

The Honorable Chairman Ron Johnson
U.S. Senate Committee on Homeland Security
and Governmental Affairs
Washington, DC 20510

The Honorable Ranking Member Claire McCaskill
U.S. Senate Committee on Homeland Security
and Governmental Affairs
Washington, DC 20510

CC: Members of the U.S. Senate Committee on Homeland Security and Governmental Affairs

September 14, 2018

Dear Chairman Johnson, Ranking Member McCaskill, and Members of the U.S. Senate Committee on Homeland Security and Governmental Affairs:

We, the undersigned organizations who work on behalf of, serve, or provide care for asylum seekers, refugees, immigrants, and children write to urge you and your colleagues to oppose any legislation that would expand the scale and length of immigrant family detention or overturn the child protection principles currently governing the treatment of migrant children in custody.

In its June 20, 2018 Executive Order¹, the Trump administration made clear that it seeks to turn to family detention as the answer to its policies of separating families apprehended - often while legally seeking asylum - at the border. The administration has sought to modify the 1997 *Flores* Settlement Agreement in order to be able to detain more children with their parents, to do so for longer periods of time, and in conditions that have clearly been demonstrated to be unsafe and inadequate. Stopped by the court,² it has proposed federal regulations³ that would gut the protections that form the heart of those prescribed by *Flores*. Our organizations are deeply concerned at these plans, as well as any legislative efforts that would similarly permit such expanded and prolonged detention in inappropriate conditions, including by undermining key elements of the *Flores* Agreement.

The *Flores* Settlement Agreement resulted from over a decade of litigation over the government's policies of detaining children. Prior to *Flores*, children could be detained with unrelated adults in prison-like facilities, had little to no access to education or recreation, be subject to strip searches, and more.⁴ The Agreement, which applies to all children - unaccompanied and accompanied - in U.S. immigration custody, is grounded in fundamental child protection principles, and aims to ensure that children are not subject to prolonged detention, that when necessary they are held in appropriate facilities that are not secure and are licensed by a child welfare entity, that they receive appropriate care, and that their due process rights are respected. Any measure that would undermine or overturn *Flores* creates the very real risk that children will be harmed and traumatized as a result.

¹ Executive Order: Affording Congress an Opportunity to Address Family Separation, The White House, June 20, 2018, <https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/>.

² Josh Gerstein, "Judge rejects Trump request to alter agreement on release of immigrant kids," *Politico*, July 9, 2018, <https://www.politico.com/story/2018/07/09/judge-rejects-trump-request-flores-immigrant-children-704019>.

³ Notice of Proposed Rulemaking: Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Children, September 7, 2018. <https://www.gpo.gov/fdsys/pkg/FR-2018-09-07/pdf/2018-19052.pdf>.

⁴ United States District Court Central District of California, *Flores v. Meese*, July 11, 1985, *Flores v. Reno*, National Center for Youth Law, <https://youthlaw.org/wp-content/uploads/1997/05/Flores-Complaint.pdf>.

The Department of Homeland Security (DHS) currently operates three family detention facilities: two in Texas, and a smaller facility in Pennsylvania. In addition, DHS also operated a family detention facility in Artesia, New Mexico in 2014, and used the T. Don Hutto facility in Texas for family detention from 2006 to 2009. Numerous reports and complaints document the extensive concerns over treatment, care, and length of custody in DHS's family detention facilities, none of which are licensed by a child welfare entity and all of which are secure.⁵ So inappropriate are the conditions in family detention facilities and DHS's practices concerning family detention that Immigration and Customs Enforcement's (ICE) own Advisory Committee on Family Residential Centers (ACFRC) - a committee of subject matter experts that was formed to independently examine and issue guidance to ICE on how to improve family detention practices - issued as its first recommendation that ICE should discontinue the practice.⁶ The American Academy of Pediatrics has similarly found that children in the custody of their parents "should never be detained."⁷ More recently, two physicians who work with DHS's Office for Civil Rights and Civil Liberties and have extensively visited family detention centers also spoke out based on their concerns over the potential expansion of family detention. The physicians found egregious examples of inadequate care that included severe weight loss in children detained in family detention centers as well as "an infant with bleeding of the brain that went undiagnosed for five days."⁸

Family detention, like all immigration detention, also severely inhibits the ability to obtain legal relief. Existing detention centers are often in remote locations with extremely limited access to legal information and legal counsel. Only 14 percent of those in immigration detention have a lawyer, and the chances of success increase ten-fold with representation.⁹ Family detention traumatizes and re-traumatizes children and their parents, who are already often fleeing a dangerous and traumatic situation and yet forced to navigate the U.S. asylum process - and to explain their story to a judge and opposing counsel - without any legal assistance. These challenges are exacerbated further in cases where a family member speaks an indigenous language or may not be able to read or write.

⁵ Women's Refugee Commission and Lutheran Immigration and Refugee Service, *Locking Up Family Values, Again*, Women's Refugee Commission, October 2014, <https://www.womensrefugeecommission.org/resources/document/1085-locking-up-family-values-again-Plaint.pdf>; Human Rights First, *Long-Term Detention of Mothers and Children in Pennsylvania*, Human Rights First, August 19, 2016, <https://www.humanrightsfirst.org/resource/long-term-detention-mothers-and-children-pennsylvania>; Complaint: The Traumatizing Impact of Family Detention on Mental Health of Children and Mothers, June 30, 2015, <https://www.aila.org/advo-media/press-releases/2015/deplorable-medical-treatment-at-fam-detention-ctrs/public-version-of-complaint-to-crcl>; Complaint: ICE's Failure to Provide Adequate Medical Care to Mothers and Children in Family Detention Facilities, July 30, 2015, <https://www.womensrefugeecommission.org/rights/resources/1182-crcl-complaint-2015-06>; Complaints Regarding Sexual Abuse of Women in DHS Custody at Karnes County Residential Center, September 30, 2014, MALDEF, http://www.maldef.org/news/releases/maldef_other_groups_file_complaint_ice_family_detention_center_karnes_city/; American Bar Association, *Family Immigration Detention: Why the Past Cannot Be Prologue*, American Bar Association Commission on Immigration, July 31, 2015, https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/FINAL%20ABA%20Family%20Detention%20Report%208-19-15.authcheckdam.pdf; *Righting the Wrong: Why Detention of Asylum-Seeking Mothers and Children in America Must End Now*, Tahirih Justice Center, October 28, 2015, <https://www.tahirih.org/wp-content/uploads/2015/10/Righting-the-Wrong-Why-Detention-of-Asylum-Seeking-Mothers-and-Children-Must-End-Now-Web-Copy.pdf>.

⁶ Immigration and Customs Enforcement, Advisory Committee on Family Residential Centers (ACFRC), *Report on the DHS Advisory Committee on Family Residential Centers*, October 7, 2016, <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>

⁷ Julie M. Linton, Marsha Griffin, Alan J. Shapiro, "Detention of Immigrant Children," Council on Community Pediatrics, Pediatrics, (March 2017), <http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>.

⁸ Miriam Jordan, "Whistle-Blowers Say Detaining Migrant Families 'Poses High Risk of Harm,'" *New York Times*, July 18, 2018, <https://www.nytimes.com/2018/07/18/us/migrant-children-family-detention-doctors.html>.

⁹ Ingrid Eagly and Steven Shafer, *Access to Counsel in Immigration Court*, American Immigration Council Special Report, September 2016, https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf.

There is more than enough evidence to illustrate clearly that DHS family detention practices result in an unacceptable treatment of children and cannot comport with the strict guidelines that *Flores* requires. The harms of family detention cannot be overstated, even when a child and her parent are detained only for a short period of time. Since *Flores* requirements are based on child protection principles to ensure that children are treated fairly and humanely, weakening them would only risk further harming children and their families. As the physicians who recently spoke out noted, “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.”¹⁰ Instead, DHS can and should turn to a spectrum of far more appropriate alternatives to family separation.

Detaining families is not the answer to the cruel family separation policies that resulted in thousands of children being torn from their parents. It is long past time for Congress to invest in sensible, proven, and far more humane alternatives. The government could safely release many families to sponsors in the community while the family pursues their immigration case in court. One program in particular, the Family Case Management Program (FCMP), was specifically implemented for families seeking asylum at our borders. The FCMP favored case management instead of detention for families, facilitating access to social and legal services while also supporting compliance with immigration requirements. Over 99 percent of the families enrolled in the FCMP appeared at their check-ins with ICE and their immigration court hearings.¹¹ At a cost of only \$38 each day for a whole family, compared to the \$320 each day for just one family member in detention, the program can also create huge cost savings when used as an actual alternative to family detention.¹²

Family detention is harmful, costly, and completely unnecessary. We urge you to reject any measure that would result in its expansion, allow families to be detained for longer periods of time, or weakens the safeguards that currently exist to protect children in government custody.

Sincerely,

National Organizations

ACLU

African American Ministers In Action

Al Otro Lado, Inc.

Alianza Americas

American Academy of Pediatrics

American College of Physicians

American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)

American Immigration Lawyers Association

¹⁰ Jordan, “Whistle-Blowers”, *New York Times*.

¹¹ 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, 5, <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-22-Nov17.pdf>.

¹² Department of Homeland Security, Immigration and Customs Enforcement, “Budget Overview: Fiscal Year 2019 Congressional Justification”, Department of Homeland Security, <https://www.dhs.gov/sites/default/files/publications/U.S.%20Immigration%20and%20Customs%20Enforcement.pdf>; Women’s Refugee Commission, *Family Case Management Program: A Backgrounder*, published July 20, 2018, <https://www.womensrefugeecommission.org/rights/resources/1653-family-case-management-program>.

American Pediatric Society
American Psychiatric Association
American Psychological Association
American-Arab Anti-Discrimination Committee
Amnesty International USA
Anti-Defamation League
ASAP (Asylum Seeker Advocacy Project)
Asian & Pacific Islander American Health Forum
Asian Americans Advancing Justice
Asian Pacific Institute on Gender-Based Violence
ASISTA
Association for Child Psychoanalysis
Association of Medical School Pediatric Department Chairs
Bend the Arc Jewish Action
Casa de Esperanza: National Latin@ Network for Healthy
Center for American Progress
Center for Gender & Refugee Studies
Center for Law and Social Policy (CLASP)
Center for Victims of Torture
Center on Immigration and Child Welfare
Church World Service
Columban Center for Advocacy and Outreach
Committee in Solidarity with the People of El Salvador (CISPES)
Detention Watch Network
Earthjustice
Evangelical Lutheran Church in America
Fair Immigration Reform Movement
Faith in Public Life
Families and Communities
Farmworker Justice
First Focus
Franciscan Action Network
Freedom Network USA
Friends Committee on National Legislation
Futures Without Violence
HEAL Trafficking
HIAS
Hofstra Law School Asylum Clinic
Hope Border Institute
Human Rights Campaign
Human Rights First
Human Rights Watch
Immigrant Justice Corps
Immigration Equality

Indivisible
International Rescue Committee
Jewish Council for Public Affairs
Justice in Motion
Kids in Need of Defense
Latin America Working Group
Leadership Conference of Women Religious
Lutheran Immigration and Refugee Service
Main Street Alliance
Maryknoll Office for Global Concerns
MomsRising
National Asian Pacific American Women's Forum (NAPAWF)
National Association of Social Workers
National Center for Victims of Crime
National Coalition Against Domestic Violence
National Council of Jewish Women
National Domestic Violence Hotline
National Immigrant Justice Center
National Immigration Forum
National Immigration Law Center
National Latina Institute for Reproductive Health
National Network to End Domestic Violence
National Organization for Women
National WIC Association
National Women's Law Center
NETWORK Lobby for Catholic Social Justice
Office of Social Justice
Oxfam America
Partnership For America's Children
Pax Christi USA
Presbyterian Church (U.S.A.)
Salvadoran American National Network (SANN)
Save the Children USA
Scalabrini International Migration Network
Service Employees International Union (SEIU)
Sisters of St. Francis of Philadelphia
Sisters of St. Francis of the Neumann Communities
Society for Adolescent Health and Medicine
Society for Pediatric Research
Southeast Asia Resource Action Center (SEARAC)
Southern Poverty Law Center
Tahirih Justice Center
U.S. Committee for Refugees and Immigrants
Ujima Inc: The National Center on Violence Against Women in the Black Community

UnidosUS
Union for Reform Judaism
Women's Refugee Commission
Young Center for Immigrant Children's Rights
ZERO TO THREE

State/Local Organizations

A Safe Place
Advocates for Children of NJ
ALDEA - The People's Justice Center
Americans for Immigrant Justice
Apostle Immigrant Services
Arizona Coalition to End Sexual and Domestic Violence
Arkansas Advocates for Children and Families
Artemis Justice Center
Ayuda
Between Friends
CAIR New York
California Partnership to End Domestic Violence
CaliforniaHealth+ Advocates
Capital Area Immigrants' Rights Coalition
Capital Area New Mainers Project
Center for Family Life in Sunset Park
Center for Family Representation
Center for Health Progress
Center for Safety and Change
Center for the Human Rights of Children, Loyola University Chicago School of Law
Center for Worker Justice of Eastern Iowa
Central American Resource Center (CARECEN) DC
Centro Legal de la Raza
Chicago Alliance Against Sexual Exploitation
Children First for Oregon
Children's Advocacy Alliance
Children's Defense Fund - New York
Children's Defense Fund - Texas
Citizens' Committee for Children of New York
Clayton Early Learning
Coalition for Humane Immigrant Rights (CHIRLA)
Colorado Children's Campaign
Colorado Fiscal Institute
Colorado Organization for Latina Opportunity and Reproductive Rights
Connecticut Association For Human Services, Inc.
Connecticut Voices for Children
DC Coalition Against Domestic Violence

Dolores Street Community Services
Domestic Violence project at the Urban Justice Center
Dove, Inc.
End Domestic Abuse WI
First Parish Portland
First3Years
Florida Council Against Sexual Violence
Georgia Coalition Against Domestic Violence
Grassroots Leadership
Gulfcoast Legal Services
Her Justice
Hispanic Interest Coalition of Alabama
Holy Name of Jesus - St. Gregory the Great Parish
Hope Acts
Human Rights Initiative of North Texas
Idaho Voices for Children
Illinois Coalition Against Domestic Violence
Immigrant Allies of Marshalltown (Iowa)
Immigration Center for Women and Children
Indiana Coalition Against Domestic Violence
Iowa Coalition Against Domestic Violence
Iowa Conference United Methodist Women
Jane Doe Inc., the Massachusetts Coalition Against Sexual Assault and Domestic Violence
Justice Center of Southeast MA
Justice For Our Neighbors - Austin Region
Justice For Our Neighbors - DC-MD
Justice For Our Neighbors - East Texas
Justice For Our Neighbors - Houston
Justice For Our Neighbors - Iowa
Justice For Our Neighbors - Michigan
Kansas Action for Children
Kansas Appleseed
Kansas Center for Economic Growth
Kansas Coalition Against Sexual and Domestic Violence
Kentucky Youth Advocates
Kids Forward
Kino Border Initiative
Latinas Unidas Por Un Nuevo Amanecer (L.U.N.A.)
Lawyers For Children
Legal Aid Justice Center
Lenox Hill Neighborhood House, Inc.
LIFT Local Immigrant Family Treasury
Maine Children's Alliance
Maine Immigrants' Rights Coalition

Maine People's Alliance
Maine WTR Resource Center
Mainers for Accountable Leadership
Mid-South Immigration Advocates
Montana Coalition Against Domestic and Sexual Violence
Mutual Ground, Inc.
NC Child
Nebraska Appleseed
Nebraska Coalition to End Sexual & Domestic Violence
Neighbors Link Community Law Practice
New Jersey Coalition to End Domestic Violence
New Mexico Voices for Children
New Sanctuary Coalition
New York Immigration Coalition
New York Legal Assistance Group
New York State Coalition Against Domestic Violence
NLG at UC Irvine Law
Northern Manhattan Coalition for Immigrant Rights
Ohio Immigrant Alliance
Pax Christi Metro DC-Baltimore
Rhode Island KIDS COUNT
RSHM LIFE Center
Sanctuary for Families
Santa Fe Dreamers Project
Schuyler Center for Analysis & Advocacy
Sosa Law
South Bronx United
Stopping Woman Abuse Now
Texans Care for Children
The Bronx Defenders
The Children's Agenda
The Children's Campaign
The Children's Partnership
The Florence Immigrant & Refugee Rights Project
The Legal Aid Society
The Legal Project, Inc.
The Resurrection Project
Tulsa Immigrant Resource Network
Turning Point, Inc.
USC Gould International Human Rights Clinic
Vermont Network Against Domestic and Sexual Violence
Voices for Children in Nebraska
Voices for Florida
Volunteers of Legal Service

Wallingford Indivisible

Washington Immigrant Solidarity Network

Washington State Coalition Against Domestic Violence

Washington State League of United Latin American Citizens (LULAC)

Wyoming Coalition Against Domestic Violence and Sexual Assault