Justice for Immigrants Webinar

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

Rebecca Eastwood, Columban Center for Advocacy and Outreach – Advocacy Coordinator
Melissa Hastings, USCCB/MRS Policy Advisor
Jill Marie Bussey, Catholic Legal Immigration Network, INC (CLINIC) – Director of Advocacy
Laura Peralta-Schulte, NETWORK – Senior Government Relations Advocate

October 17, 2018
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• Rules in place until rescinded by Congress, revised, overridden by new legislation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
Proposed Rule document was issued by the Immigration and Customs Enforcement Bureau (ICEB).

For related information, Open Docket Folder.

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 1989, 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 paralleled 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:

- Email: 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.

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.
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 

Your Information

Information entered will be viewable on Regulations.gov

View Commenter's Checklist (PDF) | Alternate Ways to Comment

Comment (Required)

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

Columbanum Center
for Advocacy & Outreach
Proposed Rule on the Flores Settlement Agreement
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

- 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/1411359b.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. 6th
  - Submit Comments:
    • Online at: [https://www.regulations.gov](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@usccb.org on cc so we can keep track!)

• 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

• **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.
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 if you would like to receive a copy via email.

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

<table>
<thead>
<tr>
<th>Affected</th>
<th>Not Affected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Green card applicants in the U.S.</td>
<td>Refugees and asylees</td>
</tr>
<tr>
<td>Applicants for immigrant visas abroad</td>
<td>Special immigrant juveniles</td>
</tr>
<tr>
<td>Returning permanent residents (green card holders)</td>
<td>T and U visa applicants</td>
</tr>
<tr>
<td>Nonimmigrant visa applicants</td>
<td>TPS applicants</td>
</tr>
</tbody>
</table>
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
How Would Public Charge Change?

- New, broader definition
- More latitude and complex Totality of the Circumstances (TOC) Test
- More public benefits on the list
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
CLINIC Resources:

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
- 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
Silver Spring, MD 20910
Main Phone: (301) 565-4800
Main Fax: (301) 565-4824

cliniclegal.org
fb.com/cliniclegal
Action for Justice

You can make all the difference!
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.**