UUSJ **Unitarian Universalists for Social Justice**

November 5, 2018

Debbie Seguin
Assistant Director, Office of Policy
U.S. Immigration and Customs Enforcement
500 12th St, NW
Washington, DC 20536

Dear Ms. Seguin:

Our Unitarian Universalist Principles and Sources compel us to affirm that all immigrants, regardless of legal status, should be treated justly and humanely. UUSJ is the Unitarian Universalist voice at the Federal level, working in partnership with congregations and individual members nationwide. Our denomination has passed a Statement of Conscience, Immigration as a Moral Issue (2013), and two Actions of Immediate Witness (one in 2015 and in 2018) that are directly relevant to these issues. As Unitarian Universalists, we are also strongly committed to preserving the integrity of our nation's democratic process.

As people of faith, we believe in the inherent worth and dignity of every human being. We believe that the Administration's proposal to revise or circumvent the 1997 Flores Agreement to extend the detention of minors beyond 20 days flies in the face of international human rights standards when it comes to children. We are deeply troubled by the way our country is treating families seeking refuge and a better life. We urge you to oppose any changes in the Flores Agreement.

Specifically, we strongly urge the Administration to maintain key provisions of the 1997 *Flores* settlement that required the government to:

- Minimize the detention of immigrant and refugee children as much as possible (jailing innocent children for any reason is simply morally unacceptable);
- Release children without unnecessary delay to (in order of preference) parents, other adult relatives, or licensed programs;
- Place children in the "least restrictive" setting appropriate to their age and special needs; and
- Implement standards relating to the care and treatment of detained children, treating them with dignity, respect, and due regard for their vulnerabilities as children.

The Notice of Proposed Rulemaking (NPRM) proposes numerous significant changes to regulations within the Department of Homeland Security and the Department of Health and Human Services that will undercut protections for immigrant children, including provisions that:

- Allow DHS to operate family jails under their own self-licensing scheme, removing existing Flores protections from the family detention system (despite mountains of evidence showing that family detention facilities are inappropriate and dangerous places for children, and that ICE's mechanisms for self-inspections are woefully deficient);
- Grant DHS and HHS wide discretion to suspend all protections for children in the case of an "emergency";
- Heighten the standard for release on parole for children in expedited removal proceedings;
- Limit release options for children in government custody;
- Set vague and potentially harmful standards for age determinations for children in DHS and HHS custody;
- Require repeated redeterminations of a child's status as an "unaccompanied alien child", meaning that vulnerable children who arrived alone at a tender age will be stripped of minimal due process protections throughout their immigration proceedings; and
- Reject the right to a bond hearing guaranteed by Flores, instead proposing an asymmetrical administrative process making HHS jailer and judge.

UUSJ vehemently opposes these proposed changes, and implores ICE, DHS, and DHHS to look at other community-based alternatives for handling unaccompanied children and children who enter the U.S. with family members. Specifically, there are five key areas where we offer recommendations:

Maintain Limits on Length of Family Detention: We strongly oppose the proposed regulation's attempts to permit the indefinite detention of families, or the elimination of the Flores Agreement's existing limitations on the detention of children. Contrary to federal court rulings that barred the long-term incarceration of children in immigration detention and declined to modify the Flores Agreement to permit family detention, the regulations would permit children to be held with their parents during the pendency of immigration proceedings, which can take years. The average wait time for an immigration case to be heard is 721 days, or close to two years[1]. As of June 2018, average wait times in San Antonio, Chicago, Imperial, CA, Denver, and Arlington, VA were over 1,400 days (almost four years). Indefinite detention of migrants amounts to cruel and unusual punishment and has no place in an America respecting basic human rights. It is unconscionable to allow for any increases in the length of time that families can be detained under the law.

Preserve Licensing Requirements for Family Detention Facilities: The regulation also proposes to end existing Flores Agreement requirements around the state licensing of facilities that hold children, including family detention facilities. The proposed rule would create a federal licensing scheme for family facilities, where unspecified third-parties would audit family facilities to enforce federal requirements, likely facilitating the opening of additional family detention facilities beyond existing family facilities, something that UUSJ strongly opposes.

[1] http://trac.syr.edu/immigration/reports/516/

Increase Community-Based Alternatives to Family Detention: Not only does UUSJ believe that state licensing requirements should be preserved for all existing and new family facilities, we also urge the government to use the learnings it has produced in earlier pilots and investments to expand cheaper and more compassionate community-based alternatives to family detention. Based on the previous testing and validation of these models, ICE receives funding to implement alternatives to detention programs that allow individuals to reside in the community while their removal proceedings are pending. These programs are vastly less expensive than detention[2] and have demonstrated to achieve appearance rates of between 91 and 99 percent.[3] Prior to the administration terminating the Family Case Management Program, this innovative pilot was reporting compliance rates of 99 percent and offered asylum seekers the chance to rebuild their lives while their cases proceeded.

Emergency and Influx: UUSJ objects to provisions in the proposed regulation that would allow DHS and HHS to weaken protections for children in the event of an "emergency" or an "influx" of migrants, both of which are defined broadly. Just as in the case of natural disasters, the federal government should respond to potential emergencies and unexpected influx by better preparedness and mobilization of State and federal resources rather than restricting protections for vulnerable children with the potential for human rights violations. These broader exceptions would generally permit DHS and HHS to suspend protections for children in a great number of situations, even impacting basic needs, like the provision of meals and snacks. Also, DHS is currently required by the Trafficking Victims Protection Restoration Act (TVPRA) to transfer UACs to DHS's Office of Refugee Resettlement (ORR) within 72 hours of determining that the child is a UAC and other minors within three to five days. While the original Flores Agreement permits the departments to delay transfer of a child in emergency situations, the new, broad "emergency" and "influx" definitions may make longer stays more common. The proposed regulations define "emergency" as a natural disaster, fire, civil disturbance, medical or health concerns and other similar circumstances. "Influx" is defined as a situation when more than 130 minors or UACs are eligible for placement in a licensed facility. The inflow of Central Americans along the southern border in recent years likely would meet the standard for an "influx," suggesting that DHS and HHS would likely be exempted from meeting established standards of care were the regulations to become final.

Decrease Unnecessary Administrative Reassessments of UACs: Under the proposed regulations, even after an initial determination that a child is a UAC, immigration officers must re-determine whether someone is a UAC each time they encounter the child, including considering whether the child has turned 18 years of age; acquired legal status; or, if his or her parent or legal guardian is found to be in the U.S. and available to assume custody. This continual reassessment would add an extra layer of uncertainty and administrative burden as they pursue their immigration cases, leading to increased backlogs and cost of our immigration court system. Re-designating a UAC as an accompanied minor or adult would also remove protections such as an exception to the one-year filing deadline for asylum and the opportunity for a non-adversarial asylum adjudication despite

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[2] Alternatives to detention cost between $.70 and $17 per day, compared to $133.99 per day for one adult detention bed. See National Immigration Forum, *The Math of Immigration Detention*, Aug. 22, 2013; Department of Homeland Security Immigration and Customs Enforcement, Budget Overview Fiscal Year 2018 Congressional Justification (May 2017). See also Government Accountability Office, GAO 15-26, *Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness* (Nov. 2014).

[3] American Immigration Lawyers' Association, National Immigrant Justice Center, et. al, *The Real Alternatives to Detention* (Jun. 2017).

arriving as a UAC. The rule would also establish a "totality of circumstances" approach to determine whether someone is 18 years of age. The standard called to considering "multiple forms of evidence," including medical examinations and other procedures, in determining whether an individual is actually a minor. This provision is overly vague and could lead to harm in cases where a child is mistakenly classified as an adult, losing key due process protections. The proposed regulations do not specify when medical and dental examination are required and provide no guidance as to the level of training or expertise needed to conduct such examinations.

Protect and Increase the Release of Children under Parole for Humanitarian Reasons: Under the Flores Agreement, children may be released on parole when there is an "urgent humanitarian" reason or in similar circumstances, based on specifics of the given case. Under a new heightened standard in the proposed regulations, children in expedited removal proceedings would face the same harsh parole standards as adults. The proposed regulations also limit release of a paroled child to a parent or legal guardian, a departure from the Flores Agreement, which permits release to other relatives. DHS admits that changes to its current practice for parole determinations may increase detention levels and higher costs, although it does not specifically calculate these additional costs. Already, the child detention center in Tornillo, Texas, which opened in June 2018, is being expanded from 1,200 to 3,800 beds, and is estimated to cost about $100 million a month to operate. UUSJ believes releasing children and their parents on parole, in addition to other community-based alternatives, should be expanded as opposed to reduced.

Adopt additional criteria to reinforce legal protections for children and assure other alternatives to detention are prioritized: Detained children have a right to a custody hearing before an Immigration Judge. This right should not be abridged by substituting an administrative hearing before the HHS, which gives too much discretion to the HHS Office of Refugee Resettlement staff. UUSJ questions the legal authority by which DHS or HHS can delegate its authority to detain or release juveniles to the Department of Justice's immigration courts, as we believe that such delegation requires legislative approval. Alternatively, a better solution would be to permit administrative hearings on custody before HHS officials, but adopt stricter criteria favoring the release of detained children, a right to counsel, and a right to appeal denial of release to a Federal District Court.

In summary, the UUSJ urges you to work for the humane treatment for immigrants and towards positive solutions to issues affecting immigrants and refugees that will not deepen the nation's racial divide. We oppose the various changes to the Flores agreement outlined in the recent NPRM, and we urge you to ensure humane treatment for children and families seeking a better life and protection against violence and poverty.

Sincerely,

Robert W. Denniston
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