

# Justice for Immigrants Webinar

## *Commenting on Federal Rules Changes: Your Chance to Add Catholic Principles to the Process*

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CATHOLIC LEGAL  
IMMIGRATION  
NETWORK, INC.



USCCB



# Rules & Regulations:

**What are they and how can you act on them?**

# WHAT ARE RULES?

- How federal agencies (ex. ICE, EPA) implement policy/legislation
- How do they come to be?
  - Agency publishes proposed rule
  - Legally required comment period (notice & comment)
  - Agency uses comments to edit proposed rule then publishes final
- Rules in place until rescinded by Congress, revised, overridden by new legislation



# EXAMPLE:

- Clean Air Act
- Clean Power Plan
- Executive Order to review
- EPA proposed rule to repeal CPP
- New plan: Affordable Clean Energy rule



# WHY IS IT IMPORTANT TO COMMENT?

- Final rules have real consequences
- Less public participation
- Bring expertise or unique voice
- Accountability
- Delay, delay, delay
- Build the record



# HOW DO I COMMENT?

- Helpful tools from organizations!
- Online or mail
- **Step 1: Know Your Rule**
  - USCCB & CLINIC resources
  - Subscribe to Federal Register
- **Step 2: Find Your Rule**
  - Regulations.gov
- **Step 3: Submit Your Comment**
  - Pro-tips:
    - Don't have to address everything
    - Give reasons for what you want the agency to do
    - Make it unique

The screenshot shows the homepage of regulations.gov. At the top, the logo "regulations.gov" is displayed with the tagline "Your Voice in Federal Decision-Making". Navigation links for Home, Help, Resources, and Contact Us are in the top right. A search bar is prominently featured with a "Search" button and a link to "Advanced Search". Below the search bar, there are sections for "What's Trending" with links to various rule pages, "Comments Due Soon" with a list of comment deadlines, and "Newly Posted" with a list of recent comments. A sidebar on the right contains a "Unable to submit a comment?" section with a link to "FAA Section 333" and other utility links like "APIs for Developers" and "Browse by Category". The footer contains a grid of links for Home, About Us, Resources, Help, and Connect With.



**PR** Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children

This Proposed Rule document was issued by the **Immigration and Customs Enforcement Bureau (ICEB)**

For related information, [Open Docket Folder](#)

**Comment Now!**

Due Nov 6 2018, at 11:59 PM ET

**Action**

Notice of proposed rulemaking.

**Summary**

The U.S. Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS) ("the Departments") propose to amend regulations relating to the apprehension, processing, care, custody, and release of alien juveniles. In 1985, plaintiffs in a class action lawsuit, *Flores v. Reno*, challenged the policies of the legacy Immigration and Naturalization Service (INS) relating to the detention, processing, and release of alien juveniles. The parties reached a settlement agreement, referred to as the *Flores* Settlement Agreement (FSA). The FSA, as modified in 2001, provides that it will terminate forty-five days after publication of final regulations implementing the agreement. The rule would adopt in regulations provisions that parallel the relevant and substantive terms of the FSA, consistent with the HSA and TVPRA, with some modifications discussed further below to reflect intervening statutory and operational changes while still providing similar substantive protections and standards. It therefore would terminate the FSA. The rule would satisfy the basic purpose of the FSA in ensuring that all juveniles in the government's custody are treated with dignity, respect, and special concern for their particular vulnerability as minors, while doing so in a manner that is workable in light of subsequent changes. The rule would also implement closely related provisions of the HSA and TVPRA.

Most prominently, the rule would create an alternative to the existing licensed program requirement for family residential centers, so that ICE may use appropriate facilities to detain family units together during their immigration proceedings, consistent with applicable law.

**Dates**

Written comments and related material must be submitted on or before November 6, 2018.

**Addresses**

You may submit comments on the entirety of this proposed rule package identified by DHS Docket No. ICEB-2018-0002, by any *one* of the following methods:

- **Federal eRulemaking Portal (preferred):** <https://www.regulations.gov>. Follow the website instructions for submitting comments.
- **Email:** [ICE.Regulations@ice.dhs.gov](mailto:ICE.Regulations@ice.dhs.gov). Include DHS Docket No. ICEB-2018-0002 in the subject line of the message.
- **Mail:** Debbie Seguin, Assistant Director, Office of Policy, U.S. Immigration and Customs Enforcement, Department of Homeland Security, 500 12th Street SW, Washington, DC 20536. To ensure proper handling, include DHS Docket No. ICEB-2018-0002 in your correspondence. Mail must be postmarked by the comment submission deadline.
- **Hand Delivery/Courier:** Visitor Entrance, U.S. Immigration and Enforcement, Department of Homeland Security, 500 12th Street SW, Washington, DC 20536.

**Instructions:** All comments submitted outside of the Federal eRulemaking Portal must include the docket number for this rulemaking. All comments received may be posted without change to the Federal eRulemaking Portal at <https://www.regulations.gov>, including any personal or commercial information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document.

**Docket:** For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

ID: ICEB-2018-0002-0001

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**Document Information**

**Date Posted:**  
Sep 7, 2018

**RIN:**  
1653-AA75

**Federal Register Number:**  
2018-19052

[Show More Details](#)

**Comments**

**7,753**  
Comments Received\*

*I oppose this rule. It is morally wrong and against the ideals this country stands for to incarcerate refugees. This would be an unforgivable abuse of power.*

[View Comment](#)

*I agree with Maril Crabtree's comment that it is a "Means to*

 You are commenting on:

The Immigration and Customs Enforcement Bureau (ICEB) Proposed Rule: [Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children](#)

For related information, [Open Docket Folder](#)

**1** Your Information

**1** Your Information **2** Your Preview **3** Your Receipt

 Information entered will be viewable on Regulations.gov

[View Commenter's Checklist \(PDF\)](#) | [Alternate Ways to Comment](#)

**Comment** (Required) 

5000 characters remaining

**Upload file(s)** (Optional) 

Choose files

Drop files here

**First Name** (Required)

**Last Name** (Required)

I want to provide my contact information

I am submitting on behalf of a third party

# Proposed Rule on the Flores Settlement Agreement



*we are one family under God*

# Proposed Rule on “Flores”

- September 7, 2018 – Notice of Proposed Rulemaking on Flores
  - “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children”
  - Issued by: DHS and HHS
  - Available at: <https://www.gpo.gov/fdsys/pkg/FR-2018-09-07/pdf/2018-19052.pdf>
- Relates to the Flores Settlement Agreement of 1997 (FSA)
  - Provides critical protections regarding the care, custody, and release of immigrant children
  - Including requirement that children typically be placed in non-secure and state licensed facilities
  - Available at: <https://www.aila.org/File/Related/14111359b.pdf>
- Flores contemplates regulations that *implement* the agreement
- BUT proposed rule seeks to expand and alter the agreement
- **Comments due by Tuesday, November 6, 2018**

# Key Changes Proposed

Numerous changes, including:

- Federal Scheme for Licensing Facilities
  - If state scheme “not available”
  - Must meet ICE Family Residential Center (FRC) Guidelines and Flores Minimum Requirements
  - Allows for certification by entity hired by DHS
- Emergency Exception
  - Broadens when non-compliance will be excused for “emergencies”
  - E.g., detaining children with unrelated adults more than 24 hours
- Definition of “Non-secure” Facility
- UAC Status Redetermination
  - Notes that immigration officers should make the determination each time they encounter the child
- *Also invites comment on if HHS should regulate policies related to home studies, post-release services, and denial of release to sponsors*

# USCCB/MRS Comments

- Federal Licensing Scheme
  - Contrary to the plain language
  - Expanded family detention presents numerous public policy concerns (e.g., impact of prolonged detention on children, their families, and taxpayer)
  - Self-certification is problematic
  - Standards proposed do not mirror Flores protections (i.e., state licensing standards)
- Definition of “Non-Secure” Facility
  - Court has found FRC’s to be secure
- Emergency Exception
  - Already contemplated and negotiated by parties
  - Allows broad discretion to define emergency
  - Attempts to provide protection for breaches of the agreement
- Home Study and PRS Standards
  - Need to ensure flexibility to timely respond to newly identified needs/vulnerabilities

# What Can You Do?

- **Learn More.** See our suggested resources on the next slide. Feel free to share these with your network!
- **Submit Comments.** Push back against this rule by submitting a comment and encouraging your network to do so as well.
  - **Due by Nov. 6<sup>th</sup>**
  - Submit Comments:
    - Online at: <https://www.regulations.gov>
    - Via Email: ICE.Regulations@ice.dhs.gov (include DHS Docket No. ICEB-2018-0002 in Subject Line and please put jfi@usc cb.org on cc so we can keep track!)
- **Contact Your Lawmakers.** Tell your Members of Congress that you want them to voice opposition to the proposed Flores changes that undermine existing protection for children.
- Via Mail: Debbie Seguin, Assistant Director  
Office of Policy, U.S. Immigration and  
Customs Enforcement, Department of  
Homeland Security  
500 12th Street SW  
Washington, DC 20536

# Resources

- [JFI's FAQ on the Flores Settlement Agreement](#)
- [JFI's 10 Things You Should Know About the Proposed Flores Regulations](#)
- [CLINIC's Mini Toolkit on the Proposed Flores Rule](#)
- **Coming Soon** – USCCB's comments on the rule.
  - Email [jfi@usccb.org](mailto:jfi@usccb.org) if you would like to receive a copy via email.



## 10 Things You Should Know about the Proposed Flores Regulations

Photo: CNS/Sedat Suna

### What is the Flores Settlement Agreement? What does it do?

The Flores Settlement Agreement "Flores" is an agreement that the federal government reached in 1997 with immigration advocates over the care of immigrant children in their custody. Flores sets forth foundational principles and critical protections regarding the care, custody, and release of immigrant children – both accompanied and unaccompanied – who are in federal custody. The agreement, which the federal government voluntarily entered into, requires in part that: facilities provide children in their custody with access to sanitary and temperature-controlled conditions, water, food, medical assistance, ventilation, adequate supervision, and contact with family members. Further, Flores states that facilities must ensure that children are not held with unrelated adults, that the government release children from detention without unnecessary delay to parents or other approved sponsors, and that if a child cannot be released from care, the child be placed in the "least restrictive" setting appropriate, based on his or her age and needs. As it relates to the custody of children, Flores also mandates that the government typically transfer immigrant children to facilities that are licensed by the state for childcare.

### What is the latest news on Flores?

On September 7<sup>th</sup>, the Administration issued a proposed regulation [title1](#), "Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children," which would alter the way the federal government implements Flores.

### How does the proposed regulation change Flores?

The Administration's proposed regulation would in part:

- Create a separate licensing process for family detention facilities that would bypass existing state requirements;
- Allow for prolonged detention of immigrant children and families; and
- Expands existing "emergency" exceptions to Flores protection.

### Isn't Flores settled law? How can the Government do this?

When implemented in 1997, Flores did envision for the federal government to make proposed regulations. Within 45 days of the regulations being implanted, Flores would no longer be valid. While the government has the right to propose rules, what was proposed on September 7<sup>th</sup>, does not adequately represent the key protections that Flores provided to children.

<https://justiceforimmigrants.org/what-we-are-working-on/immigrant-detention/family-separation/>



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**USCIS' Proposed Changes to  
Public Charge**

*Jill Marie Bussey*

# Background & State of Play

Jan/Feb  
2017

- WaPo - Draft Executive Order leaked
- EO not issued

Feb/March  
2018

- Feb - Vox publishes leaked draft rule
- March – WaPo updated draft rule

Sept/Oct.  
2018

- Sept. 22 – DHS posts draft to website
- Oct. 10 – Proposed rule officially published in Federal Register (NPRM)



# Timelines



Comment period is open for 60 days: Oct. 10 – Dec. 10, 2018

Final rule and implementation may take months





# What is Public Charge?

- Ground of inadmissibility, INA § 212(a)(4)
- Historic concept in immigration law
- Who does it apply to?

Affected	Not Affected *not inclusive
Green card applicants in the U.S.	Refugees and asylees
Applicants for immigrant visas abroad	Special immigrant juveniles
Returning permanent residents (green card holders)	T and U visa applicants
Nonimmigrant visa applicants	TPS applicants



# Public Charge Current Definition

- 1999 Notice, field guidance, proposed rule
- Can't be “*primarily* dependent” on government for subsistence through receipt of cash benefits:
  - SSI (aged, blind and disabled)
  - TANF (parents with children)
  - State and local cash assistance
- Institutionalization for long-term care







# Summary of Proposed Changes

## Definition

- Dramatically changes the definition of who is subject to and would be considered a public charge

## TOC Test

- New standards and income thresholds
- Negative weight to immigrants earning <125% FPG
- Positive weight to immigrants earning > 250% FPG

## Public Benefits

- Significantly expands benefits that could be considered in a public charge determination





# Benefits included in Proposal

Likely to receive one or more of these:

- Same 3 cash assistance programs, long-term institutionalization
- Non-emergency Medicaid (with exceptions)
- Medicare Part D Low Income Subsidy
- SNAP (food stamps)
- Section 8 housing: Housing Choice Voucher and Project-Based Rental Assistance
- Public housing





# Proposed Rule Reminders

- **It is NOT currently in effect**
- **It is NOT retroactive**
- **YOU can make a difference by opposing the rule**
  - Submit a comment
  - Encourage others to submit comments
  - Roll out a communications strategy
  - Stay up to date
  - Hold a town hall with local officials



# Impact on Immigrant Families

- Fear in the community is at an all time high
- One in four children have immigrant parent
- Withdrawal from social services high/new registrations low
- Confusion about rule's affect on other immigration applications/next steps

# Advocacy Goals

- For CLINIC affiliates
  - Our goal is to have 100% participation of all affiliates
  - This rule would affect our entire network
- For CLINIC partners and supporters
  - We encourage all concerned organizations and individuals to participate in this comment process
  - Working with Catholic partners and through Justice for Immigrants and Interfaith Immigration Coalition

# CLINIC Resources:

- Up-to-date info on the status of the rule
- PC Mini-Toolkit  
<https://cliniclegal.org/public-charge/mini-toolkit>
- Model comments, backgrounders
- Tools for practitioners and individuals
- Advocacy tools

[www.cliniclegal.org/public-charge](http://www.cliniclegal.org/public-charge)

# CLINIC Resources:

**10 steps to comment on a federal rule**

- 1 Identify a rule that will have a positive or negative effect on your community that you want to comment on.
- 2 Read the proposed rule carefully. Check the docket and review all supporting materials.
- 3 Check the date you can begin submitting comments and the last day of the open comment period.
- 4 Read comments other people have made.
- 5 Get your organization's leadership to sign off on making a comment, if needed.
- 6 Draft your comment. Use facts and make the comment unique to you, your organization or your community.
- 7 Visit either the Federal Register website or Regulations.gov.
- 8 Search for the rule you want to comment on.
- 9 Click "Submit a Formal Comment" on the federal register and "Comment Now!" on regulations.gov.
- 10 Submit your comment.

**You can help! Don't let a change to immigration application standards hurt millions of families**

**Make Your Voice Heard! Defend Immigrants by Taking Part in the Federal Rulemaking Process**

**Public Comment Mini-Toolkit Fight against the Department of Homeland Security's proposed Public Charge rule!**

[www.cliniclegal.org/public-charge](http://www.cliniclegal.org/public-charge)



# Other helpful links:

- DHS Announcement: <https://tinyurl.com/y8y4uqas>
- USCIS FAQs: [www.uscis.gov/legal-resources/proposed-change-public-charge-ground-inadmissibility](http://www.uscis.gov/legal-resources/proposed-change-public-charge-ground-inadmissibility)
- Link to submit comment: <https://www.regulations.gov/>



# Staying Connected

- CLINIC's Social Media (Facebook and Twitter)
- CLINIC Affiliates may sign-up for Agency Updates:  
<https://cliniclegal.org/email>
- Sign-up for Advocacy Updates:  
<https://cliniclegal.org/email>
- PIF campaign and listserv sign-up:  
<https://protectingimmigrantfamilies.org/>



# Catholic Legal Immigration Network, Inc.

National Office

8757 Georgia Avenue, Suite 850

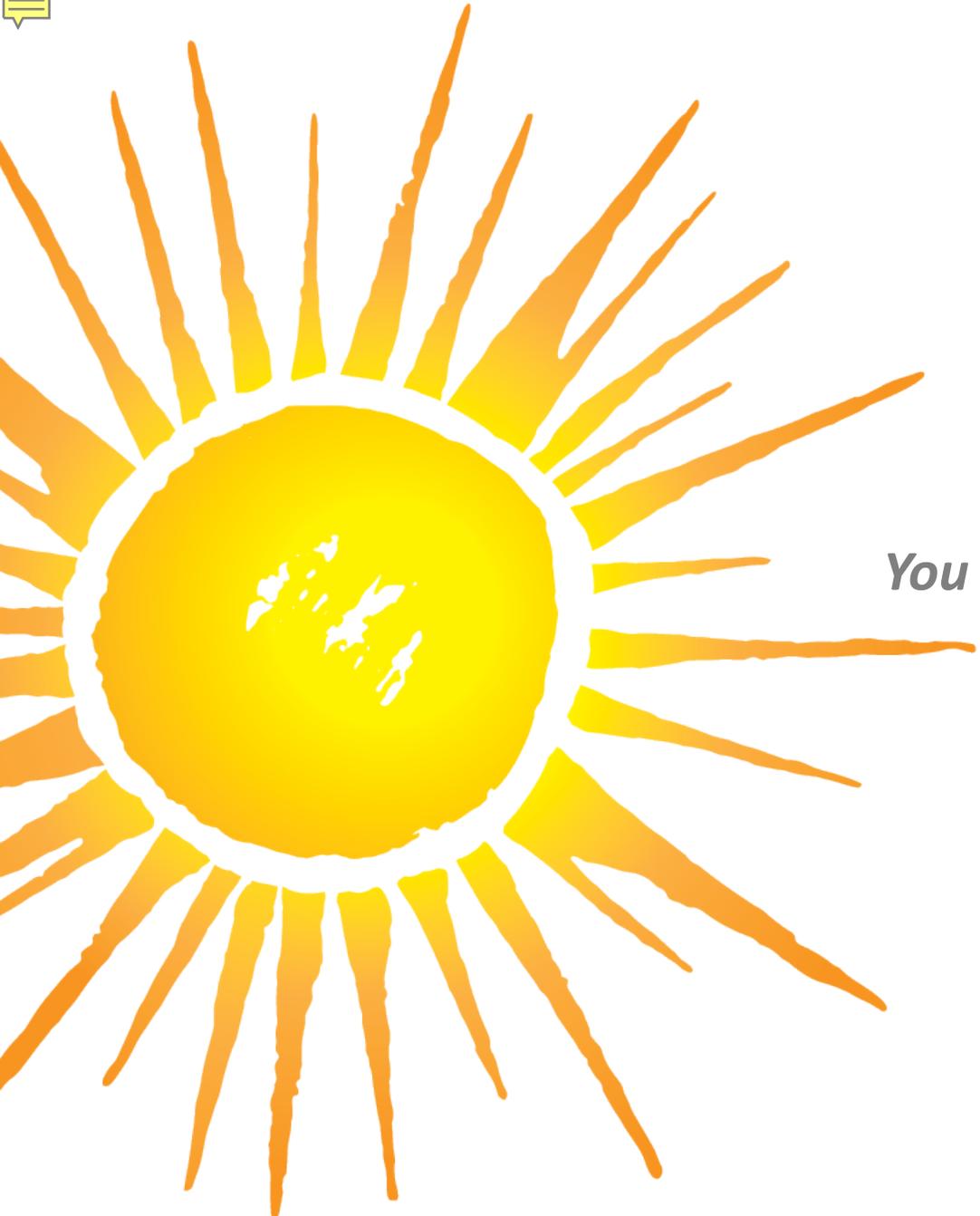
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[cliniclegal.org](http://cliniclegal.org)

[fb.com/cliniclegal](https://fb.com/cliniclegal)



# Action for Justice

*You can make all the difference!*



ADVOCATES FOR JUSTICE, INSPIRED BY CATHOLIC SISTERS

25 E Street NW, Suite 200, Washington, DC 20001  
202-347-9797 | [info@networklobby.org](mailto:info@networklobby.org)  
[www.networklobby.org](http://www.networklobby.org) | [www.networkadvocates.org](http://www.networkadvocates.org)  
[NETWORKLobby](#) [@NETWORKLobby](#)



# Ready, Set, Act!

## **WE CAN WIN IF WE ACT TOGETHER!**

-  Public Comments on Flores and Public Charge Regulations can stop the regulations.
-  Action is EASY. All you have to do is DO IT!

# What Should YOU Do?

- ☀️ Repeat after me.....
- ☀️ **Faith Organizations**: All SHOULD submit comments on the Flores & Public Charge regulations
  - ☀️ Tailor Model Comments to Your Organization.
  - ☀️ Ask the teams or affiliates in your network to do the same!
- ☀️ **Individual Comments**: MORE, MORE, MORE!



# Do It the “Sister Spirit” Way

- ☀ Motivated by faith and moral vision
- ☀ Using faith and morality in a comment
- ☀ Action in Community
  - ☀ Host a postcard campaign with friends at Church using CLINIC resources!
  - ☀ Ex: Our Lady Queen of Peace Church (Arlington, VA) Two Week Postcard Campaign After Each Mass on Flores



# Other Ideas

## **Remember Pope Francis' Call: Be joyful, creative witnesses of Christ!**

- ☀ Write a Letter to the Editor
- ☀ Engage in "Sacred Gossip" to Spread the Word!
- ☀ Be Now
  - ☀ Take a Picture when you submit a comment & use social media to urge others to do the same.
- ☀ Faith Week for Public Charge: Week of November 12
  - ☀ Release faith leader video
  - ☀ DC Event w/Faith Partners to Submit Comments
    - ☀ Host an Event in Your Church too!



 Let us all remember this: one cannot proclaim the Gospel of Jesus without the tangible witness of one's life.

*Pope Francis*

 **TOGETHER WE CAN WIN JUSTICE.**