

No. 19-56326

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**JENNY LISETTE FLORES, et al.,
Plaintiffs-Appellees,**

v.

**WILLIAMS BARR, ATTORNEY GENERAL OF THE UNITED STATES, et
al.,
Defendants-Appellants.**

**Brief of *Amici Curiae* The Academic Pediatric Association, American
Pediatric Society, American Academy of Child and Adolescent
Psychiatry, American Academy of Pediatrics, American Academy of
Pediatrics California Chapter, American Academy of Pediatrics
Pennsylvania Chapter, American Academy of Pediatrics Texas Chapter,
American Association for Psychoanalysis in Clinical Social Work,
American Medical Association, * In Support of Plaintiffs-Appellees**

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DISCLOSURE STATEMENT

There are no parent corporations or publicly-held corporations that own 10% or more of the stock in any of the amicus curiae.

AMICUS BRIEF BY CONSENT

All parties to this appeal have consented to the filing of this amicus brief.

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**CONCISE STATEMENT OF THE IDENTITY OF THE AMICUS CURIAE,
THEIR INTEREST IN THE CASE, AND THE SOURCE OF THEIR
AUTHORITY TO FILE.**

The amicus curiae listed in Exhibit 1 are organizations committed to the care, health, education, well-being, and welfare of children or that focus on advancing policy solutions for children and families or focus on the general welfare of children. Each of the amicus curiae have been authorized to join this brief under their governing documents. Full statements on each *amicus* are included as Exhibit 1 to this brief.

STATEMENT REGARDING PREPARATION OF THE AMICUS BRIEF.

Counsel for a party did not author this brief in whole or in part, nor did a party or a party's counsel contribute money that was intended to fund preparing or submitting this brief. No person — other than the amicus curiae, its members, or its counsel — contributed money that was intended to fund preparing or submitting this brief.

ARGUMENT

I. Introduction

This appeal continues the Trump Administration's effort to abandon the protections guaranteed children under the Flores Settlement Agreement ("FSA").

Flores v. Reno, Case No. CV 85-4544-RJK(Px) (C.D. Cal. filed Jan. 17, 1997).¹ Expressing disagreement with various court decisions implementing the FSA and ignoring the recommendations of its own DHS advisory committee (“Advisory Committee”) that “detention or the separation of families for purposes of immigration enforcement or management are never in the best interest of children,” 84 Fed. Reg. at 44,503, the Administration’s Rule seeks to expand the detention of children and to do so indefinitely.² In other words, according to the Administration’s own experts, its Rule is directly contrary to the best interests of children. Or, in the words of the district court, the Rule “abrogate[s] the consent decree’s most basic tenets.” (ER 27.)

The primary purpose of the FSA is to protect immigrant children from harm. Indeed, the FSA explicitly states that the Administration is required to treat “all [children] in its custody with dignity, respect and special concern for their particular vulnerability as [children].” FSA ¶ 11 (ER 239). The FSA further emphasizes that detained children should be placed “in the least restrictive setting appropriate to the [child’s] age and special needs” *Id.*

¹ The new rule is: Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, 84 Fed. Reg. 44,392 (Aug. 23, 2019) (“Rule”).

² The Rule is in direct violation of the FSA’s requirement that the “final regulations shall not be inconsistent with the terms of” the FSA. FSA ¶ 9 (ER 238).

The seminal principles of dignity, respect, and least restrictive setting are also echoed in the FSA’s mandates regarding the release of immigrant children. More specifically, the FSA provides that an immigrant child should be released without unreasonable delay. FSA, ¶¶ 14, 18 (ER 241-42, 244).

Finally, the FSA requires that in the event that a child is to be placed in a “licensed program,” such program shall be non-secure and “licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children” FSA ¶ 6 (ER 236). The licensed program must meet all enumerated standards, including that the children must be provided with appropriate medical care, suitable living accommodations (including appropriate food, clothing and grooming items), and individualized and appropriate educational services. FSA, Ex. 1 (ER 255-58).

With the current proposal, the Administration seeks to gut the protections of the FSA for vulnerable children, in violation of the FSA itself. Rather than implementing the humane approach of the FSA to care for children seeking safety, the Rule confines these children for an indefinite period of time in “secure facilities” — a euphemism for a prison-like structure. These facilities would be licensed and overseen by the same federal agencies that have decisively demonstrated their widely condemned methods of “caring” for these children. In addition, children in

custody face a constant risk under the Rule of having their status changed to their immediate detriment.

The present situation under the FSA is barely tolerable for children. The Rule will make things much worse, with more children detained for longer periods of time under materially worse conditions. The Rule is not in the best interests of these children.

II. The District Court Correctly Held That the Rule Intentionally Subverts the FSA.

In its ruling, the district court properly found that the Plaintiffs had proved a “a non-exhaustive list of 26 areas in which the New Regulations materially differ” from the FSA. (ER 26.) The court carefully compared the Rule to the FSA and found that “DHS’s New Regulations on the parole of class members, the definition of licensed facilities, and the definition of non-secure are irreconcilable with Paragraphs 6, 14, 18, and 19 of the *Flores* Agreement, and cannot be reasonably characterized as regulations ‘implementing this Agreement.’” [Op. at 11] (ER 14) And the court ruled that “HHS’s New Regulations concerning placement of minors are not consistent with the *Flores* Agreement.” *Id.* (ER 14.)

The Court stated: “Given that the history of this case is replete with findings of Defendants’ non-compliance with the Agreement, precision in the regulatory language purporting to terminate the Agreement is that much more important.” (ER 18.) The Rule changed many of the “mandatory, non-discretionary obligations” of

the government to discretionary ones, abandoning the protections afforded by the FSA. After reviewing these provisions, the court held that “these aspects of the New Regulations fail to implement the *Flores* Agreement, and are not consistent with its terms.” (*Id.*)

Finally, the district court correctly pointed out: “The *Flores* Agreement contemplates the promulgation of regulations codifying ‘*the relevant and substantive terms* of th[e] Agreement as a Service regulation’ and specifically prohibits Defendants from issuing regulations that are “*inconsistent* with the terms of th[e] Agreement.” (ER 19) After evaluating the Rule, the court properly found that the “[n]ew Regulations are a condition subsequent that not only do not implement the *Flores* Agreement, they intentionally subvert it.” (ER 20.) This finding by the district court was eminently correct and should be upheld by this Court.

III. The Rule Will Have A Devastating Impact For Immigrant Children.

The asylum court process can take anywhere from six months to a few years.³ Given the present court backlog, the time is generally years and not months. Therefore, under the Rule children are quite likely to be in federal detention centers

³ Fact Sheet: U.S. Asylum Process (Jan. 2019), <https://immigrationforum.org/article/fact-sheet-u-s-asylum-process/>

for years.⁴ The overwhelming scientific consensus in the child welfare, medical, pediatric, psychiatric, and educational professional communities, including all of the *amici curiae*, is that such long term detention would have an extremely significant negative impact on the physical, mental, and emotional health of detained children.

A. The Rule Ignores Humane Alternatives To Long-Term Detention.

There is a humane alternative to the long-term detention of children with their parents in prison-like conditions. Following an increase in the number of families arriving in the United States in 2014, DHS introduced a pilot program in 2016 known as the Family Case Management Program (“FCMP”). The FCMP operated from January 2016 to June 2017 with 952 families across five major cities. The FCMP solely served families seeking asylum and used research-based individualized case management and partnerships with community-based organizations to give families in the program a deep understanding of the immigration process to encourage their compliance with U.S. immigration law.⁵

The FCMP was successful at ensuring compliance at a low cost. Of the program’s participants, 99.3 percent attended their immigration court hearings and

⁴ *Id.*

⁵ Women’s Refugee Commission, Backgrounder: Family Case Management Program, 2018,

<https://www.womensrefugeecommission.org/rights/resources/1653-family-case-management-program>

99.4 percent attended their appointments with ICE.⁶ Some of the participants were granted immigration relief including asylum, while others were ordered removed. Importantly, FCMP successfully supported families with repatriation. The FCMP achieved extremely high rates of compliance at much lower costs than family detention. Detaining families in DHS facilities costs nearly \$320 per person per day.⁷ But, the FCMP costs \$38 per day per family unit. Thus, the cost to detain a family of three for twenty days is more than twenty-five times the cost to enroll them in the FCMP.⁸

Similar programs offered through non-profit organizations and *amici* provide similar results. For example, between June 2013 and November 2014, 44 out of 46 formal referrals to the Lutheran Immigration and Refugee Services Community Support initiative were in complete compliance—an appearance rate of 95.6 percent. These holistic programs that offer case management services, and facilitate access to legal counsel as well as safe, affordable housing have been shown to substantially

⁶ *Id.*

⁷ Department of Homeland Security, Budget Overview FY 2019, U.S. Immigration and Customs Enforcement, <https://www.dhs.gov/sites/default/files/publications/U.S.%20Immigration%20and%20Customs%20Enforcement.pdf>.

⁸ Women's Refugee Commission, Backgrounder: Family Case Management Program, 2018,

<https://www.womensrefugeecommission.org/rights/resources/1653-family-case-management-program>

increase program compliance without the extensive and expensive use of electronic monitoring.⁹

B. The Rule Is In Direct Conflict With The Findings Of DHS's Own Advisory Committee On Family Residential Centers.

Not only are the Rule's provisions allowing for indefinite detention inconsistent with the FSA, they are also in direct conflict with findings of DHS's own ICE Advisory Committee on Family Residential Centers.

The Advisory Committee, composed of independent subject-matter experts, was established on July 24, 2015 and tasked with providing advice and recommendations to the Secretary of DHS through the Assistant Secretary for ICE on "matters concerning ICE's family residential centers."¹⁰ On October 7, 2016, the Advisory Committee released a report and stated: "our overarching recommendation is for DHS simply [to] avoid detaining families."¹¹ The Advisory Committee recommended that "DHS's immigration enforcement practices should

⁹ See Zero to Three Comments on the Notice of Proposed Rulemaking to Apprehension Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, DHS Dkt. ICEB 2018-002, at 4 (Nov. 6, 2018); United States Government Accountability Office. (2014). *Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness* 30, <http://www.gao.gov/assets/670/666911.pdf>

¹⁰ Rep. of the DHS Advisory Comm. on Family Residential Ctrs., "Final Report" (2016), at 1 (Introduction), <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFR-sc-16093.pdf>.

¹¹ *Id.* at 1 (Decisions to Detain and Release).

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.”¹²

The Advisory Committee’s conclusions and recommendations were supported by several findings that detention exposes children to harm and therefore is not in the best interests of children. Indeed, the Advisory Committee noted that ICE’s family residential standards were remarkably similar to standards developed by the American Correctional Association for adult criminal defendants incarcerated pretrial, in violation of ICE’s statutory mandate as well as case law.¹³

In the face of these findings from its own Advisory Committee stating that the “best interests of the child ... should favor release of the whole family together as soon as possible,” *id.* at 10, the Government seeks not to use effective alternatives to detention or even to mitigate the risk of harm to children, but instead to increase the detention of children. The Rule is thus contrary to the explicit and unequivocal conclusions made by DHS’s very own Advisory Committee.

¹² *Id.*

¹³ *Id.* at 22-23.

C. Detention Is Inherently Harmful To Children’s Mental And Physical Health.

Detention of children is a global issue condemned by respected human rights and professional organizations both within and beyond the United States.¹⁴

¹⁴ American Academy of Pediatrics, *Detention of Immigrant Children* 6, <https://pediatrics.aappublications.org/content/pediatrics/early/2017/03/09/peds.2017-0483.full.pdf>; American Immigration Council, *A Guide to Children Arriving at the Border: Laws, Policies and Responses*, (2015), <https://www.americanimmigrationcouncil.org/research/guide-children-arriving-border-laws-policies-and-responses>; CARA Family Detention Pro Bono Project. Letter of complaint from CARA to Office of Civil Rights and Civil Liberties and Office of Inspector General, Department of Homeland Security, Washington DC, March 28, 2016, https://www.google.com/search?q=CARA+Family+Detention+Pro+Bono+Project.+Letter+of+complaint+from+CARA+to+Office+of+Civil+Rights+and+Civil+Liberties+and+Office+of+Inspector+General,+Department+of+Homeland+Security,+Washington+DC,+March+28,+2016&rls=com.microsoft:en-US&ie=UTF-8&oe=UTF-8&startIndex=&startPage=1&gws_rd=ssl#spf=1579212159075; AILA doc. no. 16032961, www.aila.org/advo-media/press-releases/2016/cara-crcl-complaint-concerns-regarding-detention; Lutheran Immigration and Refugee Service; *The Women’s Refugee Values, Again*. Baltimore, MD: Lutheran Immigration and Refugee Service; 2014, https://www.speakcdn.com/assets/2474/lirswrc_lockingupfamilyvaluesagain_report_141114.pdf; Society for Community Research and Action Division 27 of the American Psychological Association, *Policy statement on the incarceration of undocumented migrant families*, *Am. J. Community Psychol.* 2016;57(1–2):255–263; UN Human Rights, *UN Experts to US: “Release Migrant Children from Detention and Stop Using them to Deter Irregular Migration”*, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23245&LangID=E>; UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return,

Overwhelmingly, medical research shows that even a short amount of time in detention is seriously harmful to children, particularly those who have already experienced trauma in their home countries or during their journey to the United States.¹⁵ Studies of detained immigrants have found negative physical and emotional symptoms among detained children, including anxiety, depression and post-traumatic stress disorder.¹⁶ As recently documented in reports issued by the Department of Health and Human Services, these symptoms of stress, anxiety, and behavioral issues increase the longer the child is detained.¹⁷ At least one domestic

November 16, 2017, CMW/C/GC/4-CRC/C/GC/23, <https://www.refworld.org/docid/5a12942a2b.html>, pp. 2-4.

¹⁵ See Zero to Three Comments at 3 & n.iii, (citing Triggs, G. (2015), *The Forgotten Children: National Inquiry into Children in Immigration Detention* (2014). The Medical Journal of Australia, 202(11), 553-555. doi:10.5694/mja15.00551). Children in detention have also shown regression in child development, high levels of anxiety and depression, and suicide attempts. *Id.* at 3 & n.iv (citing Acer, E., Byrne, O. (2015), *Family Detention: Still Happening, Still Damaging. Human Rights First*, <http://www.humanrightsfirst.org/sites/default/files/HRF-family-detention-still-happening.pdf>); See AAP, LIRS and Young Center Expert Letter at 2 (citing Linton J.M., Griffin M., Shapiro A.J., *Detention of Immigrant Children*, Pediatrics. 2017;139(5)); Society for Community Research and Action, Division 27 of the American Psychological Association, *Policy Statement on the Incarceration of Undocumented Migrant Families*, Am. J. Community Psychol. (2016) 57:255–263.

¹⁶ American Academy of Pediatrics, *Detention of Immigrant Children*, at 6 & nn. 55–57; Von Werthern M., Robjant K., Chui Z., Schon R., Ottisova L., Mason C., Katona C., *The impact of immigration detention on mental health: a systematic review*, BMC Psychiatry 2018; 18:382.

¹⁷ U.S. Dep’t of Health & Human Serv., Off. Inspector Gen., *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children In HHS Custody* (2019), <https://oig.hhs.gov/oei/reports/oei-09-18-00431.pdf> and U.S.

study of children detained at the southwestern border of the United States confirms this body of research. Dr. Luis Zayas, a child mental health expert, evaluated nearly fifty (50) children and mothers in multiple detention centers and found extremely high levels of anxiety, depression, suicide attempts, and regressions in child development.¹⁸ These regressions include declines in language development, impaired cognitive development, bed wetting, decreased eating, sleep disturbances, social withdrawal, and aggression.¹⁹

Even brief periods of detention impact children's functioning, and worsening mental health symptoms increase the longer a child is in detention.²⁰ Prolonged detention has been shown to exacerbate trauma and its negative impacts, too:

Dep't of Health & Human Serv., Off. Inspector Gen., *Unaccompanied Alien Children Care Provider Facilities Generally Conducted Required Background Checks But Faced Challenges In Hiring, Screening, and Retaining Employees* (2019), <https://oig.hhs.gov/oas/reports/region12/121920001.asp>.

¹⁸ Claire Hutkins Seda, Dr. Luis Zayas Provides Testimony on Family Detention, Migrant Clinicians Network Blog (July 29, 2015),

<http://www.migrantclinician.org/blog/2015/jul/dr.-luis-zayas-provides-testimony-family-detention.html>.

¹⁹ Megan J. Wolff, *Fact Sheet: The Impact of Family Detention on Children* (July 29, 2018), http://psych-history.weill.cornell.edu/pdf/Family_Detention_Sheet.pdf ; American Academy of Pediatrics, *Detention of Immigrant Children*, at 6, <http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>

²⁰ See Zero to Three Comments at 3 & n.v (citing Mares, S. (2015), *Fifteen years of detaining children who seek asylum in Australia – Evidence and consequences*, Australian Psychiatry, 24(1), 1-14. Doi: 10.1177/1039856215620029); see also Marius Lahti et al., *Temporary Separation from Parents in Early Childhood and Serious Personality Disorders in Adult Life*, 26 J. Personality Disorders 751 (2012).

children in detention are ten (10) times more likely to develop post-traumatic stress disorder than adults, and their symptoms become increasingly common the longer a child is in detention.²¹ Parents in detention centers have described regressive behavioral changes in their children, including decreased eating, sleep disturbances, clinginess, withdrawal, self-injurious behavior, and aggression.²² Instances of psychological distress are even more severe when children are forcibly separated from their mother.²³

Detention is inappropriate and profoundly harmful for children of any age. It is particularly damaging to young children due to their particular needs for safe and stimulating environments in which to learn and grow, and the fact that the first years of a child's life are of paramount importance to their later success and well-being.²⁴

²¹ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf; *see also* Martha von Werthern et al., *The Impact of Immigration Detention on Mental Health: A Systematic Review*, 18 *BMC Psych.* no. 382 (2018).

²² 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>.

²³ Sarah A. MacLean et al., *Mental Health of Children Held at a United States Immigration Detention Center*, 230 *Soc. Sci. Med.* 303 (2019).

²⁴ Harvard Univ., Center on the Developing Child, *In Brief: Early Childhood Mental Health* (2013),

<https://developingchild.harvard.edu/resources/inbrief-early-childhood-mental-health/>.

Sending infants and toddlers, even with their parents, to institutional detention is profoundly destructive to the health and well-being of a young child. Decades of research in child development clearly show that physical and social environments have a significant impact on children's healthy development.²⁵ A baby's brain makes more than one million neural connections every second, growing faster than at any point later in their life. These connections are shaped by their experiences—both positive and negative—and the consequent level of harmful stress in their lives.

In addition to their effects on the developing brain, adverse childhood experiences (ACEs) have been shown for decades to have lasting harmful effects on a child's immune system, endocrine system and metabolism through dysregulation of the hypothalamic-pituitary-adrenal axis, which provides the body's physiological stress response.²⁶ For young children, exposure to an environment such as detention or jailing is actively detrimental to their growth and development.²⁷ Early childhood

²⁵ See Zero to Three Comments at 3-4 & n.xii (citing Felitti, V. J., et. al. (1998), *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults*. Am. J. of Preventative Medicine, 14(4), 245-258. Doi:10.1016/s0749-3797(98)00017-8).

²⁶ Deighton S., Neville A., Pusch D., Dobson K, *Biomarkers of adverse childhood experiences: A scoping review*, Psychiatry Research. 2018; 269:719-732, doi:10.1016/j.psychres.2018.08.097; Berens A.E., Jensen S.K.G., Nelson C.A., *Biological embedding of childhood adversity: from physiological mechanisms to clinical implications*. BMC Med. 2017;15(1):135, doi:10.1186/s12916-017-0895-4.

²⁷ See Zero to Three Comments, at 2 & n.ii (citing Mares, S. (2015), *Fifteen years of detaining children who seek asylum in Australia – Evidence and consequences*, Australian Psychiatry, 24(1), 1-14, doi: 10.1177/1039856215620029).

trauma has severe implications for both physical and emotional health over time, increasing young children's risk for learning difficulties, problems forming relationships, and adult health problems.²⁸ Studies of adverse childhood experiences have also demonstrated that children experiencing multiple traumas before they are aged eighteen are at higher risk of developing depression, substance use disorders, cardiovascular disease, chronic obstructive pulmonary disease and cancer.²⁹

Even more alarming is the compounding nature of these health effects. For each additional trauma that a child encounters, their risk of experiencing negative health consequences increases.³⁰ Given that families seeking asylum have often already experienced profound traumas in their home countries, re-traumatizing children at the border through detention is even more likely to cause significant disability or chronic disease later in life. Immigration detention also has a detrimental effect on the mental health of parents and adult family members, which can adversely affect the ability of adult caregivers in detention to provide all of the

²⁸ See Zero to Three Comments at 4 & n. xiii (citing Fillmore, E. (2010), *The Effects of Immigration Detention on the Health of Children and Families in the UK*, Adoption & Fostering, 34(1), 88-91. Doi:10.1177/030857591003400112).

²⁹ Roth B.J., Grace B.L., Seay K.D., *Mechanisms of Deterrence: Federal Immigration Policies and the Erosion of Immigrant Children's Rights*, Am. J. Public Health. 2020;110(1):84-86. doi:[10.2105/AJPH.2019.305388](https://doi.org/10.2105/AJPH.2019.305388)

³⁰ *Id.*

support that detained children need to process their trauma.³¹

In light of this overwhelming body of research regarding the detention of children, it is unsurprising that the American Medical Association, the American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatry, the American College of Physicians, the American Psychological Association, the American Academy of Family Physicians, and the National Association of Social Workers have all publicly and strongly advocated for the end to family and child detention.

In 2018, the American College of Physicians released a policy stating that forced family detention—indefinitely holding children and their parents, or children and their other primary adult family caregivers, in government detention centers until the adults' immigration status is resolved—can be expected to result in considerable adverse harm to the detained children and other family members, including physical and mental health, that may follow them through their entire lives, and accordingly should not be implemented by the U.S. government.³² Unique to the

³¹ Wood L.C.N., *Impact of punitive immigration policies, parent-child separation and child detention on the mental health and development of children*. *BMJ Paediatrics Open* 2018; 2:e000338, doi:10.1136/bmjpo-2018-000338

³² American College of Physicians, *The Health Impact of Family Detentions in Immigration Cases*, July 3, 2018,

https://www.acponline.org/acp_policy/policies/family_detention_position_statement_2018.pdf; American Academy of Pediatrics, *Policy Statement: Detention of*

experience of family detention is the compounded emotional distress to parents who must experience the trauma of detention alongside their children. Existing literature highlights the negative impacts of this trauma on the shared emotional healing of parents and children collectively.³³

The American Psychiatric Association likewise recommends that “the maximum period of detention for children and their parents not go beyond the [FSA’s] current limit of 20 days and that every effort be made to minimize the number of days spent by families in detention to decrease the negative consequences of detention for this vulnerable population.”³⁴ The American Psychiatric Association recommends such limits because:

A substantial body of research links the trauma of childhood detention with lasting adverse outcomes, including an increased risk of mental illness, such as depression, anxiety, and post-traumatic stress disorder.³⁵ ... These migration-related and postmigration stressors can produce demoralization, grief, loneliness, loss of dignity, and feelings of helplessness as normal syndromes of distress that impede refugees

Immigrant Children, 2017, <http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>;

³³ Newman L.K., Steel Z., *The child asylum seeker: Psychological and developmental impact of immigration detention*. Child and Adolescent Psychiatric Clinics of North America 2008, 17(3):665-683.

³⁴ American Psychiatric Association, *Comments in Response to Proposed Rulemaking: Apprehension, Processing, Care and Custody of Alien Minors and Unaccompanied Alien Children*, at 2 (Nov. 6, 2018).

³⁵ *Id.* (citing Felitti, Vincent J. et al, *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults*, Am. J. of Preventive Medicine, Volume 14, Issue 4, 245–258).

from living healthy and productive lives.^{36, 37} It is critical that children remain with their parents, but this will not eliminate the risk of trauma. Prolongation of these families' detention will compound the already significant mental health consequences they face.³⁸

The American Academy of Pediatrics also strongly opposes detaining children:

DHS detention facilities are not appropriate places for children ... [because] even short periods of detention can cause psychological trauma and long-term mental health risks for children. Studies of detained immigrants have shown that children and parents may suffer negative physical and emotional symptoms from detention, including anxiety, depression and posttraumatic stress disorder.³⁹

The Administration disregarded the medical community's broad consensus as well as DHS Advisory Committee on Family Residential Centers ("FRCs"), which

³⁶ *Id.* (citing Al-Krenawi, A., Lev-Wiesel, R., & Sehwal, M. (2007), *Psychological symptomatology among Palestinian children living with political violence*, *Child and Adolescent Mental Health* 12:27–31).

³⁷ *Id.* (citing Fernando, G.A., Miller, K.E., & Berger, D.E. (2010), *Growing pains: the impact of disaster-related and daily stressors on the psychological and psychosocial functioning of youth in Sri Lanka*, *Child Dev.* 81:1192-1210).

³⁸ *Id.* at 2.

³⁹ American Academy of Pediatrics Comments to DHS Dkt. No. ICEB. 2018-002, *Proposal Rulemaking: Apprehension, Processing Care, and Custody of Alien Minors and Unaccompanied Alien Children*, at 7 (Nov. 5, 2018) (citing 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>).

Specifically in adolescents, who are often aware of the injustices they are experiencing, detention may impact their ability to make social adjustments. Caitlin Dickerson, *'There is a stench': Soiled clothes and no baths for migrant children at Texas center*, *New York Times*, June 21, 2019, <https://www.nytimes.com/2019/06/21/us/migrant-children-border-soap.html>.

found in 2016 that appropriate standards of care for children and families are simply impossible within the context of family detention and that detention or the separation of families for purposes of immigration enforcement or management are never in the best interest of children.⁴⁰

D. *Federal Detention Facilities' Conditions Seriously Compound The Harm Inherent In Detention.*

Further compounding the risks to children's well-being, families in detention face inadequate access to critical services including the medical and mental health care. Children and families, babies and expectant mothers in particular, need specialized medical and mental health services in order to ensure healthy growth and development. Family residential facilities have consistently failed to recruit adequate health staff including pediatricians, child and adolescent psychiatrists, and pediatric nurses. Families released to non-custodial programs have access to providers based in the community, but in detention their access to qualified medical and mental health care professionals has been demonstrated to be severely limited.⁴¹

The lack of adequate access to critical medical and mental health services is well-documented. Visits to family detention centers by pediatric and mental health

⁴⁰ Immigration and Customs Enforcement, *Report of the DHS Advisory Committee on Family Residential Centers*, 2016, <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>.

⁴¹ See Zero to Three Comments at 3.

experts have revealed discrepancies between the standards outlined by ICE and the actual services provided, including inadequate or inappropriate immunizations, delayed medical care, inadequate education services, and limited mental health services.⁴²

Other reports from physicians providing medical care at immigration facilities describe prison-like conditions; inconsistent access to quality medical, dental, or mental health care.⁴³ In a visit by lawyers, enabled under the 1997 Flores Settlement Agreement, one Texas facility reported a population of 350 minors, which was noted to be over its capacity by facility officials.⁴⁴

According to the U.S. Centers for Disease Control and Prevention, there have been cases of chicken pox, scabies, influenza and lice amongst migrant children at border facilities.⁴⁵ The presence of infectious disease combined with reports of

⁴² Julie M. Linton, Marsha Griffin, Alan J. Shapiro, American Academy of Pediatrics, *Policy Statement: Detention of Immigrant Children*, at 5 (Apr. 2017), <http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>.

⁴³ See American Medical Association, *AMA Adopts New Policies to Improve Health of Immigrants and Refugees*, June 12, 2017, <https://www.ama-assn.org/ama-adopts-new-policies-improve-health-immigrants-and-refugees>. See also American Academy of Pediatrics Flores Comments at 8; Julie M. Linton, Marsha Griffin, Alan J. Shapiro, American Academy of Pediatrics, *Policy Statement: Detention of Immigrant Children*, <http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>.

⁴⁴ See n.40, *supra*.

⁴⁵ <https://www-cdc-gov.libproxy1.usc.edu/usmexicohealth/pdf/unaccompanied-children-factsheet.pdf>

overcrowding, lack of appropriate sanitation resources, and inconsistent access to medical care in border facilities generates a dangerous combination of risk factors for the spread of disease. According to a report by the Office of Inspector General on June 3, 2019, “[b]athrooms in two facilities’ detainee housing units were dilapidated and moldy. At one facility, detainees were not provided appropriate clothing and hygiene items to ensure they could properly care for themselves.”⁴⁶

Two contract physicians from within DHS’s own Office of Civil Rights and Civil Liberties found serious compliance issues in DHS-run facilities resulting in “imminent risk of significant mental health and medical harm.”⁴⁷ The physicians were so alarmed that they sent a whistleblower letter to the Senate Whistleblower Protection Caucus. The DHS physicians stated that because of the intrinsic harm associated with detaining children:

[T]here is no amount of programming that can ameliorate the harms created by the very act of confining children to detention centers. Detention of innocent children should never occur in a civilized society, especially if there are less restrictive options, because the risk of harm to children simply cannot be justified.

⁴⁶ OIG, *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities*, <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>

⁴⁷ Letter from Dr. Scott Allen and Dr. Pamela McPherson to the Honorable Charles Grassley and the Honorable Ron Wyden, July 17, 2018, at 3, <https://www.wyden.senate.gov/imo/media/doc/Doctors%20Congressional%20Disclosure%20SWC.pdf>

Id. at 2.

There are numerous examples of children being held in prisonlike conditions. In late 2015, the Texas Department of Family Protective Services introduced a regulation called the “FRC rule” that would allow the Dilley Detention Center to detain children while exempt from statewide health and safety standards. In June 2016, a judge ruled that such an exemption could put children at risk of abuse, particularly due to shared sleeping spaces with non-related adults. In December 2016, that decision was upheld by a federal judge.⁴⁸

In its 2016 testimony on the Karnes County Residential Center (GEO Group)’s application for licensure under the Texas Department of Family and Protective Services as a General Residential Operation and Emergency Care Service Facility, the Texas Pediatric Society (TPS) found, “prison-like settings [such as those present at Karnes] do not aid in the healthy upbringing and development of

⁴⁸ American Academy of Pediatrics Flores Comments at 5; Alexa Garcia-Ditta, *Judge Halts Child Care License for Dilley Detention Center*, Texas Observer, June 2, 2016, <https://www.texasobserver.org/immigrant-family-detention-license-hold/>; , Final Judgement, D-1-GN-15-004336, *Grassroots Leadership v. Texas Dep’t of Family and Protective Servs.*, (District Court of Travis County 2016), https://grassrootsleadership.org/sites/default/files/uploads/gli_v._dfps_final_judgment.pdf; Representative Lucille Roybal-Allard, Representative Pramila Jayapal, *In ICE Detention Pregnant Women Face Stress, Trauma, and Inadequate Care*, The Hill Blog, Apr. 25, 2018, 8:20 AM, <https://thehill.com/blogs/congress-blog/homeland-security/384602-in-ice-detention-pregnant-women-face-stress-trauma-and>.

children or enable their families to provide [the] best quality of care to their children.” *Id.* TPS testified that granting state licensure to a facility like Karnes would do the opposite of what state statute requires of such facilities – it would limit a child’s opportunity for meaningful social interaction. Additionally, TPS found a lack of trauma-informed, mental health resources in the [rural] Karnes community and the intrinsic nature of these facilities as detention centers are not conducive to the emotional and developmental needs of highly traumatized children.⁴⁹

In a recent report on the current state of detention centers, the Office of Inspector General (OIG) found that current audits already, “do not ensure adequate oversight or systemic improvements in detention conditions.”⁵⁰ The report highlights that the current lenient approach to inspections and onsite monitoring have led to inadequate responses by ICE and inconsistencies in implementing corrective actions. Some examples included facilities failing to notify ICE about alleged, or proven sexual assaults, or not allowing detainees to participate in recreation as required. It

⁴⁹ American Academy of Pediatrics Flores Comments at 5; Joyce Elizabeth Mauk, MD, Testimony on Public Hearing for Karnes County Residential Center, Apr. 13, 2016, <https://www.aap.org/en-us/advocacy-and-policy/state-advocacy/Documents/Testimony%20on%20GEO%20Detention%20Facility%20Karnes.pdf>.

⁵⁰ Dep’t of Homeland Security Office of Inspector General, *ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, OIG-18-67 (June 26, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.

is therefore, particularly disturbing for DHS to plan to subject children to indefinite confinement in facilities that will be seriously detrimental to their health.

E. The Rule Will Have A Devastating Impact On The Educational Development Of The Detained Children.

The Rule will also have a devastating impact on the educational development of the detained children. Studies show that detained children face heightened barriers to learning. More specifically, these children display regression in language development and impaired cognitive development due to the persistent stress and substantial exposure to fear, labeled as “toxic stress.”⁵¹ Toxic stress has been shown to interfere with the physical brain development of a child.⁵² This can lead to developmental delays, potentially affecting the child’s future performance at school.⁵³ Other experts have determined that exposure to this type of stress can have lifelong consequences for a child in terms of his or her educational development and

⁵¹ Megan J. Wolff, *Fact Sheet: The Impact of Family Detention on Children*, 2018, http://psych-history.weill.cornell.edu/pdf/Family_Detention_Sheet.pdf; Julie M. Linton, Marsha Griffin, Alan J. Shapiro, *Detention of Immigrant Children*, American Academy of Pediatrics, 2017, at 2, <https://pediatrics.aappublications.org/content/pediatrics/139/5/e20170483.full.pdf>.

⁵² Shonkoff, J.P., Garner A.S., AAP Committee on Psychosocial Aspects of Child and Family Health, et al., *The Lifelong Effects of Early Childhood Adversity and Toxic Stress*, Pediatrics 2012; 129:e232, <https://pediatrics.aappublications.org/content/pediatrics/129/1/e232.full.pdf>.

⁵³ Dudley M., Steels Z., Mares S., Newman L., *Children and young people in immigration detention*, Curr. Op. Psychiatry, 2012; 25(4):285-292.

economic productivity.⁵⁴ This is due, in part, to the fact that the detained child will experience physiological and psychological effects associated with toxic stress, for example, children may develop post-traumatic stress disorder or major depression, and may even engage in suicidal ideation.⁵⁵ These effects are likely to significantly impair a child's ability to learn.⁵⁶

Other studies show that children who are detained during critical years of their development are exposed to additional risks in terms of their education. More specifically, these studies show that children aged two to four in detention who lack access to preschool services face learning and development consequences at this critical stage of brain development.⁵⁷ This risk persists when detained children are

⁵⁴ American Academy of Pediatrics, *Letter to Secretary Johnson*, <https://www.aap.org/en-us/advocacy-and-policy/federal-advocacy/Documents/AAP%20Letter%20to%20Secretary%20Johnson%20Family%20Detention%20Final.pdf>.

⁵⁵ Dudley M., Steels Z., Mares S., Newman L., *Children and young people in immigration detention*, *Curr. Op. Psychiatry*, 2012; 25(4):285-292; K. Robjant et al., *Mental Health Implications of Detaining Asylum Seekers: Systematic Review*, 194(4) *Brit. J. of Psychiatry* 306-312 (2009), https://pdfs.semanticscholar.org/ad17/2e7c889a6e3ccab263ab1e12909d41f6cd2b.pdf?_ga=2.139782069.788147620.1566760224-784155949.1566760224.

⁵⁶*Id.*

⁵⁷ Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf.

in their primary school age.⁵⁸ These children experience negative impacts on their learning due to the lack of school education, which has long term impacts on their cognitive development and academic progress.⁵⁹ These findings are particularly concerning where the Rule does not explain how the federal government will provide “educational services appropriate to the [child’s] level of development in a structured classroom setting,” as required by the FSA. 84 Fed. Reg. at 44,440.

Furthermore, contrary to the FSA, the Rule does not require that children receive “instruction and educational and other reading materials in such languages as needed.” FSA Ex. 1 § (a) ¶ 4; 8 C.F.R. § 236.3(i)(4)(vii), 84 Fed. Reg. at 44,528. DHS’s responds to this omission, by stating that, “[i]n practice, most educators who teach at FRCs are bilingual, typically in English and Spanish, and provide individualized education in a manner designed to be most effective for the minor.” 84 Fed. Reg. at 44,440. Putting aside the facts that a teacher who is bilingual does not necessarily have *instructional materials* in both languages, may not be certified to teach in multiple languages, and that children may need instruction in languages other than English and Spanish, DHS’s assertion of a common practice is a far cry from the legal guarantee FSA requires. It goes without saying that providing children with qualified teachers and materials in their own language is essential to insuring

⁵⁸ *Id.*

⁵⁹ *Id.*

that children are not hampered in their educational development. The Rule does not do this.

In sum, the Rule will deprive detained children of the opportunity to reach their full developmental and academic potential by increasing their exposure to toxic stress and restricting their access to educational programs with supportive norms and structures. This will create a substantial societal cost — those detained children whose education languishes and go on to live in this country will be much less able to contribute to society.

F. Detention Erodes The Parent-Child Relationship And Exacerbates The Immense Distress That Children In Detention Already Experience.

The result of the Rule is increased detention of accompanied children and their parents. Though DHS claims that provisions of the Rule would actually “strengthen the stability of the family[,]” 84 Fed. Reg. at 44,503, this assertion is unfounded and unsupported by data or studies. In reality, detention undermines the authority of parents, prevents parents from being able to respond to the needs of their children, and causes greater harm to the well-being of both children and their parents.

Detained parents, who themselves are subject to the authority of DHS and its agents, lose their fundamental autonomy to make independent decisions regarding their children’s diet, schedule, sleeping arrangement, discipline, medical care

providers, education, and more.⁶⁰ In fact, reports indicate that detained parents have been unable to secure proper medical care for their children who had become ill as a result of eating contaminated food.⁶¹ Since parents are unable to fulfill their usual caretaking role, studies show that children become confused by the existence of conflicting authority figures.⁶² This interference in the development of the parent-child relationship is particularly disruptive for infants and toddlers.⁶³

Research shows that children are impacted by the emotional well-being of their parents.⁶⁴ A significant number of detained adults go on to suffer from post-traumatic stress disorder and/or clinical depression, and may face challenges in processing and healing from their experience in detention and in aiding their children

⁶⁰ Report of the Advisory Committee on Family Residential Centers, Final Report, at 37, 42 n.98; 2 Family Residential Standards 3.1, 4.3, 4.4, and 4.5.

⁶¹ Eleni Bakst, *Immigration Detention is Making Kids Sick*, Human Rights First Blog (Nov. 22, 2017), <https://www.humanrightsfirst.org/blog/immigration-detention-making-kids-sick>.

⁶² Kronick R., Rousseau C., Cleveland J., *Asylum-Seeking Children's Experiences of Detention in Canada: A Qualitative Study*. Am. J. Orthopsychiatry. 2015; 85(3):287–294.

⁶³ Jack P. Shonkoff and Deborah A. Phillips, *From Neurons to Neighborhoods: The Science of Early Childhood Development*, National Research Council and Institute of Medicine, 2000.

⁶⁴ Harvard Univ., Center on the Developing Child, *Maternal Depression Can Undermine the Development of Young Children*, <https://46y5eh11fhgw3ve3ytpwxt9r-wpengine.netdna-ssl.com/wp-content/uploads/2009/05/Maternal-Depression-Can-Undermine-Development.pdf>.

in doing the same.⁶⁵ This is especially problematic since children in detention are disproportionately exposed to trauma and thus in greater need of parental support, as reports show that children in family detention have been starved, taunted, and even sexually assaulted.⁶⁶

The Administration's claim that the Rule would strengthen the stability of detained families is without merit. Given that families seeking asylum often have already experienced profound traumas in their home countries, re-traumatizing children at the border through detention is even more likely to cause significant disability or chronic disease later in life.⁶⁷ Overwhelming authority has concluded that even when families are detained together, the family structure is completely uprooted. This disturbance has both short and long-term negative effects on the mental and physical health of children and their parents.

⁶⁵ Janet Cleveland, Cécile Rousseau, and Rachel Kronick, *Bill C-4: The impact of detention and temporary status on asylum seekers' mental health* (Geneva, Switzerland: Global Detention Project, (2012) https://www.globaldetentionproject.org/wp-content/uploads/2016/06/Canada_cleveland.pdf; Rhitu Chatterjee, *Lengthy Detention of Migrant Children May Create Lasting Trauma, Say Researchers*, NPR. <https://www.npr.org/sections/health-shots/2019/08/23/753757475/lengthy-detention-of-migrant-children-may-create-lasting-trauma-say-researchers>.

⁶⁶ See, e.g., Michael Grabell and Topher Sanders, *Immigrant Youth Shelters: If You're a Predator, It's a Gold Mine*, Propublica, July 27, 2018, <https://www.propublica.org/article/immigrant-youth-shelters-sexual-abuse-fights-missing-children>.

⁶⁷ Immigrant and Refugee Health Justice Working Group, Doctors for America.

IV. Conclusion

The Administration's Rule should not stand. Indeed, the Rule is fatally flawed — there are alternatives to the Rule that are cheaper, humane, and actually effective in meeting the needs of children. Moreover, the Rule is fundamentally inconsistent with the FSA and common concepts of basic humanity. Children should not be subjected to the harsh treatment that is allowed by the Rule. Families should not be “united” in prison-like facilities that fail to provide basic services, cost far more, and are inimical to physical and mental well-being. Rather, families should live together in our communities while awaiting their legal right to a court hearing. It is in the best interests of children and families that the Rule be rejected. The district court decision should be affirmed.

Dated: January 28, 2020

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By: /s/ James H. Hulme

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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EXHIBIT 1

STATEMENT OF INTEREST OF *AMICI CURIAE*

Amicus curiae the Academic Pediatric Association nurtures the academic success and career development of child health professionals engaged in research, advocacy, improvement science and educational scholarship in order to enhance the health and well-being of all children.

Amicus curiae the American Academy of Child and Adolescent Psychiatry (AACAP) is a medical membership association established by child and adolescent psychiatrists in 1953. Now over 9,500+ members strong, AACAP is the leading national medical association dedicated to treating and improving the quality of life for the estimated 7-15 million American youth under 18 years of age who are affected by emotional, behavioral, developmental and mental disorders. AACAP's members actively research, evaluate, diagnose, and treat psychiatric disorders, and pride themselves on giving direction to and responding quickly to new developments in addressing the health care needs of children and their families.

Amicus curiae the American Academy of Pediatrics (AAP) represents 67,000 primary care pediatricians, pediatric medical subspecialists, and surgical specialists who are committed to the attainment of optimal physical, mental, and social health and well-being for all infants, children, adolescents, and young adults. AAP believes that the future prosperity and well-being of the United States depends on the health and vitality of all of its children, without exception. Pediatricians know that even

short periods of detention can have long-lasting consequences for children, including psychological trauma and mental health risks. There is no evidence that any amount of time in detention is safe for a child. All children—no matter where they or their parents were born—should have the right to access health care, remain united with their families, and pursue a high-quality education.

Amicus curiae the American Academy of Pediatrics, California (AAP-CA), is comprised of all California AAP chapters statewide, totaling over 5,000 pediatricians. Together, AAP-CA represents primary care and subspecialty pediatricians across California. The mission of the AAP-CA is to attain optimal physical, mental, and social health and well-being for all infants, children, adolescents, and young adults in California, regardless of immigration status. When the pain and suffering of any child is within our power as a community and as a nation to prevent and to mitigate, we must do so. Detention is a sanitized word for the circumstances in which we know many of these children are being held. We join with the AAP in asserting that there is no evidence that any amount of time in detention is safe for a child, and that all children—no matter where they or their parents were born—should have the right to access health care, remain united with their families, and pursue a high-quality education.

Amicus curiae American Association for Psychoanalysis in Clinical Social Work (AAPCSW) is one of the largest professional organizations of clinical social

workers in the United States, including researchers, educators, clinicians, and students. AAPCSW promotes psychoanalytic education, advances clinical social work, facilitates the production and dissemination of knowledge, and advocates for high standards of practice. Through its local areas and the national organization, AAPCSW works to produce and disseminate psychoanalytic knowledge to promote human capabilities and flourishing. As mental health professionals with ethical standards rooted in the reverence for social justice and human dignity, AAPCSW finds the attempt to vitiate *Flores* simply unacceptable. The resulting traumatizing uncertainties have significant consequences for the health and wellbeing of these young people. Therefore, AAPCSW maintains that our civic duty and our professional ethical commitment to human dignity require us to advocate for those faced with dehumanizing policies.

Amicus curiae the American Federation of Teachers (AFT), AFL-CIO, was founded in 1916 and today represents approximately 1.7 million members. The AFT has a longstanding history of supporting and advocating for the civil rights of its members and the communities they serve. AFT members are teachers and school support staff, nurses and healthcare professionals, and public sector employees who dedicate their lives to providing services to children and their families. AFT members are gravely concerned about the intensely traumatic and disruptive direct effects of long-term detention on immigrant children and their families, as proposed

in the final rule, as well as the indirect effects of such detention to those connected in community with them.

Amicus curiae the American Medical Association (AMA) is the largest professional association of physicians, residents and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all U.S. physicians, residents and medical students are represented in the AMA's policy making process. AMA members practice in every state and in every medical specialty. The AMA was founded in 1847 to promote the art and science of medicine and the betterment of public health, and these remain its core purposes. Families seeking refuge in the United States endure emotional and physical stress, which is only exacerbated when they are separated from one another or held in family detention facilities during immigration proceedings. Childhood trauma and adverse childhood experiences created by inhumane treatment often create negative health impacts that can last a lifetime. Department of Homeland Security (DHS) family detention practices can result in unacceptable treatment of children and can violate the FSA guidelines. Because of these concerns, the AMA urges the Court to invalidate this final rule and instead give priority to supporting families and protecting the health and well-being of the children within those families.

Amicus curiae the American Pediatric Society is comprised of distinguished pediatric leaders shaping the future of academic pediatrics. Assembling an engaged inclusive and impactful community of academic pediatric thought leaders, our strategic priorities are to exercise thought leadership to shape the field, advocate for academic pediatrics and support career development of academic pediatrics to improve child health.

Amicus curiae the American Professional Society on the Abuse of Children (APSAC) is the leading multi-disciplinary national organization for professionals serving children and families affected by child maltreatment, which includes both abuse and neglect. APSAC achieves its mission through sponsoring peer-reviewed publications, offering expert training and educational activities, policy leadership and collaboration, and consultation emphasizing theoretically sound, evidence-based principles. Since 1986, APSAC has played a central role in developing guidelines that address child maltreatment. APSAC is qualified to inform the DHS and the Department of Health and Human Services (HHS) about the damage maltreatment can inflict on children's brain development and cognitive ability. Of note, the final rule would cause harm not only to children held in detention, but also to children of Mexican, Central American, and other ethnic origins living in the United States, whether citizens or not. APSAC submits this brief to assist the Court in understanding the impact of detention, especially indefinite detention, on

children's physical, emotional, and mental development. These facts provide important background information useful to a complete understanding of the potential impact of the rule currently promulgated by DHS and HHS.

Amicus curiae the American Psychiatric Association (APA), with more than 38,700 members, is the world's largest organization of physicians who specialize in psychiatry. Through research, education, and advocacy, APA members work to ensure effective prevention, diagnosis, and accessible treatment of mental health and/or substance-use disorders. The final rule seeks to amend the FSA to allow DHS to keep "families who must or should be detained together at appropriately licensed family residential centers (FRCs) for the time needed to complete immigration proceedings." This vague guidance about how long families may be detained is concerning and has the potential to impose long-lasting trauma on detained children and their parents. In addition, prolongation of these families' detention will compound the already significant mental health consequences they face. APA recommends the maximum period of detention for children and their parents not go beyond the current limit of 20 days and that every effort be made to minimize the number of days spent by families in detention to decrease the negative consequences of detention for this vulnerable population. APA is also are gravely concerned that weakening facility requirements and oversight will lead to higher incidents of physical and sexual violence.

Amicus curiae the American Psychoanalytic Association (APSA) is the oldest and largest professional organization for psychoanalysts in North America, representing 3,000 members, 32 approved training institutes, and 38 affiliate societies throughout the United States. APSA has determined that the administration's use of cruel language, policies, and abuse is a form of psychological warfare. The rhetoric and policies of DHS—child separations, workplace raids and arrests, inadequate detention centers, and changing rules for seeking asylum—create psychological trauma and we know from both empirical evidence, as well as our clinical experience that this type of trauma and toxic stress causes long-lasting serious mental health issues such as depression, anxiety, PTSD, cognitive impairment, and even risk of suicide.

Amicus curiae the Association of Medical School Pediatric Department Chairs (AMSPDC) seeks to improve the health and well-being of children through the development of the chairs of academic pediatric departments and support of their clinical, research, education, and advocacy missions. The AMSPDC lead in care delivery, research, training, and advocacy in their communities and throughout the world.

Amicus curiae the California American Professional Society on the Abuse of Children (CAPSAC), the state of California chapter of APSAC, provides additional support to California professionals working in the field of child abuse through

training, consultation, advocacy and networking. CAPSAC plays a central role in developing guidelines addressing child maltreatment, qualifying it to inform DHS and HHS about the damage maltreatment can inflict on children's brain development and cognitive ability. CAPSAC's expertise focuses on preventing child maltreatment, regardless of citizenship status. CAPSAC submits this brief to assist the Court in understanding the impact of detention, especially indefinite detention, on children's physical, emotional, and mental development. These facts provide important background information vital to understanding the potential impact of the rule currently promulgated by DHS and HHS.

Amicus curiae the California Medical Association (CMA) is a not-for-profit professional association for physicians with approximately 46,000 members throughout California. For more than 160 years, CMA has promoted the science and art of medicine, the care and well-being of patients, the protection of the public health and the betterment of the medical profession. CMA's physician members practice medicine in all specialties and settings and provide care to immigrants, including unaccompanied children and support the FSA.

Amicus curiae the California Psychiatric Association (CPA) is a non-profit statewide organization which represents three thousand psychiatrists in California whose medical specialty relates to the comprehensive care of individuals with behavioral health problems that stem from biological and psychological factors. The

CPA is responsible for carrying out legislative, regulatory, judicial, and educational advocacy on behalf of organized psychiatry primarily in California, and nationally, as necessary. The CPA is committed to advocating for access to medically necessary behavioral health care on behalf of all individuals who suffer from behavioral health problems regardless of citizenship status. Psychiatrists in California are familiar with the psychological trauma and related stress directly associated with the prolonged detention of youth and separation from families, some of which may be long term in nature. The CPA has recently developed a specific policy platform related to these issues; such as been shared with the California state legislature, federal agencies and certain members of Congress. The CPA is the largest professional organization in California that represents psychiatrists.

Amicus curiae the Center for Law and Social Policy (CLASP) is a national, nonpartisan, anti-poverty nonprofit advancing policy solutions for low-income people. CLASP develops practical yet visionary strategies for reducing poverty, promoting economic opportunity, and addressing barriers faced by people of color. CLASP has expertise in early care and education, early childhood development, child welfare, and immigration policy. CLASP strongly opposes this rule, which disregards child welfare practices and established standards for ensuring the best interests of children. If implemented, it would compromise the immediate safety and well-being of children and harm their long-term development. We urge the Court to

consider the research on child development presented in this brief as evidence of the immense harm to children that would result from implementation of this rule.

Amicus curiae the Center for Youth Wellness (CYW) is a pediatric health care and advocacy organization dedicated to improving the health of children and adolescents exposed to early adversity and toxic stress by advancing public awareness of, medical research on, and treatment practices for Adverse Childhood Experiences, or ACEs. Founded by Dr. Nadine Burke Harris in 2012, CYW is a national leader in ACEs research and its translation into practice. CYW is highly qualified to comment on the potential toxic stress-related damage done to children of parents with FSA protection by the threat and reality of FSA rescission. CYW therefore urges the Court to prevent the final rule from being implemented.

Amicus curiae the Children's Defense Fund (CDF) is a 501(c)(3) non-profit child advocacy organization that has worked relentlessly for more than 40 years to ensure a level playing field for all children. CDF champions policies and programs that lift children out of poverty; protect them from abuse and neglect; and ensure their access to health care, quality education and a moral and spiritual foundation. As written, the final rule would essentially permit indefinite detention of children, limit the family members to whom a detained child could be released, and roll back the minimal standards currently in place for children's access to health, education, and special needs accommodations. Furthermore, the final rule would allow

detention centers to “self-certify” as child care facilities, a proposal that dismisses the concepts of oversight, accountability, and child care standards, and in the end represents a serious miscarriage of justice. Our main points of concern are the well-being and safety of immigrant children and families, the restrictions placed on children being released from detention centers, the potential for living conditions to considerably worsen in detention centers, and the unnecessarily high cost of the final rule. CDF strongly urges the Court to prevent the final rule from moving forward.

Amicus curiae Doctors for America (DFA) works with doctors and doctors-in-training in all 50 states to put patients over politics and to improve health across the country. DFA are 18,000 physicians and medical students in all 50 states, in rural and urban communities, private practices, academic medical centers, community health centers, and government-run systems like the Veteran's Affairs and the Indian Health Service. We are driven by pragmatic idealism and bring the voice of physicians to the issue of immigrant and refugee health justice. We believe the Flores Settlement Agreement to be an essential protection for migrant children in government custody.

Amicus curiae First Focus on Children (First Focus) is a bipartisan advocacy organization dedicated to making children and families the priority in federal policy and budget decisions. One of First Focus’s priority issues is to ensure that federal policies, including immigration policies, promote the health, safety, and well-being

of children in immigrant families. First Focus is deeply opposed to any changes to FSA that would undermine protections for children and allow for their prolonged detention in family detention facilities. Additionally, First Focus opposes any proposals that would allow immigrant children to be detained in facilities licensed by the DHS which has proven time and time again to be woefully inadequate and dangerous for children. Any changes to current standards should focus on the best interest of the child and build on the FSA's protections. Immigration enforcement and policy decisions must consider the children affected by these decisions. This rule does not.

Amicus curiae the Lutheran Immigration and Refugee Service (LIRS), for decades, has been committed to providing direct services and advocating on behalf of unaccompanied migrant children and accompanied children and their families throughout the United States. LIRS oversees programs that provide long and short-term foster care, family reunification services, and post release services; LIRS services are trauma informed and designed to help children recover from the multiple hardships and traumas they experience from the time they spent in their home countries, throughout their journey to the United States and once they enter the United States. LIRS believes that our nation's immigration laws and system should always ensure that children's rights are placed front and center. Alternatively, we strongly believe that detention is not in the best interest of the child. In this regard,

we support retaining the FSA, because it offers the best set of child protection standards. We would like to see these standards strengthened not weakened.

Amicus curiae March of Dimes is a nonprofit organization that leads the fight for the health of all moms and babies. March of Dimes educates medical professionals and the public about best practices, supports lifesaving research, provides comfort and support to families in neonatal intensive care units, and advocates for moms and babies. Ensuring that pregnant women and their children have access to timely, affordable, and high-quality healthcare is essential to achieving its goals. March of Dimes is joining this amicus brief because if the FSA is rescinded there will be irreparable harm to the health and well-being of families, including women and children. We know indefinite detention of children has a direct negative impact on access health insurance coverage and other public benefit programs that families depend on to maintain for their health and well-being. Evidence suggests that the fear of deportation and related stressors leads to poor birth outcomes such as low birthweight and greater risk of preterm birth. As the leader in ensuring the health of all moms and babies, we stand firm on keeping moms and babies healthy and safe — regardless of their citizenship status.

Amicus curiae the National Association of Pediatric Nurse Practitioners (NAPNAP) is the nation's only professional association for pediatric nurse practitioners (PNPs) and their fellow pediatric-focused advanced practice registered

nurses (APRNs) who are dedicated to improving the quality of health care for infants, children, adolescents and young adults. Representing more than 9,000 healthcare practitioners with 18 special interest groups and 50 chapters, NAPNAP has been advocating for children's health since 1973 and was the first NP society in the U.S. Our mission is to empower pediatric-focused APRNs and their interprofessional partners to enhance child and family health through leadership, advocacy, professional practice, education and research. NAPNAP notes that research has found that overcrowding and prolonged detention areas contribute to these concerns. NAPNAP is concerned about the immediate and long term mental and physical health effects of indefinitely detaining children. Thus, NAPNAP opposes any attempts to replace or vitiate the FSA.

Amicus curiae the National Association of Social Workers (NASW) is the largest association of professional social workers in the United States, with nearly 120,000 members in 55 chapters, who provide vitally-needed services in a broad range of settings. The California Chapter of NASW has over 9,000 members. The Association also works to advance policies at all levels of government, including immigration and child welfare policies, that align with the profession's values and code of ethics. Among other things, NASW develops policy statements on issues of importance to society and the social work profession, including child welfare and immigration issues. NASW actively supports efforts to ensure that our most

vulnerable children are served by systems designed to protect them from abuse and ensure their well-being. This includes efforts to ensure that children from immigrant families, regardless of citizenship status, are provided with the same societal protections as children from non-immigrant families. Advancing these rights is a vital priority for the social work profession in the twenty-first century.

Amicus curiae National Education Association (NEA) is a nationwide employee organization representing over three million members, the vast majority of whom serve as educators and education support professionals in our nation's public schools, colleges, and universities. NEA has a strong and longstanding commitment to ensuring that every child has access to a high-quality public education, regardless of immigration status. NEA is equally committed to the overall well-being of children, psychologically and developmentally. NEA members work directly with children in our schools every day, including immigrant children and children subject to trauma. NEA opposes the detention of children under any circumstances because it causes severe psychological harm and impairs children's ability to learn and grow.

Amicus curiae the PA Chapter, American Academy of Pediatrics (PA AAP), is a state-wide nonprofit organization representing nearly 2,300 primary care and subspecialty pediatricians from across the Commonwealth. The mission of the PA AAP is to attain optimal physical, mental, and social health and well-being for all

infants, children, adolescents, and young adults in Pennsylvania, regardless of immigration status. When the pain and suffering of any child is within our power as a community and as a nation to prevent and to mitigate, we must do so. Detention is a sanitized word for the circumstances in which we know many of these children are being held. We join with the AAP in asserting that there is no evidence that any amount of time in detention is safe for a child, and that all children—no matter where they or their parents were born—should have the right to access health care, remain united with their families, and pursue a high-quality education.

Amicus curiae Save the Children Action Network (SCAN), founded in 2014 as the political advocacy arm of Save the Children, is building bipartisan support to make sure every child has a strong start in life. SCAN is doing this by advocating for high-quality early learning for children in the United States, the safety of children arriving at the southern U.S. border and the protection of children living in conflict zones around the world. The final changes to the FSA would allow for long-term detention of families, pending immigration proceedings, a process that often takes years to complete. The final changes are cast as being in the best interest of the children involved, but that is far from the truth – every minute a child is held in detention can cause irreparable harm. The final rule would also allow the administration to ignore basic standards of care, like access to hygiene and other basic needs. Seeking asylum is not a crime and the global evidence shows that

detention has significant negative effects on a child's development and social and emotional well-being. This rule is inhumane and a grave violation of children's rights.

Amicus curiae Save the Children Federation, Inc. (Save the Children), in the United States and around the world, gives children a healthy start in life, the opportunity to learn and protection from harm. Save the Children specializes in childhood health and nutrition, a culture of peace, governance, alternative care, and protection during migration, but one of our cross-cutting thematic priorities relates to the right to protection and the eradication of harmful practices towards children and adolescents. As noted above, the final changes to the FSA would allow for long-term detention of families, pending immigration proceedings, a process that often takes years to complete. The final changes are cast as being in the best interest of the children involved, but that is far from the truth – every minute a child is held in detention can cause irreparable harm. The final rule would also allow the administration to ignore basic standards of care, like access to hygiene and other basic needs. Seeking asylum is not a crime and the global evidence shows that detention has significant negative effects on a child's development and social and emotional well-being. This rule is inhumane and a grave violation of children's rights.

Amicus curiae the Society for Pediatric Research (SPR) seeks to create a network of multidisciplinary researchers to improve child health. SPR provides and promotes activities that strengthen the pediatric research community, with a strong focus on supporting the pediatric researcher pipeline.

Amicus curiae the Texas Pediatric Society (TPS), the Texas Chapter of the AAP, represents over 4,200 primary care pediatricians, pediatric medical subspecialists, surgical specialists, and medical students who believe that the most important resource of the State of Texas is its children, and pledges its efforts to promote their health and welfare. The goal of the TPS is that all children in the State attain their full potential for physical, emotional, and social health. TPS agrees with the AAP that the future prosperity and well-being of the United States depends on the health and vitality of all of its children, without exception. TPS has consistently and firmly stated that children should not be subjected to detention and every child should receive developmentally appropriate daily care, medical care, and mental health care which is compassionate and responsive to their needs.

Amicus curiae United States Fund for UNICEF (UNICEF USA) supports the work of the United Nations Children's Fund (UNICEF) to put children first through fundraising, advocacy and education in the United States. UNICEF has helped save more children's lives than any other humanitarian organization by providing health care and immunizations, safe water and sanitation, nutrition, education, emergency

relief and more. UNICEF USA is working toward the day when no children die from preventable causes, and every child has a safe and healthy childhood. Our legal system, and our national conscience, require us to consider the best interests of the child in any legal or policy decision. This proposed rule, however, does not consider the harmful impacts of detention for any length of time on children. Experts have determined that one thing is absolutely clear: like separating children from parents, detention of children is a highly destabilizing, traumatic experience that has long term consequences on child well-being, safety, and development. There are well-known and effective programs to protect families and children, allow them to exercise their rights under United States and inter-national law, and ensure that they abide by U.S. legal processes without detaining them. UNICEF USA urges the Federal Government to withdraw this final rule.

Amicus curiae the Women's Refugee Commission (WRC) is a non-governmental, non-profit organization that works to identify gaps, research solutions, and advocate for change to improve the lives of crisis-affected women and children. The WRC is a leading expert on the needs of refugee women and children, and the policies that can protect and empower them. For over two decades, the Women's Refugee Commission has monitored immigration detention facilities and migrant children's facilities operated under what is now the jurisdiction of Immigration and Customs Enforcement (ICE), Customs and Border Protection

(CBP), and the Office of Refugee Resettlement (ORR), and interviewed facility staff, local service providers, asylum seekers, and migrant children about the policies, practices, and conditions of custody that relate to the ability to access to protection. WRC has been monitoring border screening policies, including family separation for over four years. The final rule has inherent flaws and is legally flawed in a myriad of ways: it violates international law, as well as United States constitutional and statutory law. As WRC has demonstrated for years, there is no humane way to detain families, and whenever families or children are in the care and custody of the Federal Government, safeguards and basic minimum standards must not only be in place but met. The final rule undermines the intent behind the provisions of the FSA in that they are unconstitutionally vague, ultra vires, overbroad, and generally lack enforcement and oversight of the Federal Government's actions.

Amicus curiae ZERO TO THREE (ZTT) is a national nonprofit, nonpartisan organization founded more than 40 years ago to promote the well-being of infants and toddlers by translating the science of early childhood development for policymakers, practitioners, and parents. ZTT is a national leader on infant and early childhood mental health and early childhood development, and works to ensure that babies and toddlers benefit from the family and community connections critical to their well-being and healthy development. The final rule would wipe away these

protections, allowing children in the company of their parents to be incarcerated indefinitely in detention facilities known as FRCs. The final rule also ignores the central FSA principle, reiterated many times, favoring a "General Policy Toward Release" in the case of migrant children being held in detention—including those held with their parents—and therefore the need for ending that detention as soon as possible.