadequate education services; and limited mental health services.[12] Other reports describe: prison-like conditions; inconsistent access to quality medical, dental, or mental health care;[13] and lack of appropriate developmental or educational opportunities.[14] Conditions in Customs and Border Patrol ("CBP") processing facilities, which include forcing children to sleep on cement floors, open toilets, constant light exposure, insufficient food and water, no bathing facilities, and extremely cold temperatures, are traumatizing for children.[15] No child should ever have to endure these conditions.

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[6] *See,* 83 Fed. Reg. 45525.
[7] Julie M. Linton, *et al.*, "Policy Statement: Detention of Immigrant Children", April 2017, http://pediatrics.aappublications.org/content/139/5/e20170483.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] American Medical Association, "AMA Adopts New Policies to Improve Health of Immigrants and Refugees", June 12, 2017, https://www.ama-assn.org/ama-adopts-new-policies-improve-health-immigrants-and-refugees.
[14] Julie M. Linton, *et al.*, "Policy Statement: Detention of Immigrant Children", April 2017, http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483.
[15] *Id.*

In July 2018, fourteen major medical organizations joined together to voice deep concerns about the treatment that immigrant children and their parents face in federal custody.[16] The letter from these organizations notes that two physicians within DHS' Office of Civil Rights and Civil Liberties found serious compliance issues in DHS-run facilities resulting in "imminent risk of significant mental health and medical harm."[17] The DHS physicians stated that "detention of innocent children should never occur in a civilized society, especially if there are less restrictive options, because the risk of harm to children simply cannot be justified."[18] Currently, there is no mechanism for health professionals to regularly monitor the conditions in DHS facilities and their appropriateness for children.

After almost a year of investigation, the DHS Advisory Committee on Family Residential Centers concluded 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 is never in the best interest of children.[19] We must remember that immigrant children are still children. Protections for children in law or by the courts exist because children are uniquely vulnerable and are at high risk for trauma, trafficking, and violence. Proposals like this NPRM that seek to override the FSA in order to allow for the longer-term detention of children with or without their parents or to weaken federal child trafficking laws strip children of protections designed for their safety and well-being and put their health and well-being at risk.

The NPRM disregards the severe violence that is a root cause of migration

There is substantial evidence to demonstrate that not only poverty but also violence, corruption, and impunity drive forced migration from the Northern Triangle countries of Central America, Guatemala, Honduras, and El Salvador, to the United States and the rest of the region. In recent years, numerous studies have documented violence as a main "push factor" of forced migration from this region and a major reason that individuals seek international protection.[20]

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[16] Letter from American Pediatric Association, *et al.* to The Honorable Charles Grassley *et al.*, July 24, 2018, https://downloads.aap.org/DOFA/Senate%20Congressional%20Oversight%20Request%20Letter%20Final%2007%2024%2018.pdf.

[17] Letter from Dr. Scott Allen and Dr. Pamela McPherson to the Honorable Charles Grassley and the Honorable Ron Wyden, July 17, 2018, https://www.wyden.senate.gov/imo/media/doc/Doctors%20Congressional%20Disclosure%20SWC.pdf.

[18] *Id.*

[19] Report of the DHS Advisory Committee on Family Residential Centers, September 30, 2016, https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf.

[20] *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", October 26, 2015, http://www.unhcr.org/en-us/publications/operations/5630f24c6/women-run.html; Jonathan T. Hiskey *et al.*, "Understanding the Central American Refugee Crisis: Why They are Fleeing and How U.S. Policies are Used to Deter Them", February 2016, https://www.americanimmigrationcouncil.org/sites/default/files/research/understanding_the_central_american_refugee_crisis.pdf; Center for Gender and Refugee Studies, "Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges", February 2015,

Violence is compounded for marginalized populations such as women, children, youth, LGBTI, Afro-descendant, and indigenous communities. Sexual and gender-based violence, in particular, has been documented to be a driver of forced migration from the region causing women and girls to seek international protection.[21] Physical and sexual violence against women and girls is mostly perpetuated by gangs and family members, but also by police and other authorities.[22] The United Nations has categorized this violence and the forced recruitment of girls and women as constituting a contemporary form of slavery.[23]

Indefinite detention in the United States for children and families would compound the trauma that these individuals have already suffered before arriving at the U.S.-Mexico border given the conditions in their home countries. Many of them are human trafficking survivors. Moreover, a substantial number of children, families, and individuals fleeing this region have grounds for asylum based on these conditions. The NPRM fails to respond to the ample evidence demonstrating these realities of forced migration, with DHS instead choosing to assert its conviction that an unsupported correlation demonstrates that the FSA's limitations on child detention draw families to the U.S.[24] The willful blindness of both DHS and HHS comes with an unacceptable human cost for traumatized children and families forced to flee untenable conditions.

COMMENTS ON DHS and HHS REGULATIONS IN THE NPRM

Re-determination of UAC status: Proposed 8 C.F.R. § 236.3(d); 45 C.F.R. § 410.101

DHS

The new rule proposed by the NPRM in 8 C.F.R. § 236.3(d) would require immigration officers to determine whether a person satisfies the definition of an Unaccompanied Alien Child ("UAC") in the Homeland Security Act ("HAS")[25] upon each encounter. If they no longer meet the criteria, they will be stripped of all legal protections afforded to UACs. Children arriving to the U.S. alone face countless challenges, from healing from prior trauma to contending with a new and unfamiliar language, and

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https://cgrs.uchastings.edu/sites/default/files/Childhood_Migration_HumanRights_English_1.pdf and Michael Clemens, Center for Global Development, "Violence, Development, and Migration Waves: Evidence from Central American Child Migrant Apprehensions", July 27, 2017, https://www.cgdev.org/publication/violence-development-and-migration-waves-evidence-central-american-childmigrant.pdf.

[21] See, United Nations High Commissioner for Refugees, "Women on the Run."

[22] *See,* United Nations High Commissioner for Refugees, "Women on the Run"; *see also,* 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.

[23] 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.

[24] *See*, 83 Fed. Reg. 45493.

[25] Homeland Security Act, 6 U.S.C § 462(g) (2010).

complex legal proceedings. These difficulties are particularly pronounced for child survivors of trafficking, violence, abuse, and neglect, who deeply fear they will be returned to countries in which their safety and their lives are at risk. Repeated re-determinations of a child's UAC status under 8 C.F.R. § 236.3(d) would exacerbate the vulnerability of children and run directly contrary to the aims of U.S. anti-trafficking law. In 2008, Congress enacted the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2013 ("TVPRA"), a bipartisan reauthorization of legislation aimed at preventing and combating human trafficking and exploitation and providing support and protection to survivors. Responding to concerns that children arriving alone to the U.S. were not receiving adequate screenings for human trafficking and other protection needs, the TVPRA set forth specific procedures for screening, processing, and caring for UACs.[26] If this proposed rule is maintained, individuals who genuinely arrived as UACs will be stripped of the legal protections guaranteed by the TVPRA that are integral to survivor care and to decreasing the vulnerability of UACs to trafficking.[27]

HHS

In 45 C.F.R.§ 410.101, the NPRM would permit HHS to re-determine a child's status as a UAC and strip the child of related protections—a practice that would run contrary to the mission of the Office of Refugee Resettlement ("ORR") under the HSA and TVPRA, and to the best interests of UACs.

HHS' proposed regulations define the term UAC as provided for by the Homeland Security Act of 2002 - that is, as "a child who has no lawful immigration status in the United States; has not attained 18 years of age; and with respect to whom there is no parent or legal guardian in the United States or no parent or legal guardian in the United States is available to provide care and physical custody."[28]

HHS states that "the HSA, as well as the TVPRA, only gives ORR authority to provide for care and custody of individuals who meet that definition. The statutes, however, do not set forth a process for determining whether an individual meets the definition of a UAC."[29] HHS proposes to "make clear that ORR's determination of whether a particular person is a UAC is an ongoing determination that may change based on the facts available to ORR."[30]

As explained above, status as a UAC carries with it certain substantive and procedural protections enacted by Congress in recognition of the distinct vulnerability of children who arrive in the U.S. without a parent or legal guardian. Yet HHS' proposed regulations would permit ORR a broad and active role in

[26] 8 U.S.C. § 1232. The TVPRA provides distinct procedures for unaccompanied children depending on whether they are from contiguous or non-contiguous countries. Unaccompanied children from non-contiguous countries, including those in Central America, must be transferred to the custody of ORR within 72 hours, where they are screened for trafficking and protection concerns. Children from contiguous countries are screened by CBP for trafficking concerns and protection needs and are transferred to ORR if found to have either or if a determination cannot be made in the requisite period.

[27] William Wilberforce Trafficking Victims Protection Reauthorization Act, 8 U.S.C § 235(b) (2008).

[28] 6 U.S.C. § 279(g)(2).

[29] *See*, 83 Fed. Reg. 45505.

[30] *Id.*

re-determining not only a child's status as a UAC, but potentially the availability of related substantive and procedural protections. Under the proposed rule, ORR could strip UACs of protections intended to facilitate their access to a fair process as they navigate the immigration system and significantly undermine their ability to access humanitarian protection. Far from providing for a child's best interests, such actions would have a destabilizing effect on children, particularly survivors of violence, trafficking, and trauma, and make children increasingly vulnerable. The HSA and TVPRA should not be read to enable such detrimental effects to the well-being of children by the agency charged with ensuring their care and best interests.

COMMENTS ON DHS REGULATIONS IN THE NPRM

Age Determinations: Proposed 8 C.F.R. § 236.3(c)

The proposed regulations purport to rely on both the FSA and TVPRA in setting forth a standard for evaluating the age of children. Yet they contradict both the language and the clear intent of the FSA; the clear, statutory language enacted by Congress in the TVPRA; and well-established agency practices promulgated over more than a decade pursuant to the FSA and the TVPRA. Specifically, the proposed regulations: (1) fail to start with a presumption that the individual is a child; (2) fail to indicate that medical tests cannot serve as the sole basis for age determinations; (3) fail to limit medical testing to bone and dental radiographs; (4) fail to require or even identify other forms of evidence that must be considered when available; and (5) fail to take into account significant advances in medical knowledge, which have demonstrated the unreliability of medical tests to make accurate determinations of whether an individual is younger or older than 18, particularly for migrant children. The use of medical and dental examinations exacerbates the trauma of trafficked UACs. Such examinations are considered disproportionally invasive by UN institutions,[31] the Council of Europe,[32] healthcare providers,[33] and EU institutions.[34] They are also overwhelming critiqued as unreliable by medical professionals,[35] measuring only "physiological maturity, not chronological age."[36] For example, for individuals aged between 15 to 18, they provide a margin of error of plus or minus five years.[37] Individuals who claim to be minors must

[31] *Id.*
[32] Rapporteur Doris Fiala, Council of Europe, "Child-friendly age assessment for unaccompanied migrant children", January 23, 2017, http://www.trevisolavora.it/guidastranieri/documenti/accertamento_ata_minori.pdf.
[33] MdM International Network Head Office, "Age Assessment for Unaccompanied Minors", August 38, 2015, https://mdmeuroblog.files.wordpress.com/2014/01/age-determination-def.pdf; De Sanctis *et al.,* "Pros and Cons for the Medical Age Assessments in Unaccompanied Minors: A mini-review"(2016) Acta Biomed 87(2), 121-131.
[34] European Parliament resolution of 12 September 2013 on the Situation of Unaccompanied Minors in the EU (2012/2263(INI)).
[35] MdM International Network Head Office, "Age Assessment for Unaccompanied Minors", August 38, 2015, https://mdmeuroblog.files.wordpress.com/2014/01/age-determination-def.pdf.
[36] Mary Anne Kenny and Maryanne Loughry, "Addressing the Limitations of Age Determination for Unaccompanied Minors: A Way Forward" (2018) Children and Youth Service Review 92,15-21; De Sanctis *et al.*, "Pros and Cons for the medical age assessments in unaccompanied minors: a mini-review", (2016) Acta Biomed 87(2), 121-131.
[37] *Id.*

be presumed to be minors until/unless the totality of the circumstances indicate that the individual is 18 years old or older.

"Self-licensing" and Indefinite Detention of Children and Families: Proposed 8 C.F.R. § 236(b)(9)

Currently, ICE maintains only three state-licensed family residential centers ("FRCs"), with a capacity of 3,326 beds.[38] Additionally, the FSA has been interpreted as requiring the release of accompanied children to a relative or family friend within 20 days.[39] Given the scarcity of state-licensed FRCs, the NPRM seeks to detain children with their families in FRCs which, in a third-party auditor's view, comply with the standards applicable to state-licensed facilities. This new rule would also permit their indefinite detention throughout immigration proceedings, with the NPRM acknowledging that "ICE is unable to estimate how long detention would be extended for some categories of minors and their accompanying adults in FRCs due to this proposed rule."[40] While the separation of children from their families is undoubtedly inhumane and exposes children to a significant risk of trafficking,[41] HEAL Trafficking condemns the proposed creation of federally-licensed FRCs and recommends a total prohibition of FRCs.

Subjecting child trafficking survivors to FRC detention undermines survivor care due to the severe health implications that result from such detention. FRC usage has been condemned by the American Medical Association, the American Psychiatric Association, the American Academy of Pediatrics, and the American College of Physicians.[42] Additionally, in their 2018 letter to the Senate Whistleblowing Caucus, two medical experts representing the Department of Homeland Security's Office of Civil Rights and Civil Liberties stated:

> The fundamental flaw of family detention is not just the risk posed by the conditions of confinement—it's the incarceration of innocent children itself. In our professional opinion, there is no amount of programming that can ameliorate the harms created by the very act of confining children to detention centers.[43]

From their 10 investigations of FRCs between 2014-2018, the identified health risks included: a lack of qualified health professionals, weight loss, insufficient provision of trauma-informed care, insufficient training for at-risk children, and increased anxiety and depression. CBP Officers have also been accused

[38] *See*, 83 Fed. Reg. 45512.
[39] Order Implementing Remedies Pursuant to the Court's July 24, 2015 Order, *Flores v. Lynch*, Case No. CV 85-4544-DMG (C.D Cal., Aug. 6 (2015) ¶ 2(a).
[40] *See*, 83 Fed. Reg. 45518.
[41] U.S. State Department, "Trafficking in Persons Report", June 2018, https://www.state.gov/documents/organization/282798.pdf.
[42] Letter from Dr. Scott Allen and Dr. Pamela McPherson to the Honorable Charles Grassley and the Honorable Ron Wyden, July 17, 2018, https://www.wyden.senate.gov/imo/media/doc/Doctors%20Congressional%20Disclosure%20SWC.pdf.
[43] *Id.*

of deliberately harming children through "sexual, verbal, and physical assault, deprivation of food and water, subjection to extreme temperatures."[44]

Given the extensive length of immigration proceedings – averaging, for example, over 1,400 days in San Antonio, Imperial, Denver, and Arlington[45] – the health implications of indefinite detainment for trafficked children in federally-licensed FRCs would be severe.

HEAL Trafficking thus recommends the total prohibition of FRCs, whether state or federally licensed. Instead, the release of entire families, subject to supervisory initiatives, should be pursued. The Family Case Management Program, for example, which offers case management and supervision, resulted in over 99% of families attending required immigration proceedings.[46]

Release from DHS Custody: Proposed 8 C.F.R. § 236.3(j)

The FSA authorizes the release of accompanied children to a: parent, legal guardian; adult relative; licensed program; adult individual or entities designated by parents, legal guardians or the INS when family reunification is not reasonably possible.[47] This new rule permits release only to a non-detained parent or legal guardian and should not be adopted.

The NPRM also eliminates the requirement that DHS evaluate simultaneous release of a parent, legal guardian, or adult relative who is also detained when releasing children from DHS custody. Currently, 8 C.F.R. § 236.3(b)(2) provides that, when a minor in DHS custody is authorized for release on bond, parole, or recognizance, and there is no suitable sponsor available, DHS shall evaluate, on a "discretionary case-by-case basis," the simultaneous release of a "parent, legal guardian, or adult relative in . . . detention." The proposed regulations eliminate this provision entirely. Without the requirement to consider simultaneous release for parents along with their children, more children may be denied liberty as they are left in family detention for longer or separated from their parents and placed in ORR custody.

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[44] Tahirih Justice Center, "Brief Analysis of 2018 Notice of Proposed Rule Making (NPRM) Apprehension, Processing, Care and Custody of Alien Minors and Unaccompanied Alien Children", September 14, 2018, https://www.tahirih.org/wp-content/uploads/2018/09/Brief-analysis-of-proposed-rule-re-children-in-detention-1.pdf.

[45] TRAC Immigration, "Immigration Court Backlog Jumps While Case Processing Slows", June 8, 2018, http://trac.syr.edu/immigration/reports/516/.

[46] Office of Inspector General, Department of Homeland Security, "U.S. Immigration and Customs Enforcement's Award of the Family Case Management Program Contract (Redacted)", November 30, 2017, https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-22-Nov17.pdf.

[47] Stipulated Settlement Agreement, at 5 ¶ 14.

Instead of releasing children with their parents from detention, the proposed regulations codify procedures to separate children from their parents. Under the NPRM, when a detained parent/guardian is not released with a child who receives parole from DHS custody and no parent/guardian is available to take custody of the child, DHS may treat the child as a UAC, separate the child from the detained parent/guardian, and transfer the child to ORR custody to begin the process of locating a sponsor.[48] The transfer of accompanied children to ORR custody to secure their release is not required by law. DHS should instead release detained children and parents together to avoid inflicting further unnecessary trauma on children. The American Psychiatric Association has concluded that forced separation "is highly stressful for children and can cause lifelong trauma, as well as an increased risk of other mental illnesses, such as depression, anxiety, and posttraumatic stress disorder (PTSD)."[49] Further, it would delay their release and prolong their institutionalization, contrary to the regulation's purported intention to maintain family unity, and would swell an already overburdened ORR shelter system.

Due to the adverse health implications of detention for child trafficking survivors as explained above and of separation of children from their families, the release of entire family units, when children are accompanied by relatives, should be required. Subject to strict pre-release checks and post-release services, children that are accompanied by non-relatives should be released to licensed programs or designated individuals or entities as provided for in the FSA.

COMMENTS ON HHS REGULATIONS IN THE NPRM

Placing a UAC in a Secure Facility: **45 C.F.R. §§ 410.203, 204, 205, and 206**

NPRM provisions contained in proposed 45 C.F.R §§ 410.203, 204, 205, and 206 are inconsistent with both the terms of the FSA and subsequent laws governing the care and treatment of unaccompanied children in government custody, including the HSA, the TVPRA, and the court order in *Flores v. Sessions*.[50] The departures the NPRM makes from the FSA would significantly expand the potential situations in which HHS could place a child in secure detention and would likely increase the number of children placed in secure settings. HEAL Trafficking is particularly concerned about the harms that would occur to the health of child trafficking survivors placed in secure detention.

[48] *See,* 83 Fed. Reg. § 236.3(j)(2).
[49] The American Psychiatric Association, "APA Statement Opposing Separation of Children from Parents at the Border", May 30, 2018, https://www.psychiatry.org/newsroom/news-releases/apa-statement-opposing-separation-of-children-from-parents-at-the-border.
[50] 2:85-cv-04544-DMG-AGR (ECF No. 470, Jul. 30, 2018) (discussing ORR Residential Treatment Centers, placement in secure facilities, notice of placement in secure facilities, and informed consent for administration of psychotropic drugs).

Detained unaccompanied immigrant children in the U.S. exhibit high rates of "post-traumatic stress disorder, anxiety, depression, suicidal ideation, and other behavioral problems."[51] Conditions of custody in secure detention often exacerbate the symptomology of illnesses such as post-traumatic stress disorder (PTSD) and can be re-traumatizing for children.[52] In addition, immigration custody has been shown to contribute to psychological distress, triggering "feelings of isolation, powerlessness and disturbing memories of persecution."[53] These feelings are often exacerbated by the seeming indefiniteness of custody.[54] Detention can also lead to "depression, aggression and rebellion" in children,[55] as it deprives children of healthy attachments and normal developmental experiences.[56]

Additionally, prolonged family separation and detention has been shown to lead to psychological and physiological harm in children.[57] These harms include "frustration and a sense of helplessness" and behavioral issues including self-harm, depression, and suicidal ideation, which increase with each additional week a child spends in custody.[58] The consequences may last much longer. Research has shown that "[y]oung detainees may experience developmental delay and poor psychological adjustment, potentially affecting functioning in school."[59] Finally, children experiencing fatigue based on the seemingly indefinite nature of their detention are often driven to make the unfair choice between detention and returning to countries where they face danger.[60]

CONCLUSION

For all of the foregoing reasons, HEAL Trafficking urges DHS and HHS to withdraw the NPRM in its entirety and to proceed expeditiously with measures to protect migrant children and families, including

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[51] Julie M. Linton, *et al.*, "Policy Statement: Detention of Immigrant Children", April 2017, http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483.

[52] Karen M. Abram, *et al*., Off. of Juv. Justice and Delinquency Prevention Bulletin, Dept. of Justice, "PTSD, Trauma, and Comorbid Psychiatric Disorders in Detained Youth", 201), http://www.ojjdp.gov/pubs/239603.pdf.

[53] Physicians for Human Rights and Bellevue/NYU Program for Survivors of Torture, "From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers", 2003, http://www.survivorsoftorture.org/files/pdf/perstoprison2003.pdf.

[54] *Id.* at 7.

[55] Amy Bess, National Assembly of Social Workers, "Human Rights Update: The Impact of Immigration Detention on Children and Families", 2011, https://www.cswe.org/CMSPages/GetFile.aspx?guid=aabe3803-5114-4ff0-b860-1b32f293e962.

[56] Mary Dozier *et al.,* "Consensus Statement on Group Care for Children and Adolescents: A Statement of Policy of the American Orthopsychiatric Association", (2014) Am. J. Orthopsychiatry 84(3), 219-225, https://www.apa.org/pubs/journals/features/ort-0000005.pdf.

[57] *See,* Affidavit of Dr. Lisa Fortuna, Director of the Child and Adolescent Psychiatry Division at Boston Medical Center at ¶¶ 11-17, 19-23; *LVM v. Lloyd*, 18-cv-1453 (S.D.N.Y. May 9, 2018) (ECF No. 46).

[58] *Id.* at ¶ 18(c)-(d), and ¶¶ 15-16.

[59] *See, e.g.*, Julie M. Linton, *et al.*, "Policy Statement: Detention of Immigrant Children", April 2017, http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483 (citations omitted).

[60] *See,* Motion for Preliminary Injunction at 15, n. 12, *LVM v. Lloyd*, 18-cv-1453 (S.D.N.Y. April 30, 2018) (ECF No. 42).

survivors of human trafficking, under the terms of the FSA, subsequent court orders in Flores, and related provisions of the HSA and TVPRA.

HEAL Trafficking appreciates the opportunity to submit these comments.

Sincerely,

Hanni Stoklosa, MD, MPH
Executive Director
HEAL Trafficking, Inc.