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Re: DHS Docket No. ICEB-2018-0002; RIN 1653-AA75, 0970-AC42; Comments in Response to Proposed Rulemaking: Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children

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November 6, 2018

Submitted via www.regulations.gov

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Assistant Director, Office of Policy
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500 12th Street SW
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Re: DHS Docket No. ICEB-2018-0002; RIN 1653-AA75, 0970-AC42; Comments in Response to Proposed Rulemaking: *Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children*

Dear Ms. Seguin,

The Center for the Human Rights of Children (“CHRC”) and the Civitas ChildLaw Center (“Civitas”) of Loyola University Chicago School of Law are pleased to submit the following comments in response to the Department of Homeland Security’s (DHS) Notice of Proposed Rulemaking (“NPRM”) published in the Federal Register on September 7, 2018, relating to the apprehension, processing, care, and custody of alien minors and unaccompanied alien children (UACs).

CHRC and Civitas strongly oppose the proposed rule and respectfully urge you to withdraw it. We advocate instead for policies and practices consistent with the Flores Settlement Agreement’s (“FSA”) mandate to minimize detention for children, and maximize their health and safety when detention is deemed necessary in limited circumstances, and require policies and practices that reflect research and best practices in our own child-serving systems.

The Center for the Human Rights of Children (CHRC) represents an interdisciplinary group of educators and scholars in the fields of law, child development, child welfare, social work, education, psychology, public health, and mental health. Recognizing that children require special protections due to their vulnerabilities, the Center for the Human Rights of Children (CHRC), a University Center of Excellence, was established in 2007 to pursue an agenda of research, outreach, education, and advocacy to address critical and complex issues affecting children and youth, both locally and globally. The CHRC applies a human-rights approach to the

problems affecting children, reaffirming that the inherent dignity and equal and inalienable rights of all members of the human family, including children, is the foundation of freedom, justice and peace in the world.

The Civitas ChildLaw Center prepares law students, lawyers, and other leaders to be effective advocates for children. To accomplish this mission, Civitas trains law students, attorneys, and child-serving professionals to serve the unique legal needs of children and families; provide high quality legal representation to child clients; advocate for laws, policies, and practices that advance children's rights; advance knowledge of children's rights through research, scholarship, and training; serve the educational needs of children through litigation and policy reforms; promote improved public child-serving systems; create greater public awareness of children's circumstances, needs, and rights; contribute to children's law as an area of legal specialization; strengthen the quality of justice for children pursuant to the principles of the UN Convention on the Rights of the Child.

In our combined capacity, we have subject matter expertise in law, policies, and practices that affect children and their families across a variety of areas, including child trafficking, immigration, juvenile justice, child welfare, education, and adoption. We have also directly served both citizen and undocumented children in various programs and systems. CHRC and Civitas recognize that both DHS and HHS will have corresponding duties under the proposed rule. DHS will revise 8 §CFR 236.3, and HHS will create a new 45 CFR Part 410. Our comments relate to both proposed sections.

The prolonged and potentially indefinite incarceration of children contemplated by the proposed rule violates, rather than implements, the FSA. The proposed rule would increase the frequency and length of incarceration for migrant children and their parents, many of whom are survivors of violence and are experiencing trauma. Detaining children for any length of time is traumatizing. Detaining traumatized children is inhumane, along with forcing their parents to care for them in a harsh environment with minimal access to services and protections. Incarceration directly triggers re-traumatization, particularly for the children and families who have experienced or witnessed violence. Instead, children require access to developmentally and trauma-informed services in a non-punitive, non-hostile setting. If incarceration is deemed necessary as a last resort, the government must articulate why no other option is available and must maximize children's well-being while in custody. Contrary to the FSA, the proposed rule does not protect children's well-being in custody.

For the following reasons, CHRC and Civitas strongly oppose the proposed rule and respectfully urge you to withdraw it. We advocate instead for policies and practices consistent with the Flores Settlement Agreement's (FSA) mandate to minimize detention for children, and maximize their health and safety when detention is deemed necessary in limited circumstances.

- 1. Detention in unlicensed facilities fail to meet basic child welfare requirements currently set out in the FSA**

The FSA specifically requires federal authorities to transfer children in their custody to a “qualifying adult or a non-secure facility that is licensed by the states to provide residential, group, or foster care services for dependent children.” The proposed rule seeks to create an alternative federal licensing scheme for immigrant detention facilities holding children when state licensing schemes for detention of accompanied children are “not available.” The proposed NPRM rule intends for the government to utilize its own licensing standards for family residential centers, thereby removing the FSA’s limitation that children be held only *temporarily* in unlicensed secure facilities.¹ Additionally, HHS proposes significant expansion of circumstances that will qualify for placing an unaccompanied child in secure ORR custody.² Both common sense and recent litigation on this issue has made clear that placing children in unlicensed facilities is improper. Because family residential centers cannot be licensed by an appropriate state agency, under the Agreement [FSA], class members may not be housed in these facilities except as permitted by the Agreement.”³ DHS should not supply an alternative licensing definition because state laws do not allow for licensing of Family Residential Centers (FRC).

Creating an alternative federal licensing scheme would also vastly expand the use of family detention. This will allow the DHS and HHS to hold 1) more children and families in detention, and 2) hold children and families in these secure detention facilities indefinitely.⁴ This violates the rights of children and their families, and presents serious concerns regarding the health, safety, and well-being of an indefinite number children and families, which are articulated in more detail below.

The creation of an alternative federal licensing scheme resulting in prolonged detention does not promote the mandate of the FSA requiring prompt release of children, and use of licensed facilities only in those exceptional circumstances where children cannot be released. Accompanied children can and should be released to and with their accompanying parents. Detention of children with their families is not necessary. The NPRM is violates the FSA’s mandate to release children from government custody as soon as possible.

2. The changes proposed by DHS and HHS to replace the FSA standards pose a severe threat to immigrant children’s and families’ health, safety, well-being.

The changes proposed by DHS and HHS to replace the FSA standards provide for indefinite detention of children and families. Research in the fields of medicine, law, public health, child welfare, and psychology proves that detaining children for any period of time, is adverse to their health and well-being.⁵ The isolation faced by detained youth in any setting, combined with the lack the human connections that encourage positive attachment and self-esteem,

¹ 83 FR 45525.

² 83 FR 45530.

³ Order Denying Application for Limited Relief, *Flores, et al. v. Sessions, et al*, cv 85-4544 (C.D. Cal. July 9, 2018).

⁴ 83 FR 45525.

⁵ Julie M. Linton, Marsha Griffin, Alan Shapiro, American Academy of Pediatrics, *Policy Statement: Detention of Immigrant Children*, Apr. 2017, retrieved from <http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>.

undermine their ability to cope with the traumas they experience.⁶ Studies of detained immigrants have shown that both children and parents may suffer negative physical and emotional symptoms from detention, including anxiety, depression and posttraumatic stress disorder.⁷ Research indicates that children are at risk of encountering other mental health challenges such as sleep issues, somatic complaints, and emotional and behavioral problems following detention even when detained for short periods of time.⁸ Early traumatic emotional experiences including social isolation such as forced detention have adverse neurodevelopmental outcomes for youth.⁹ Stress from detention has the potential to exacerbate these issues. Research shows that stress is related to hippocampal damage for children endorsing symptoms consistent with post-traumatic stress disorder.¹⁰ There is evidence that hippocampal damage impacts children differently than adults resulting in memory impairment with recalling past events and imagining fictitious and future scenarios, key components for healthy development and later independent living.¹¹ In simple terms, prolonged detention both mentally and physically harms children.

Even if children are detained together with their parents, the conditions of detention undermine parental authority and capacity to respond to their children's needs; this difficulty is complicated by parental mental health problems exacerbated by detention.¹² Parents in detention centers have described regressive behavioral changes in their children, including decreased eating, sleep disturbances, withdrawal, self-injurious behavior, and aggression.¹³ The negative impact of detention on human beings, especially children, has long-term and potentially irreparable effects.

In addition to the fact that mental health and pediatric specialists note several discrepancies between the proposed NPRM standards and actual services provided "including inadequate or inappropriate immunizations, delayed medical care, inadequate education services, and limited mental health services,"¹⁴ we have grave concerns about the confidentiality of children's private medical and psychological records. These records could be used against them in court, a potential violation to the Health Insurance Portability and Accountability Act.¹⁵ In their initial

⁶ Wolf, L. (2018). Purgatorio: The Enduring Impact of Juvenile Incarceration and a Proposed Eighth Amendment Solution to Hell on Earth. *Stanford Journal of Civil Rights and Civil Liberties*, 14, 89-124. Retrieved October 30, 2018.

⁷ *Id.*

⁸ Lorek, A., Ehntholt, K., Nesbitt, A., Wey, E., Githinji, C., Rossor, E., & Wickramasinghe, R. (2009). The mental and physical health difficulties of children held within a British immigration detention center: A pilot study. *Child abuse & neglect*, 33(9), 573-585.

⁹ Braun, K., Lange, E., Metzger, M., & Poeggel, G. (1999). Maternal separation followed by early social deprivation affects the development of monoaminergic fiber systems in the medial prefrontal cortex of Octodon degus. *Neuroscience*, 95(1), 309-318.

¹⁰ Carrion, V. G., Weems, C. F., & Reiss, A. L. (2007). Stress predicts brain changes in children: a pilot longitudinal study on youth stress, posttraumatic stress disorder, and the hippocampus. *Pediatrics*, 119(3), 509-516.

¹¹ Cooper, J. M., Vargha-Khadem, F., Gadian, D. G., & Maguire, E. A. (2011). The effect of hippocampal damage in children on recalling the past and imagining new experiences. *Neuropsychologia*, 49(7), 1843-1850.

¹² *Id.*

¹³ *Id.*

¹⁴ Julie M. Linton, Marsha Griffin, Alan Shapiro, American Academy of Pediatrics, *Policy Statement: Detention of Immigrant Children*, Apr. 2017, <http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>.

¹⁵ Nilsen, E. (2018, June). *Kids who cross the border meet with therapists and social workers. What they say can be used against them.* Vox. Retrieved from <https://www.vox.com/policy-and-politics/2018/6/18/17449150/family-separation-policy-immigration-dhs-orr-health-records-undocumented-kids>

needs assessment, children are asked for personal information about trauma history, family relationships, and relationship to authority. If children are concerned that their disclosures may be utilized against them or their (undocumented) family members, they will be less likely to fully engage in mental health services, which leaves children at risk of having their symptoms exacerbated. Additionally, minors legally cannot exercise HIPAA rights without the signature and approval of a parent or guardian. However, consent requirements are undermined if the parent or guardian is also detained, or unable to claim sponsorship due to fears of being deported.

Finally, CHRC and Civitas have concerns about the lack of clarity proposed by ORR's physical and mental health standards for children in its care. The NPRM notes that ORR will provide routine and emergency medical and mental health care for all unaccompanied immigrant children in its care, and "provide appropriate mental health interventions when necessary." However, the process for determining such interventions are unclear, with ORR failing to provide an operationalized definition for "when necessary" and according to whose discretion.

3. Prolonged and unlimited detention of children contradicts domestic and international law, best practices and principles in child-serving systems, including juvenile justice and child welfare.

Federal child welfare law also recognizes children's need for permanency and stability. In 1997, Congress passed the Adoption and Safe Families Act (ASFA) as a response to concerns that children were remaining in substitute care for long periods.¹⁶ The law now recognizes and requires timely permanency for children.¹⁷ This priority stems from the child welfare system's reliance on the best interest standard, which recognizes that the best interests of the child must always be paramount.¹⁸ This idea is reinforced in the United Nations Convention on the Rights of the Child (CRC), a global norm for children's rights.¹⁹ The CRC also makes clear that detention of a child should be used only as a measure of last resort and for the shortest appropriate amount of time, because "no child should be arbitrarily deprived of his or her liberty."²⁰

The adverse effects of prolonged detention of children has also been recognized by our juvenile justice laws and practices. Supreme Court Justice Marshall stated that, "fairly viewed...detention of a juvenile gives rise to injuries comparable to those associated with the imprisonment of an adult."²¹ A review of youth corrections shows that detention has a

¹⁶ Jones, W. G., Honorable. (2006). *Working with the Courts in Child Protection* (Rep.). (United States Department of Health and Human Services, Administration for Children & Families, Administration on Children, Youth and Families, Children's Bureau, Office on Child Abuse and Neglect).

¹⁷ P.L. 105-89.

¹⁸ Child Welfare Information Gateway. (2016). *Determining the Best Interests of the Child* (pp. 1-28) (United States Department of Health and Human Services, Administration for Children & Families, Children's Bureau).

¹⁹ *Convention on the Rights of the Child*. (1990, September 2).

²⁰ *Id.*

²¹ Holman, B., & Zeidenberg, J. (2006, November 28). *The Dangers of Detention: The impact of Incarcerating Youth in Detention and Other Secure Facilities* (Rep.). Retrieved October 30, 2018, from Justice Policy Institute website: http://www.justicepolicy.org/uploads/justicepolicy/documents/dangers_of_detention.pdf.

profoundly negative impact on young people’s mental and physical well-being, their education, and their employment.²²

Moreover, prolonged and indefinite detention of migrants also violates the prohibition against torture and ill-treatment under international law. The UN Special Rapporteur on torture has stated that ill-treatment can amount to torture if it is intentionally imposed “for the purpose of deterring, intimidating, or punishing migrants or their families, or coercing them into withdrawing their requests for asylum.”²³

Prolonged and indefinite detention of migrant children, combined with limited access to legal service providers also contravenes the obligations of the US under the Optional Protocol on the Sale of Children (OPSC), and the 2013 and 2017 Concluding Observations by the UN Committee on the Rights of the Children in response to the US combined periodic report of its obligations under the OPSC.²⁴ In 2013, the CRC recommended that the United States incorporate the “best interest determination” for unaccompanied children “in all decisions throughout immigration-related procedures and ensure that every unaccompanied child is represented in immigration court and appointed an independent Child Advocate to protect the child’s best interest.”²⁵ The CRC also urged the United State to provide protections to vulnerable migrant children, “regardless of their parent’s immigration status” and to strive to “reduce their vulnerability” to offences under the protocol. The CRC also urged that all unaccompanied minors be provided an attorney to represent them in immigration proceedings.²⁶

4. Prolonged and unlimited detention will severely limit educational opportunities for children, creating long-term negative effects.

Education is a right recognized for children under the Convention on the Rights of the Child. US law also recognizes that all children have a right to public primary and secondary education without regard to race, national origin, citizenship, immigration status, or the immigration status of their parents or guardians.²⁷ Our experience with homeless children makes clear that children are best equipped to succeed academically when they live in a stable home with an adult they trust and learn in a normal, structured and supportive classroom environment.

The proposed HHS and Department of Homeland Security (“DHS”) regulations do not list a requirement for evaluations or requirement for structured education for children, but vaguely state that education will be provided “in a structured classroom setting, Monday through Friday. . . .”²⁸ The new DHS and HHS regulations indicate that a child’s educational program should be appropriate for the minor’s estimated length of stay. When children are in an

²² *Id.*

²³ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, Migration-related Torture and Ill treatment, A/HRC/37/50 (February 2018).

²⁴ Concluding Observations on the combined 3rd and 4th report submitted to the UN Committee on the rights of the Child, available at <https://www.state.gov/j/drl/rls/272172.htm>

²⁵ <https://www.icj.org/wp-content/uploads/2014/10/Concluding-Observations-CRC-OPSC-United-States-of-America-2013-eng.pdf>, at 47.

²⁶ *Id.*

²⁷ *Plyer v. Doe*, 457 U.S. 202 (1982)

unstable environment, such as detention, or when parents or other caregivers are unable to act as providers for their children, their education suffers. For example, research shows that children placed in temporary living facilities, children experiencing homelessness, and children in foster care or separated from a parent all face significantly higher barriers to learning.²⁹ The proposed rule will deprive more children of the opportunity to reach their full developmental and academic potential by restricting their release to trusted caregivers and their access to schools with supportive norms and structures.

Migrant children entering detention facilities may already have disrupted formal education due to poverty, violence, or crime in their communities.³⁰ Children and families seeking asylum have likely also experienced trauma. This trauma can impact “concentration, memory, and the ability to process information, which are necessary for children to succeed in school.”³¹ Research also shows that exposure to trauma has been linked to difficulties in problem-solving, regulating emotions, an increase in aggressiveness, and executive functioning.

As written, the proposed NPRM does not adequately address trauma-informed services, including specialized educational services for children and children with disabilities. Children with disabilities may not be identified or appropriately cared for. There have been reports of children in family detention centers with disabilities who are being restrained and secluded because their behavior needs are not being addressed.³² These are children who are away from their families and other supports, who have often experienced severe trauma before separation, in addition to any disabilities they might also have.

5. The proposed regulations violate the rights of unaccompanied child status provided under federal law, and potential victims of human trafficking.

The NPRM, as proposed, directly contravenes the Trafficking Victims Protection Reauthorization Act of 2008, which assigns initial jurisdiction over unaccompanied alien children’s asylum cases to USCIS and undermines the exemption of unaccompanied alien children’s cases from the one-year filing deadline.

The proposed regulation states that “[n]othing in this paragraph affects USCIS’ independent determination of its initial jurisdiction over asylum applications filed by UACs pursuant to

²⁹ See, e.g., Press Release, U.S. Department of Education, Education Department Releases Guidance on Homeless Children and Youth (Jul. 27, 2016), <https://www.ed.gov/news/press-releases/education-department-releases-guidance-homeless-children-and-youth>; U.S. Dep’t of Educ. & U.S. Dep’t of Health and Human Servs., Dear Colleague Letter: Elementary and Secondary Education Act (June 23, 2016), <https://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercaredcl.pdf>.

³⁰ Hill, L., *Supporting Newcomer Students, A Chicago-Specific Exploration of Social-Emotional Learning Initiatives*, Center for the Human Rights of Children, 2018, page 6. Retrieved from <https://luc.edu/chrc/orderpublications.shtml>

³¹ *Id.*, page 5.

³² See *id.*; see also *Doe v. Shenandoah Valley Juvenile Center Comm’n*, Class Action Complaint (W.D. Va. Oct. 4, 2017), http://www.washlaw.org/pdf/svic_class_action_complaint_signed.PDF. See Bob Ortega, CNN, “Virginia report clears child detention center of abuse, but youths’ lawyer says investigation was insufficient,” Aug. 14, 2018, <https://www.cnn.com/2018/08/14/us/virginia-clears-shenandoah-detention-center-abuse-allegations-invs/index.html> (discussing the findings of a state investigation finding allegations related to Shenandoah did not amount to child abuse or neglect—an investigation counsel challenge as “shockingly inadequate.”).

section 208(b)(3)(c) of the Act.” Yet, DHS asserts that “immigration officers will make a determination of whether an alien meets the definition of a UAC each time they encounter the alien.”³³ Under the NPRM, DHS would have unconstrained discretion to determine who meets the definition of a UAC, and thus eliminate and undermine procedural protections such as the ability to first present an asylum claim before a USCIS asylum officer, or exemption from the one-year filing bar, even after these protections have already legally attached.

The Homeland Security Act of 2002 provided the first definition of an “unaccompanied alien child” as “a child who—(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.”³⁴

The legal status of “unaccompanied alien child” brings with it substantive and procedural protections to ensure the safety and well-being of children, and their ability to meaningfully participate in immigration proceedings. The proposed regulations, however, would allow DHS to strip these protections from unaccompanied alien children and make them even more vulnerable. This result thwarts congressional intent as demonstrated by the FSA and the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA).

The Trafficking Victims Protection Act of 2008 (TVPRA) was intended to “strengthen US efforts to stop the abhorrent practice of human trafficking both in the United States and around the world.”³⁵ The TVPRA also recognized that “unaccompanied alien children are the most vulnerable immigrants,” deserving of both humane and fair treatment while in custody, the TVPRA requires that children from non-contiguous countries be placed in removal proceedings before an Immigration Judge, have the right to apply for legal relief and receive counsel “to the greatest extent practicable.”³⁶ These children are transferred to the jurisdiction of the Department of Health and Human Services, which “must make initial determinations of benefit eligibility for minors who are potential trafficking victims” in order to “facilitate the immediate assistance desperately needed by children rescued from exploitative and traumatic situations.”ⁱ These procedures were enacted with broad, bipartisan support and leadership to provide more meaningful and informed opportunities to learn of the child’s capacity, risk of human trafficking, and capability of making a voluntary, independent, and informed decision about whether to enter or withdraw and application to enter the United States. The TVPRA also includes provisions for children from non-contiguous countries who are identified at risk of

³³ 83 Fed. Reg. at 45497 (Proposed 8 CFR § 236.3(d)).

³⁴ Homeland Security Act of 2002, Sec. 462; 6 U.S.C. § 279.

³⁵ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Hearing before the Senate, 110th Congress (2008) (Testimony of Patrick Leahy) Retrieved from <https://a.next.westlaw.com/Link/Document/FullText?findType=l&pubNum=100003&cite=UUID%281BB554DC0C7-9411DDB70BCD4D0A3C280C%29&originatingDoc=IE404DAF0D5A011DDBC03E3FA6ED9E47F&refType=LL&originatingContext=reportsAndRelatedMaterials&contextData=%28sc.DocLink%29&transitionType=ReportsRelatedItem>

³⁶ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Hearing before the Senate, 110th Congress (2008) (Testimony of Dianne Feinstein and Chris Smith) Retrieved from <https://a.next.westlaw.com/Link/Document/FullText?findType=l&pubNum=100003&cite=UUID%281BB554DC0C7-9411DDB70BCD4D0A3C280C%29&originatingDoc=IE404DAF0D5A011DDBC03E3FA6ED9E47F&refType=LL&originatingContext=reportsAndRelatedMaterials&contextData=%28sc.DocLink%29&transitionType=ReportsRelatedItem>

being trafficked from being repatriated into the hands of traffickers or abusers.

Child development and mental health research has made clear that children and adolescents have not fully matured in areas of cognition, language, emotional development, and maturity of judgment.³⁷ The Procedural protections in the TVPRA recognized this, and provided unaccompanied immigrant children time to tell their stories and access any legal relief for which they may qualify, such as asylum and special immigrant juvenile status. To this end, the TVPRA exempts unaccompanied alien children from the one-year filing deadline that otherwise applies to asylum claims.³⁸ Children who have experienced chronic trauma – multiple and pervasive violent events – have been shown to be even more difficult to identify as victims of abuse and neglect, including trafficking, as the effects of this level of trauma can hinder communication between children and adults.³⁹ Moreover, research has shown that when children are detained in frightening conditions, their ability to disclose traumatic events can be further compromised.⁴⁰

The exemption also addresses the challenges facing unaccompanied alien children who typically are detained in one or more ORR facilities, sometimes for extended periods, before release to a caregiver. Flexibility for children to submit their asylum claims once they are settled and have an opportunity to prepare their cases with counsel accords with basic notions of due process and best practices involving children in both US and international law.

Yet under the NPRM, an immigration officer could determine that an unaccompanied alien child no longer meets the definition of an unaccompanied alien child and potentially remove access to protections if a child has turned 18,⁴¹ or if a parent or legal guardian is available to provide care and custody for the child. This could occur even though the child's vulnerability endures after having turned 18 or been reunified with a parent or legal guardian. This undermines protections and standards recognized under federal legislation, and will compromise US efforts to protect unaccompanied children, children who have been trafficked, and those eligible for asylum.

Conclusion

For reasons set forth above, and on behalf of our colleagues and collaborators, the CHRC and Civitas oppose the proposed NPRM rule. The NPRM undermines existing protections for children set forth under the FSA, and undermines both international and domestic protections

³⁷ Sroufe, L. A., Egelund, B., Carlson, E.A., and Collins, W.A. (2005). *The development of the person: The Minnesota study of risk and adaptation from birth to adulthood*. New York: Guilford; Siegel, D. (2012). *The Developing Mind, Second Edition: How Relationships and the Brain Interact to Shape Who We Are*. Guilford Press; Siegel, D.J. (2001). Toward an interpersonal neurobiology of the developing mind: relationships, "mindsight", and neural integration. *Infant Mental Health Journal*, 22(1-2), 67-94; Perry, B. D. (2002). Childhood experience and the expression of genetic potential: What childhood neglect tells us about nature and nurture. *Brain & Mind* 3(1): 79-100.

³⁸ INA § 208(a)(2)(E).

³⁹ *Supra*, 37.

⁴⁰ *Id.*

⁴¹ *Cf. Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018) (finding that an Immigration Judge can assume jurisdiction over an asylum applicant filed by a UAC after turning 18). As demonstrated by the above and foregoing analysis, this BIA decision is contrary to Congressional intent and was wrongly decided.

for children that serve to safeguard children from neglect, abuse, and exploitation. Moreover the proposed NPRM could cause irreparable harm to children. We urge DHS and HHS to abandon this rule or to revise the proposed rule to mirror the conditions set forth in the agreed upon FSA.

Sincerely,



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¹ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Hearing before the House of Representatives, 110th Congress (2008) (Testimony of Chris Smith) Retrieved from <https://a.next.westlaw.com/Link/Document/FullText?findType=l&pubNum=100003&cite=UUID%281BB554DC0C7-9411DDB70BCD4D0A3C280C%29&originatingDoc=IE404DAF0D5A011DDBC03E3FA6ED9E47F&refType=LL&originat ionContext=reportsAndRelatedMaterials&contextData=%28sc.DocLink%29&transitionType=ReportsRelatedItem>