



May 27, 2025

Submitted online via the Federal Docket Management System

Re: Comments in Opposition to the Interim Final Rule entitled Unaccompanied Children Program Foundational Rule; Update To Accord With Statutory Requirements; Docket No. ACF-2025-0003, RIN 0970-AD16

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Administration for Children and Families
U.S. Department of Health and Human Services
Washington, DC

Director Biswas:

The Door's Legal Services Center ("The Door LSC") respectfully submits this comment on the Administration for Children and Families (ACF)'s Interim Final Rule, *Unaccompanied Children Program Foundational Rule; Update To Accord With Statutory Requirements*, as published in the Federal Register on March 25, 2025, 90 FR 13554, (herein, the "Interim Rule" or "Rule").¹ The Door LSC opposes the Interim Rule in full. The direct impact of the Rule is to dramatically increase the length of stay for unaccompanied minors in the care of the Office of Refugee Resettlement (ORR), contradicting mandates under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPPRA). Additionally, the Rule does not address current legal obligations under the Privacy Act of 1974, particularly the clause regarding "routine use."

The ACF also does not provide sufficient justification for the Rule's immediate promulgation, the Rule's intended impact, or any of the cost-benefit analysis required by the Administrative Procedures Act of 1946 (APA). The Rule does not include any analysis as to its impact in relation to other recent policy changes affecting sponsor eligibility and surveillance. As an impacted party providing services to the unaccompanied minors directly affected by this rule, we strongly urge the ACF to complete and release such an analysis for proper comment. Should the ACF release additional justification or analysis, we request the opportunity to submit additional comment addressing this analysis under the requirements of the APA.

¹ "Unaccompanied Children Program Foundational Rule; Update To Accord With Statutory Requirements," *Federal Register*, Children and Families Administration, March 25, 2025, <https://www.federalregister.gov/documents/2025/03/25/2025-04971/unaccompanied-children-program-foundational-rule-update-to-accord-with-statutory-requirements>.



I. The Door Legal Services Center

The Door’s Legal Services Center provides holistic legal advocacy services to young people ages 12 to 24.² Established in 1992 to address the lack of free legal assistance for youth in New York City, the center addresses the civil legal needs of our clients, including immigration, foster care, housing, and public benefits, among others. The Center provides a broad range of counsel and advocacy services to young people. In addition to legal assistance, The Door provides holistic wraparound services to all youth members, including high school equivalency; college and future planning; jobs and internship prep; health services; counseling; gender-affirming care; food and nutrition services; creative arts and recreation; supportive housing; and runaway and homeless youth services. Our over 60-person team of attorneys, social workers, paralegals, and administrative assistants represent decades of specialized expertise in youth, immigration law, family law, foster care, and child welfare.

Within the Door’s LSC, over 30 staff members work specifically with detained unaccompanied minors in the custody of the Office of Refugee Resettlement (ORR) through the Detained Minors Project (DMP). The DMP team works closely with shelter and foster care staff to successfully release minors to vetted sponsors, partnering on thousands of cases since 2019.

II. Contradiction of Existing Legal Obligations Under the TVPRA and Foundational Rule

While the Interim Rule articulates a limited legal justification for its promulgation, ACF fails to consider ORR’s other central legal obligations to place children in the least restrictive setting under the Trafficking Victims Protection Reauthorization Act (TVPRA)³ and release children without unnecessary delay under ORR’s own Foundational Rule.⁴ The implementation of the Interim Rule directly contradicts the bipartisan Congressional intent to facilitate the safe, speedy release and minimally restrictive placement of unaccompanied children.⁵ The TVPRA tasked ORR to ensure that these children are “*promptly placed in the least restrictive setting that is in the best interest of the child*” (emphasis added).⁶

Since the passage of the TVPRA, ORR has developed and updated an internal guide that establishes proper procedures for the placement and release of unaccompanied children. This guide includes a list of factors that should be considered when ORR makes placement decisions

² See “Legal & Immigration: Legal Services,” The Door, accessed May 27, 2025, <https://www.door.org/legalservices/>.

³ *William Wilberforce Trafficking Victims Protection Reauthorization Act*, 8 USC 1232(c) (2022).

⁴ “Unaccompanied Children Program Foundational Rule,” Administration for Children and Families, U.S. Department of Human Services, April 30, 2024, available at <https://www.federalregister.gov/documents/2024/04/30/2024-08329/unaccompanied-children-program-foundational-rule>.

⁵ See 154 Congressional Record S10886 (daily ed. Dec. 10, 2008) (statement of Sen. Leahy, sponsoring senator), available at <https://www.congress.gov/congressional-record/volume-154/issue-185/senate-section/article/S10886-1>.

⁶ 8 U.S.C. § 1232(c)(2)(A)



for these youth (“ORR Policy Guide”).⁷ The factors listed are: (1) danger to self; (2) danger to the community/others; (3) runaway risk; (4) trafficking in persons or other safety concerns; (5) age; (6) sex; (7) LGBTQI+ status or identity; (8) disability; (9) any specialized services or treatment required or requested by the unaccompanied child; (10) criminal background; (11) location of potential sponsor and safe and timely release options; (12) behavior; (13) siblings in ORR custody; (14) language access; (15) whether the unaccompanied child is pregnant or parenting; (16) location of the unaccompanied child’s apprehension; and (17) length of stay in ORR custody.⁸ Notably, this list of considering factors does not include the immigration status of the potential sponsors.

With the implementation of the Interim Final Rule, unaccompanied children who would have previously been released to their parents or close relatives are languishing in ORR custody. Family members are not willing to come forward as potential sponsors for fear that their information will be shared with immigration officials. Family members who are willing to come forward are being disqualified as potential sponsors solely because of their immigration status. Without a qualifying potential sponsor, unaccompanied children cannot be promptly released to the least restrictive setting.

It is in the best interests of UCs to be released from ORR custody to the homes of suitable family members for the physical and mental well-being of these children, but also because release from detention gives them better access to counsel and ability to pursue relief from removal. The TVPRA explicitly states that the government shall, to the greatest extent practicable, ensure that unaccompanied children who are or have been in ORR custody “have counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking.”⁹ Research into children’s access to counsel while detained indicates that there are substantial barriers to the ability of children in ORR custody to find and retain counsel.¹⁰ Without adequate access to counsel, these youth are less equipped to assert their legal rights and apply for immigration relief. Therefore, prohibition of the prompt release of unaccompanied children from ORR custody goes against the best interests of the children, in direct contradiction of the TVPRA, and therefore, against Congressional intent.

III. Harm to Unaccompanied Children and Sponsors

From 2019 to 2025, The Door LSC provided legal screenings, know your rights presentations, and in some circumstances, full legal representation to thousands of unaccompanied children

⁷ See “Section 1.2.1 - Placement Considerations,” *ORR Unaccompanied Alien Children Bureau Policy Guide*, Office of Refugee Resettlement, U.S. Department of Health & Human Services, revised February 27, 2025, <https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.2.1>.

⁸ See *id.*

⁹ 8 U.S.C. § 1232 (c)(5)

¹⁰ See Eunice Hyunhye Cho and Aditi Shah, *No Fighting Chance: ICE’s Denial of Access to Counsel in U.S. Immigration Detention Centers*, American Civil Liberties Union, June 9, 2022,

<https://www.aclu.org/publications/no-fighting-chance-ices-denial-access-counsel-us-immigration-detention-centers>.



while they were in ORR custody. Partnering with shelter case workers, our social workers and legal staff regularly monitored cases during the sponsorship process. Over that period, we have observed that unaccompanied children with a close family member to serve as a viable sponsor were released significantly faster than children who were released to a non-relative or who had no sponsor available.

Although The Door's Legal Services Center does not regularly inquire into nor keep records regarding the immigration status of sponsors, we have observed based on conversations with unaccompanied children and their sponsors that a likely majority of sponsors do not have legal immigration status in the United States. Increased restrictions on sponsorship based on immigration status and intensive monitoring of potential sponsors with the intent to pursue immigration enforcement has a direct impact on a significant portion of unaccompanied minors detained in ORR custody.

Based on The Door's extensive experience working this population, we strongly believe that this Rule will dissuade potential sponsors without legal immigration status from coming forward to serve as a sponsor due to the risk of immigration enforcement. As a result, unaccompanied children will spend more time in ORR custody. If they are eventually released, this Rule will increase the likelihood that they are released to an unrelated sponsor who they do not know well based on that sponsor's legal immigration status in the United States.

Since the sharp increase in this Administration's increased restrictions, surveillance, and enforcement against sponsors, including this Rule, we have observed that children previously in the process of being released to parents, siblings, or immediate relatives (ORR Categories 1 and 2) have increasingly converted to Categories 3 and 4 (distant relative/unrelated adult/no sponsor identified). The overall number of youth in our shelters either pursuing sponsorship from a previously unknown adult or waiting in custody with no sponsor at all has sharply increased. This month, over 50% of the young people in our serviced ORR shelters were either Category 3 or 4, up from 34% in January 2025.

Many unaccompanied children have fled to the United States in search of safety from abuse, persecution, and trafficking. By forcing children to choose between indefinite detention in ORR custody or living with a stranger, the Interim Rule puts unaccompanied children at increased risk of the harm they came to the United States to escape.

- a. Prolonged detention in ORR custody has consequences on the mental and educational wellbeing of unaccompanied children and their legal cases*

In our communications with our ORR shelter partners, case managers already report increased lengths of stay for youth in their custody, specifically due to heightened restrictions around sponsorship eligibility and sponsors' fear of immigration enforcement. ORR's own data reveals that length of stay for unaccompanied minors eventually discharged from custody went from 37



days in January 2025 to 217 days in April—a 587% increase.¹¹ Between March and April alone, the average length of stay increased 105 days.¹²

ORR short-term Shelters were never meant for long-term stays. Rather, they are meant to house unaccompanied children until they can be released to a sponsor or transferred to a long-term foster care program. Nonetheless, children without an available sponsor often have extended stays in ORR shelters. When children remain in ORR shelters, they are unable to access consistent, grade appropriate education and face delays pursuing their educational goals. Our clients report feeling bored in class and frustrated that they were unable to progress in their education. Young people who do not speak Spanish as their primary language, including young people who speak French, Pulaar, Qeqchi, Quiche, Mam, or other languages, struggle to communicate with staff and other young people and report feeling intensely isolated. In a previous iteration of policies targeting sponsors in 2018, ORR facilities reported children with longer detention stays “experienced more stress, anxiety, and depression.”¹³ Shelter and legal staff both report increased symptoms of detention fatigue in our clients, leading to increased behavioral issues and detachment from day-to-day life while detained.¹⁴

b. Prolonged detention in ORR custody has consequences on the legal cases of unaccompanied children

Prolonged ORR detention has direct consequences on the legal cases of unaccompanied children. Many of the young people served by The Door are eligible for Special Immigrant Juvenile Status (SIJS) pursuant to 8 U.S.C. 1101(a)(27)(J), which allows young people a pathway to legal permanent residence if they can demonstrate to a state juvenile court that: (1) they are under the age of 21 years old, (2) unmarried, (3) have been found dependent on a state juvenile court, (4) reunification with one or both of the child’s parents is not viable due to abandonment, abuse, neglect, or a similar basis under state law, and (5) it is not in the best interest of the child to return to that child’s country of nationality or last habitual residence, or the country of nationality or last habitual residence of their parents.

The Door currently represents over 300 young people in SIJS cases, none of which are for young people presently in ORR custody. In New York, children in ORR custody are generally unable to pursue SIJS until they are released from federal custody. Practitioners have regularly faced

¹¹ “Unaccompanied Alien Children: Facts and Data,” Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services, current as of May 12, 2025, https://acf.gov/orr/about/ucs/facts-and-data#book_content_2 (see “Average Monthly Data”).

¹² See Id.

¹³ Joanne M. Chiedi, *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody*, Office of the Inspector General, U.S. Department of Health and Human Services, September 3, 2019, <https://oig.hhs.gov/oei/reports/oei-09-18-00431.asp>.

¹⁴ Azadeh Erfani and Jane Liu, “Punishing Trauma: Incident Reporting And Immigrant Children In Government Custody,” Young Center for Immigrant Rights and the National Immigrant Justice Center, September 1, 2022, <https://www.theyoungcenter.org/publications/punishing-trauma-incident-reporting-and-immigrant-children-in-government-custody/>.



obstacles in pursuing SIJS for detained youth and rarely are successful in obtaining the requisite juvenile court order necessary to apply for SIJS with USCIS, stalling their cases for sometimes years at a time. Given the age limitation of this protection, every week spent in detention is another week they are blocked from applying.

Despite prima facie eligibility for immigration relief through SIJS, young people without a viable pathway out of ORR custody in New York are at increased risk of being ordered removed in immigration court because they are unable to begin the SIJS process. This is despite the fact that they have identified a form of immigration relief and are prevented from pursuing it by factors outside of their control.

Prolonged detention without an end date is also likely to inspire despair at a child's chances for timely immigration relief or a life in the United States. Staff report that clients cut off from community, school, and loved ones for months or years at a time are more likely to request voluntary departure—a return to the very country they originally fled—rather than stay in detention any longer. These children are not given a true opportunity to pursue the safety and relief they are eligible for in the United States, again in contradiction to the TVPRA and ORR Foundational Rule.

IV. Interim Rule Contradicts Current Policy and Privacy Act

While the Rule as published briefly justifies its policy changes under 8 U.S.C. 1373(a) and (b), the ACF fails to provide any analysis of how these changes comply with the Privacy Act of 1974, specifically the “routine use” clause. With respect to the disclosure of a record, the Privacy Act defines a “routine use” as “the use of such record for a purpose which is compatible with the purpose for which it was collected.”¹⁵ ORR is not an immigration enforcement agency, and as such has no mandate under ACF's current reasoning to disclose the immigration status of its current and applying sponsors to any DHS immigration enforcement agency. ORR is responsible for vetting and approving sponsors for the timely release of the children in their care by reason of their immigration status, providing adequate care in the least restrictive setting in the meantime.

It is clear that ACF is well aware of the Foundational Rule's compliance under the Privacy Act of 1974. ORR itself released a notice on its compliance under the Privacy Act less than six months ago, stating

“[b]ecause ORR is not an immigration enforcement agency—but rather is responsible for placing unaccompanied children with vetted and approved sponsors, providing care and services to unaccompanied children who are in Federal custody by reason of their immigration status, and identifying and assessing the suitability of a potential sponsor for each child—it is incompatible with ORR's program purposes to share information in a system of records,

¹⁵ 5 U.S.C. 552a(a)(7)



particularly confidential mental health or behavioral information in children's case files, for immigration enforcement purposes.”¹⁶

Congress has affirmed this legal separation of information between agencies in its own appropriations to DHS, prohibiting DHS from using funds provided “to place in detention, remove, refer for a decision whether to initiate removal proceedings, or initiate removal proceedings against a sponsor, potential sponsor, or member of a household of a sponsor or potential sponsor of an unaccompanied alien child (as defined in section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)) based on information shared by the Secretary of Health and Human Services,” with limited exceptions concerning serious crimes affecting the welfare of the child.¹⁷

V. Harm to ORR and Its Stated Mission

ORR has had access to the immigration status of potential sponsors since 2005 (though they do not require the information), and the ACF itself has determined that a sponsor’s immigration status is not a disqualifying factor to determine the safety and well-being of a child in their care.¹⁸ ORR already implements a thorough sponsorship application process where the “safety and well-being of a child is a primary consideration in placement decisions” to protect minors from “specific individuals who would seek to harm or exploit the child.”¹⁹ The Rule as written does not address the safety or well-being of the child at all, nor does it address the decades of previous rulemaking that limited ORR’s information sharing for enforcement purposes within the confines of federal law, laid out in the TVPRA.²⁰

In addition to undermining Congressionally mandated family reunification and increasing harm to minors in federal custody, the Interim Rule exemplifies self-injurious policymaking. The decision to detain minors for longer rather than release them to a safe adult is an expensive one, as each additional day for each child in ORR custody is at additional cost. Extended detention stays also result in fewer beds available for arriving children. While current arrival numbers remain low, history shows that this number can increase dramatically due to conditions in countries of origin and our own domestic immigration policy.

¹⁶ “Privacy Act of 1974; System of Records,” Federal Register, Children and Families Administration, December 4, 2025, <https://www.federalregister.gov/documents/2024/12/04/2024-28382/privacy-act-of-1974-system-of-records>.

¹⁷ Consolidated Appropriations Act, 2024, Public Law 118–47, div. C, title II sec. 216 (incorporating by reference Consolidated Appropriations Act, 2020, Public Law 116–93, div. D, title II, sec. 216), available at <https://www.congress.gov/bill/118th-congress/house-bill/4366>.

¹⁸ “Sponsors and Placement: Release of Unaccompanied Alien Children to Sponsors in the U.S.,” Office of Refugee Resettlement, Administration for Children and Families, current as of July 21, 2021, <https://acf.gov/orr/about/ucs/sponsors>.

¹⁹ “Section 1.2.3 - Safety Issues,” *ORR Unaccompanied Alien Children Bureau Policy Guide*, Office of Refugee Resettlement, U.S. Department of Health & Human Services, revised August 1, 2024, <https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.2.3>.

²⁰ 8 U.S.C 1232



Furthermore, the Rule as written does not engage in any cost-benefit analysis for the policy change—qualitative or quantitative—sidestepping a required part of the rulemaking process.²¹ We are unable to appropriately comment on the effects of the Rule without this analysis.

VI. Immediate Promulgation is Inappropriate and Not in the Public Interest

The ACF engaged in improper use of rulemaking procedures by bypassing a formal notice and comment period and immediately promulgating the regulation as an interim final rule. A notice and comment period to allow feedback on 1) the assertion that ORR did not have the authority to promulgate its original rule, which is not settled,²² and 2) the impact of the current interim rule is not “impracticable, unnecessary, or contrary to the public interest” by the standards of 5 U.S.C. 553(b)(A).

The interim rule claims that ORR did not have the authority to promulgate its previous rule, which in fact outlined its compliance with the Privacy Act of 1974 and the TVPRA, and thus asserts that a notice and comment period is “unnecessary and contrary to the public interest.” We have outlined above that ORR’s regulation was within the confines of Congressionally enacted law due to the “routine use” clause, which has been regularly referenced to protect sensitive information essential to the function of the agency in question.

Additionally, we have detailed extensive concerns of the interim rule’s harm to minors, their potential sponsors, and ORR’s own mission. This rule’s immediate promulgation without notice to the parties involved or the opportunity to submit comments does not negate harm to the public interest—it reinforces it.

VII. Conclusion

We emphasize that the policy changes detailed in the Interim Final Rule are not promulgated in a vacuum. The Rule exists as part of a suite of policies that target unaccompanied children and their sponsors for immigration enforcement. ORR and DHS have instituted many additional policies that have magnified the negative externalities of this Rule, including an attempted termination of contract for legal service providers serving unaccompanied children, ID restrictions, income requirements, and increased post-release intimidation and surveillance of current sponsors.²³

²¹ Maeve P. Carey, *Cost-Benefit Analysis in Federal Agency Rulemaking*, Congressional Research Service, updated October 28, 2024, <https://www.congress.gov/crs-product/IF12058>.

²² See “Legal Advocacy and Litigation Library: Angelica S. v. HHS,” National Center for Youth Law, last updated May 27, 2025, <https://youthlaw.org/cases/angelica-s-v-hhs>.

²³ See Rebecca Santana, “Trump administration cuts legal help for migrant children traveling alone,” *Associated Press*, March 21, 2025, <https://apnews.com/article/trump-legal-aid-unaccompanied-children-immigration-court-127a69ce69573d2d16c72a74dacef3ab>; See also Andrea Castillo and Melissa Gomez, “Are ICE agent checks on migrant children to protect them or deport them?” *Los Angeles Times*, May 7, 2025, <https://www.latimes.com/politics/story/2025-05-07/welfare-checks-land-migrant-children-back-in-federal-custody>.



This environment of fear and surveillance results in consequences beyond the effects of any one policy change. Potential and current sponsors with and without immigration status are more afraid to sponsor children out of detention due to unnecessary qualification restrictions and at-home intimidation from various law enforcement agencies deputized to surveil sponsoring families. Unaccompanied children in more restrictive shelters are afraid to move to long term foster care programs and possibly lose access to their attorney due to the nationwide defunding measures. These consequences compound and magnify each other, and it is inappropriate and irresponsible for ACF to promulgate such a Rule without analysis or rationale.

We reiterate our opposition to this Interim Final Rule, and we request that it be withdrawn completely. At a minimum, we request that ACF complete the legal and impact analyses necessary prior to promulgating such a change and allow for an additional period of notice and comment prior to its implementation.

Respectfully submitted,

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Stephanie Lopez
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Meena Shah
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A handwritten signature in black ink, appearing to read 'Lisa Ledvora'.

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