



November 6, 2018

Ms. Debbie Seguin
Assistant Director, Office of Policy
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street SW
Washington, DC 20536

RE: DHS Docket No. ICEB-2018-0002

Dear Ms. Seguin:

The National WIC Association (NWA) is the non-profit education arm and advocacy voice for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the over 7 million mothers and young children served by WIC, and the 12,000 service provider agencies who are the frontlines of WIC's public health nutrition services. WIC's nutritious food package, nutrition education, and breastfeeding support improve birth outcomes and early childhood development, leading to healthier communities and healthcare cost savings. For over three decades, NWA has worked to build bipartisan and broad-based support for WIC's programmatic goals and public health mission.

NWA appreciates this opportunity to offer comments to the U.S. Department of Homeland Security (DHS) and the U.S. Department of Health and Human Services (HHS) on their proposed regulations governing the detention of migrant children. NWA actively monitors and comments on issues affecting the health and nutrition needs of young children, particularly infants.

The proposed regulations would permit prolonged detention of migrant children in detention facilities, which is associated with significant negative physical and psychological effects at a crucial time of growth and development. Per the proposals, children would be detained in facilities that are not licensed by states and are therefore prone to neglect and abuses.

Accordingly, the proposed regulations create an administrative scheme that is inconsistent with the health needs of infants and young children. Out of deep concern for their well-being, NWA strongly objects and urges the Departments to withdraw these proposed regulations.

Children should not be housed in detention facilities as a matter of policy.

There is longstanding precedent that limits the federal government's ability to detain migrant children for longer than reasonably necessary, generally requiring release of the child to a parent or family member within 20 days.¹ This precedent reflects the compelling harm to a child's

¹ *Flores v. Reno*, Case No. CV-85-4544 (C.D. Cal. Jan. 17, 1997) (Stipulated Settlement Agreement).

health that is associated with prolonged detention. The approach offered by the proposed regulations is misguided, and the Departments should instead affirm the *Flores* standard.

Prolonged detention of any individual is bound to have psychological effects on the individual, but it is most detrimental to the developing minds of children. The trauma of being detained is profound, and children held in detention are ten times as likely to develop psychiatric disorders such as post-traumatic stress disorder, anxiety, or depression.² The disorders do not resolve themselves upon release from custody; indeed, all of these conditions have a lifelong impact as the child matures into adulthood. The lasting trauma of detention therefore increases the likelihood of adverse adult behaviors, including suicidal thoughts.³ This is precisely why the *Flores* precedent wisely urges the release of child detainees “without unnecessary delay.”⁴

The Departments’ preference for detention is also a missed opportunity to exhibit social responsibility to developing minds. Interactions with a judicial or quasi-judicial system shape a child’s perceptions of authority and social order.⁵ Young children – especially infants – have so rarely chosen their own path of migration, and the punishment of detention is incompatible with the child’s actions. The Departments assert that such a hardline approach is necessary to deter further migration, but political restrictions have not been proven to be effective in reducing migration because other factors – such as economic prospects or family ties – have always outweighed new restrictions.⁶ This is especially true as there are increased asylum requests coming from those fleeing violence in Central America, where the factors in favor of migration can be life-or-death.⁷

The Departments’ proposal to extend detention of migrant children indefinitely is inconsistent with clear public health concerns – promising that frightened children will grow up to become distressed adults. The Departments do not offer a sufficient explanation for this proposal that would justify the harms to children. We strongly urge that the Departments recognize the value of the governing *Flores* settlement agreement and withdraw this proposed regulation.

If children are detained, their health and nutrition needs must be of paramount concern.

The Departments’ proposal is likewise disturbing given the failure of present detention centers to meet the needs specific to infants and child detainees. There have been repeated instances of abuse and neglect, including neglect of an infant’s or child’s nutritional needs. This has led to malnourishment of child detainees. The Departments’ proposed regulatory scheme, which would

² Zachary Steel, et al., “Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia,” 28 *Australian & New Zealand J. of Pub. Health* 527 (2004).

³ Vincent Felitti & Robert Anda, “The Relationship of Adverse Childhood Experiences to Adult Medical Disease, Psychiatric Disorders, and Sexual Behavior: Implications for Healthcare,” in *The Hidden Epidemic: The Impact of Early Life Trauma on Health and Disease*, R. Lanius & E. Vermetten, eds. (2009).

⁴ *Flores* at 10.

⁵ David Arredondo, “Child Development, Children’s Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making,” 14 *Stan. L. & Pol’y Rev.* 13, 16 (2003).

⁶ Wayne Cornelius & Idean Salehyan, “Does border enforcement deter unauthorized immigration? The case of Mexican migration to the United States of America, 1 *Regulation & Governance* 139 (2007).

⁷ Medecins sans Frontieres, *Forced to Flee Central America’s Northern Triangle: A Neglected Humanitarian Crisis* (June 2007), https://www.msf.org/sites/msf.org/files/msf_forced-to-flee-central-americas-northern-triangle_e.pdf.

bles detention centers that operate without a state license, is downright folly and will ensure that more children suffer from abuse and neglect.

Proper nutrition is essential to early child development, including physical growth, strength, mobility, and language skills.⁸ Poverty is demonstrated to have a marked impact on a child's ability to incorporate needed nutrients into their diet, affecting that child's cognitive and physical development.⁹ When children enter the United States, it should be the priority of the federal government to ensure that they have access to adequate nutritious foods. Too often, detention facilities will fail to assess or accommodate the nutritional and medical needs of child detainees.

This neglect can have catastrophic results. Employees of the Department of Homeland Security noted several such cases of neglect: a sixteen-month old infant lost a third of his body weight over ten days because of an untreated diarrheal disease, yet he was never given intravenous fluids or sent out to an emergency room; a month-old infant born in the field – at high risk of medical problems – was not seen by a pediatrician until *after* that infant had a seizure, five days after arrival; children were vaccinated with adult doses; numerous children had fractures and lacerations stemming from the spring-loaded closure of heavy medical doors; and so on.¹⁰

The prevalence of neglect – particularly in recently converted facilities – underscores the necessity of state licensures for detention facilities and vigorous compliance enforcement. The Departments are not adequately staffed or funded to conduct routine compliance activities at facilities across the country, and state oversight is appropriate to relieve the federal government of this burden. The Departments' proposal, however, to outsource compliance activities is an abrogation of government responsibility and will certainly result in more unsafe conditions, a greater likelihood of neglect and abuse, and worse outcomes for the children detained in these facilities.

In addition to outright neglect, the trauma of detention can manifest physically as children suffer a loss of appetite, headaches, and abdominal pain.¹¹ Without nutrition support or assessment, these children may develop lifelong habits that are inconsistent with a healthy diet. However, detention facilities are inadequately staffed with medical, mental health, and nutrition professionals. Children would benefit from having increased access to medical services in a safer environment, which can be more easily achieved in the community.

Of particular concern, detained infants may lose access to breastmilk. NWA has consistently advocated for increased access and support for breastfeeding, which is the optimal feeding choice for infants.¹² However, a breastfeeding mother benefits from specific supports – including access to a breast pump, supplemental foods that ensure a breastfeeding mother can produce

⁸ Ctrs. for Disease Control & Prevention, "Developmental Milestones," <https://www.cdc.gov/ncbddd/actearly/milestones/index.html> (accessed Nov. 1, 2018).

⁹ Jeanne Brooks-Gunn & Greg Duncan, "The effects of poverty on children," 7 *The Future of Children* 55 (1997).

¹⁰ Dr. Scott Allen & Dr. Pamela McPherson, "Letter to the Senate Whistleblowing Caucus" (July 17, 2018), <https://www.whistleblower.org/sites/default/files/Original%20Docs%20Letter.pdf>.

¹¹ Ann Lorek, et al., "The Mental and Physical Health Difficulties of Children Held within a British Immigration Detention Center: A Pilot Study," 33 *Child Abuse & Neglect* 573 (Sept. 2009).

¹² World Health Org., "The World Health Organization's infant feeding recommendations" (May 2001), https://www.who.int/nutrition/topics/infantfeeding_recommendation/en/.

enough healthy breastmilk, and complementary foods that assist an infant with the transition to solid foods. The Departments' rule does not take adequate steps to make these supports available, undermining the nutrition and breastfeeding needs of detained infants and breastfeeding mothers.

The inadequacy of breastfeeding supports highlights one of the many core problems with the proposal: an overwhelmed detention system will not prioritize the unique nutrition needs of infants and young children. The youngest among us require increased attention to eating habits, and possible neglect of nutritional intake can have fatal consequences for detained infants and children. These needs are better assured in the community, where family members can vigorously oversee the nutritional intake of young migrant children and ensure adequate growth and development.

Conclusion

The Departments' proposals upset the longstanding *Flores* precedent, which was consistent with the public health consensus that children grow and thrive more effectively outside of detention facilities. The Departments' rule has failed to articulate a compelling reason to require increased detention of migrant children. The proposed regulation is poor public policy, and will ensure worse health outcomes for migrant children who very well may obtain legal status and eventually become citizens.

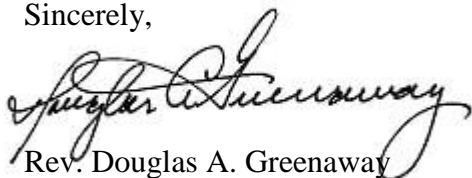
NWA joins a chorus of public health organizations to call on the Departments to withdraw this proposed regulation.

Even if the Departments withdraw the rule and maintain the current *Flores* standard, children will still spend time in detention facilities. It is imperative that the Departments take their responsibilities as custodians of children more seriously, particularly when it comes to the nutrition needs of young children and infants. Repeated instances of neglect in detention facilities have led to worse health outcomes, impacting a child's development irreversibly.

NWA calls upon the Departments to prioritize the nutrition and health needs of child detainees – particularly infants – in any administrative scheme that is implemented or contemplated. The Departments can better serve individuals within their care, and the public health community will be watching.

NWA appreciates this opportunity to comment and express our views in full.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas A. Greenaway". The signature is fluid and cursive, written over a white background.

Rev. Douglas A. Greenaway
President & CEO
National WIC Association