

November 11, 2019

Regulations Docket Clerk
Office of Legal Policy
Department of Justice
950 Pennsylvania Avenue NW, Room 4234
Washington, DC 20530

Re: Proposed Rule: "DNA-Sample Collection From Immigration Detainees"
DOJ Docket Number: OAG-164
AG Order No. 4537-2019

To Whom It May Concern:

Thank you for the opportunity to comment on the Department of Justice's (DOJ) proposed rule for "DNA-Sample Collection From Immigration Detainees" published on October 22, 2019. On behalf of Children's HealthWatch, a network of pediatricians, public health researchers, and policy and child health experts, please accept these comments and our opposition in the strongest possible terms to this rule change that will threaten the health and well-being of families of immigrants, including children.

If passed, the proposed rule would change how the DOJ implements the DNA Fingerprint Act of 2005, which authorized the collection of DNA samples from individuals arrested or detained by federal authorities. Specifically, the proposed rule would remove an exception granted to the Department of Homeland Security (DHS), eliminating the Department's authority to forgo DNA collection for those for whom DNA collection is "not feasible because of operational exigencies or resource limitations." This not only forces the Department to collect costly DNA samples despite a lack of resources to do so, but puts the health, dignity, and privacy of hundreds of thousands of individuals at risk. Furthermore, this rule change would criminalize families and children detained at the border, and violate exemptions Congress put in place to protect immigrants.

As a health and research organization, Children's HealthWatch is intricately aware of and involved in privacy laws as they pertain to DNA collection and other identifiable information. We, like other health and research organizations and agencies across the nation, adhere to these privacy protections required by law. The proposed rule violates the protections by which we abide^{1,2,3}, and raises serious privacy concerns for an already vulnerable population, including children and those who seek asylum at legal ports of entry.

According to the proposed rule, after DNA samples are collected, they would be entered into the FBI's highly regulated national DNA database. According to the FBI, this database – known as the Combined DNA Index System, or CODIS – is a "tool for linking violent crimes." Collecting DNA from individuals, particularly children, by no means advances this purpose, but instead is a violation of privacy and unjustly criminalizes individuals. This mass collection of DNA alters the purpose of CODIS from one of criminal investigation to population surveillance, a shift that is in opposition to this country's basic notions of a free, trusting, and autonomous society.

In addition to the dehumanizing and criminalizing effects this proposed rule change would have on individuals at the border, it is likely to also violate the privacy of some American citizens and legal

residents. For example, United States citizens who are sometimes mistakenly booked into immigration custody⁴ could be forced to provide DNA samples. Furthermore, because genetic material carries familial connections, data collection at the border could have implications not only for those in immigration custody, but also their family members who might be United States citizens or legal residents.

This proposed rule is yet another move by the Administration to deter immigrants – particularly those of color at the Southern border – from entering the United States, impose fear within the community, and criminalize non-Americans, including children and asylum seekers. A policy of fear and punishment, such as the one laid out in this rule, does not build a brighter future for American communities with healthy people and strong workers; to the contrary, such a policy will compromise the privacy and dignity of current and future generations.

This rule does active harm: It will be highly costly to implement, violate human privacy, and criminalize children and asylum seekers, both of whom have special protections under international law. Therefore, we strongly oppose any administrative action that would harm the health of children and their families and urge the administration to immediately withdraw this harmful and dehumanizing proposal in its entirety.

Sincerely,



Megan Sandel MD, MPH
Co-Lead Principal Investigator, Children's
HealthWatch
Boston, MA

Principal Investigator, Children's HealthWatch
Philadelphia, PA



Deborah A. Frank, MD
Principal Investigator and Founder, Children's
HealthWatch
Boston, MA



Diana Becker Cutts, MD
Co-Lead Principal Investigator, Children's
HealthWatch
Minneapolis, MN



John Cook, PhD, MAEd
Principal Investigator, Children's HealthWatch
Boston, MA



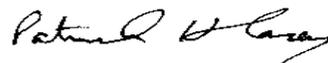
Mariana Chilton, PhD, MPH
Director, Center for Hunger-Free Communities
Principal Investigator, Children's HealthWatch



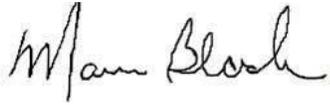
Eduardo Ochoa Jr., MD
Principal Investigator, Children's HealthWatch
Little Rock, AR



Félice Lê-Scherban, PhD, MPH



Patrick H. Casey, MD
Principal Investigator, Children's HealthWatch
Little Rock, AR

A handwritten signature in black ink that reads "Maureen Black". The signature is written in a cursive, flowing style.

Maureen Black, PhD
Principal Investigator, Children's HealthWatch
Baltimore, MD

A handwritten signature in blue ink that reads "Stephanie Ettinger de Cuba". The signature is written in a cursive, flowing style.

Stephanie Ettinger de Cuba, MPH
Executive Director, Children's HealthWatch

- 1 Wallace HM, Jackson AR, Gruber J, Thibedeau AD. Forensic DNA databases—Ethical and legal standards: A global review. *Egyptian Journal of Forensic Sciences*. 2014;4(3):57-63.
- 2 Kaye J, Martin P. Safeguards for research using large scale DNA collections. *BMJ*. 2000;321(7269):1146.
- 3 United States Department of Health and Human Services. Health Information Privacy: Your Rights Under HIPAA. Available at <https://www.hhs.gov/hipaa/for-individuals/guidance-materials-for-consumers/index.html>
- 4 St. John P, Rubin J. Must reads: ICE held an American man in custody for 1,273 days. He's not the only one who had to prove his citizenship. *Los Angeles Times*. April 27, 2018. Available at <https://www.latimes.com/local/lanow/la-me-citizens-ice-20180427-htmstory.html>