Sample Flores Comment Text:

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
ICEB-2018-0002-0001

Dear Ms. Seguin:

I am submitting comments to the U.S. Departments of Homeland Security and Health and Human Services, related to the proposed rule, Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, ID **ICEB-2018-0002-0001**.

[insert information about yourself and/or the organization you may be representing: include your expertise, experience, and/or interest, as a professional, community member, person of faith, person with direct knowledge of immigrant children and families, etc.]

The proposed rule is intended to replace the Flores Settlement Agreement (FSA) by implementing the Agreement's provisions, as provided in the FSA, paragraph 40. Instead, however, the rule would significantly undermine the protections for children that form the basis of the Flores Agreement. I urge you to withdraw this proposed rule.

(Note: Could be reworded to say "DHS and HHS should withdraw this proposed rule" or similar, to increase variation from the template.)

Proposed Rule Violates the Basic Purpose of the Flores Settlement Agreement. The main purpose of the Flores Settlement Agreement is to assure the protection of migrant children's rights and welfare by minimizing their stay in detention, ensuring that adequate standards are in place for their care, and released as quickly as possible to the care of their parents or other family members in the least restrictive setting possible. The proposed rule would violate Flores by providing for indefinite detention of children together with their parents in DHS-licensed facilities, and also by placing multiple restrictions on the parole of minors, increasing the likelihood that they will remain separated from their families for prolonged periods.

Flores established that migrant children should for the most part be transferred from Department of Homeland Security custody within 3-5 days, and under no circumstances should be detained in unlicensed DHS facilities for more than 20 days. A recent ruling by Judge Gee confirmed that these limits should apply both to unaccompanied children and to children together with one or more parents. If children cannot be released to the community in the care of a parent or relative, under Flores they must be transferred to state-licensed residential facilities that are not prison-like in nature (FSA paragraph 6).

DHS Should Not Establish Self-Licensed Family Detention Facilities. The proposed rule, which aims to allow for detention of families with minor children (Proposed 8 CFR 236.3(h) – Detention of Family Units), recognizes that most states do not have licensing provisions for family residential facilities, therefore limiting the ability of DHS or HHS to detain migrant families with children for more than 20 days. To get around this, the rule proposes that if there is no licensing procedure in a given jurisdiction, "a facility will be considered licensed if DHS employs an outside entity to ensure that the facility complies with family residential standards established by ICE." (NPRM, page 47.) To allow licensing and inspection to be performed by ICE is entirely contrary to the intent of the Flores Agreement in requiring state licensing of residential facilities housing children. In order for standards to be adequate to protect children from harm, they must be determined independently.

There is ample evidence that ICE's inspections of its own adult detention facilities are inadequate, and that there were serious failures to comply with standards at DHS family detention facilities over a period of years. The DHS Office of Inspector General recently found that "deficiencies remain uncorrected for years." ICE contracts with the Nakamoto Group to conduct inspections, which were not thorough. In the OIG report, an ICE employee said Nakamoto's inspections were "very, very, very difficult to fail." (https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf)

ICE's record shows it is unsuitable to create and oversee a licensing scheme that would be consistent with the Flores Settlement Agreement's required protections for children. In addition, a July 18, 2018 *New York Times* story cited a letter from physicians Scott Allen and Pamela McPherson to the U.S. Senate's Whistleblower Protection Caucus, describing 10 investigations they conducted of family detention facilities between 2014 and 2017. They found serious failures to comply with standards that adversely affected children's health. At one site, "numerous children" were accidentally given adult doses of a vaccine. Children's significant weight loss was disregarded, including a 16-month-old baby who lost nearly a third of his body weight from untreated diarrhea. The physicians expressed concern that such problems would increase under "hastily deployed expansion of family detention." (*New York Times:* https://www.nytimes.com/2018/07/18/us/migrant-children-family-detention-doctors.html)

Children are Harmed by Detention, With or Without Their Families. This focus on the threats to children's health is at the heart of objections to the policies set forth in the proposed rule. Flores imposes tight restrictions on the length of time children, with or without their families, can be held in detention expressly because detention is harmful to children. An investigation initially conducted by the Lutheran Immigration & Refugee Service and the Women's Refugee Commission in 2007 and updated in 2014 concluded "Family detention cannot be carried out humanely…Detention traumatizes families, undermines the basic family structure, and has a devastating psycho-social impact." (https://www.womensrefugeecommission.org/images/zdocs/Fam-Detention-Again-Full-Report.pdf)

(Note: You can vary the above section by using some but not all of the quotes and citations. For example, you do not have to include the full Recommendation 1-1 from the DHS Advisory Committee.

Also consider adding your own statements about the harm to children and families, which you might insert after the first paragraph of this section. You can provide your perspective as a parent, person of faith, caregiver (professional or otherwise), researcher/policy analyst, educator, or as a community-member.)

Further, the DHS Advisory Committee on Family Residential Centers, in its September 2016 report, recommended that "detention is never in the best interest of children" and that "DHS should discontinue the general use of family detention" with limited exceptions. Their full recommendation is quoted here:

"Recommendation 1-1: 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. DHS should discontinue the general use of family detention, reserving it for rare cases when necessary following an individualized assessment of the need to detain because of danger or flight risk that cannot be mitigated by conditions of release. If such an assessment determines that continued custody is absolutely necessary, families should be detained for the shortest amount of time and in the least restrictive setting possible; all detention facilities should be licensed, nonsecure and family-friendly. If necessary to mitigate individualized flight risk or danger, every effort should be made to place families in community-based case-management programs that offer medical, mental health, legal, social, and other services and supports, so that families may live together within a community."
(https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf)

The American Academy of Pediatrics (AAP) issued a Policy Statement in April 2017 citing findings from multiple sources that detentions can cause long-lasting trauma in children. Specifically looking at ICE's Family Residential Centers in Texas and Pennsylvania, the statement cited that among children detained there, "some were still found to suffer traumatic effects." These facilities were ruled in violation of Flores by the California U.S. District Court in August 2015 but have continued to intern families with children. Parents were cited as describing decreased eating, sleep disturbances, clinginess, withdrawal, self-injuries, and aggression among their children. Parents and children may suffer from anxiety, depression, and posttraumatic stress disorder, according to studies cited in the AAP statement.
(http://pediatrics.aappublications.org/content/139/5/e20170483)

The inappropriate medical treatment described above (children administered the wrong vaccines; dehydration from diarrhea unattended) and other medical failures are further evidence that detaining families subjects children and parents to significant risk of harm and that DHS does not have a track record to suggest that they should be entrusted with licensing and overseeing families in such settings.

Dr. Fiona Danaher of the Massachusetts General Hospital for Children wrote in the *New England Journal of Medicine*, "As physicians, we know that traumatic experiences like the loss of a loving caregiver can inflict toxic stress on a child, hindering healthy development and leading to changes in physiology that promote physical and mental illness throughout the life course. Such trauma can even become

epigenetically encoded, thereby passing to future generations." She was describing the separation of children from their parents. She explicitly seconded the comment from Dr. Colleen Kraft, head of the American Academy of Pediatrics, that taking children from their migrant parents is "government-sanctioned child abuse." (https://www.nejm.org/doi/full/10.1056/NEJMp1808443?query=TOC)

Humane Treatment of Children Could Be Suspended Under Too-Broad Definition of Emergency. Under emergency conditions, DHS can keep children in detention for longer than the 3-5 days now called for, instead releasing them "as expeditiously as possible," which under Flores has been taken to mean no more than 20 days. The proposed rule would broaden the definition of emergency (allowing DHS to determine whether unspecified conditions constitute an emergency) and would apply it not only to length of stay, but also to the standards of care, for example making it allowable to reduce the amount or frequency of meals. In addition, the rule retains an outdated definition of "influx," saying that if there are more than 130 unaccompanied children awaiting transfer to a licensed facility, the children do not have to be moved within the 3-5 day standard. The figure of 130 children was selected in 1997, when there were 6,895 border agents. Twenty years later there are nearly three times that many border agents, and far fewer apprehensions, so it is well within DHS' capacity to handle transfers in a timely manner. But since at this time there are always more than 130 children awaiting transfer, the continued use of this definition of "influx" means DHS can ignore Flores' insistence that children be released from jail-like facilities as quickly as possible. (FSA paragraph 12(C).)

(<u>Note</u>: The above paragraph cites a real issue, but you could consider leaving it out, or deleting the portion at the end about "influx."

Also, consider adding or substituting findings about incarcerating minors in juvenile justice facilities, which the proposed rule provides for:

Youth who are incarcerated may experience new mental health problems or see a worsening of existing mental health conditions and can be more likely to engage in self-harm and suicide. Cite:

See, e.g., Javad H. Kashani et al., Depression Among Incarcerated Delinquents, 3 PSYCHIATRY RESOURCES 185, 185-191 (1980) (stating that 1/3 of youth who had been incarcerated and diagnosed with depression noted that the onset of their depression occurred after their incarceration began); Christopher B. Forrest et al., The Health Profile of Incarcerated Male Youths, 105 PEDIATRICS 286, 286-291 (2001) (stating that the transition into incarceration could be responsible for some of the increase in mental illness in detention). See also D.E. Mace et al., Psychological Patterns of Depression and Suicidal Behavior of Adolescents in a Juvenile Detention Facility, 12 J. OF JUV. JUST. AND DETENTION SERVICES 18, 18-23 (1997) (suggesting that poor mental health combined with living conditions youth experience while incarcerated makes it more likely for them to engage in self-harm and suicide).)

It is important to note that while the proposed rule describes its main purpose as to establish a means of carrying out indefinite family detentions, there are several provisions that would result in more children remaining separated from their family members, therefore making the physicians' concerns about the trauma inflicted on separated children still timely. Some are listed below:

Children in DHS Custody Will Only Be Released to Parents or Legal Guardians. The proposed rule would change current regulations, which are based on Paragraph 14 of the Flores Settlement Agreement, by restricting the release of an unaccompanied child from DHS custody to parents or legal guardians not in detention. Current regulations (8 CFR 236.3) allow the child to be released to other adult relatives, such as a brother, sister, aunt, uncle or grandparent. The consequence of such a change will be to prolong the child's stay in a DHS facility, where the severity of bad outcomes for the child increase with a prolonged stay, and to keep him or her apart from family members. This rule should instead permanently implement the Flores Agreement, which calls for the child's release to a relative "without unnecessary delay."

DHS Should Work to Release Parents/Relatives and Children to Allow Them to be Reunited. The proposed rule makes a number of additional changes that will delay or deny the opportunity for children to be reunited with family members. First, under current regulation (8 CFR 236.3(b)(2)) DHS is expected to evaluate whether it is possible to release a parent, legal guardian, or adult relative at the same time it is releasing a separately detained minor, in order to make it possible for the family to be reunited in a community setting. The new proposed rule eliminates that provision. Second, if the parent/guardian is not available to take custody of the child, the new rule would allow DHS to treat that child as an unaccompanied alien child (UAC), and proceed to transfer the child to custody under the HHS Office of Refugee Resettlement (ORR). ORR would then begin to seek a sponsor, which might mean placing the child in foster care if a family member is not available; while that is being arranged, the child would be placed in a state-licensed facility provided through HHS. This sets the child on a path of potential long-term separation from family, placing the child at risk for bad developmental, behavioral and health outcomes.

Dr. Danaher of the Mass. General Hospital for Children, cited above, reminds us that when the evidence of the suffering of children is right before us, we have a choice. "As citizens, we have an obligation to advocate against the devastating harm being inflicted in our names. If we permit such brutal treatment of already traumatized children to continue, the stain will be on all our hands."
(https://www.nejm.org/doi/full/10.1056/NEJMp1808443?query=TOC)

(Note: Insert your own closing – you can delete this last paragraph, and substitute something from you, or just reiterate the call to withdraw the proposed rule.)