

Legal Services for Unaccompanied Children

**OMB Information Collection Request
0970 - 0565**

Attachment A - Summary of Public Comments and ORR Responses

August 2021

Submitted By:
Office of Refugee Resettlement
Administration for Children and Families
U.S. Department of Health and Human Services

ORR expresses its appreciation to the public for the thoughtful and detailed comments in response to this information collection request. In addition to comments specific to the information collection, many of the comments received relate to underlying policy and are outside the scope of the purpose for which comments on the information collection were solicited. As specified in 5 C.F.R. s. 1320.8(d), these purposes are: whether the form and the information it collects are necessary for what the agency is trying to accomplish through the form and whether the information collected will have practical utility; to evaluate the paperwork burden of filling out the form and whether the agency's estimate of the burden was correct; the usefulness of the information being collected on the form; and minimizing the form completion burden. Although many of the comments summarized below are outside of the scope for this specific information collection, ORR extends its thanks to the public and will consider these comments in our future work.

The below responses reference ORR's new case management system, UC Path. Several of the instruments in this collection will be incorporated into UC Path, while the remaining instruments will be available in a fillable PDF format.

UC Path is critical to program operations and it is important that rollout of the new system not be delayed. Therefore, revisions based on public comments that are within the scope of the purpose for which comments on the information collection were solicited will be considered after initial launch of the UC Path case management system. ORR plans to conduct a deliberative review of commenters' suggestions and concerns and submit a request for revisions to this information collection request in January 2022. The new information collection request will also include revisions based on feedback from UC Path system users (i.e., ORR grantee, contractor, and federal staff).

General Comments on Proposed Information Collection

1. All of the commenters stated opposition to the proposed information collection activity and its (1) likely interference with ORR's fulfillment of its statutory obligation to place unaccompanied children (UC) in the least restrictive setting in the best interest of the child, particularly through the information collection related to specific consent; and (2) impediment to UC access to legal services and interference with legal representation of UC. The commenters requested that ORR retract certain proposals or revise the proposed information collection activity.

ORR Response: ORR has read and carefully considered the comments and concerns submitted and refers the commenters to the following responses.

2. All but one commenter called on ORR to extend the public comment period for an additional 60 days. The commenters base this request on confusion around the applicability of the "Regulatory Freeze Pending Review" Memorandum of White House Chief of Staff Ron Klain from January 20, 2021, as well as capacity constraints related to the transition between presidential administrations, the ongoing COVID-19 pandemic, and the multiple overlapping proposed information collection activities relating to various aspects of the Unaccompanied Children

Program published for public comment in early 2021. The commenters also asked for further explanation and justification regarding the purpose of the proposed changes and information collection. Finally, several of the commenters requested that the Department of Health and Human Services (HHS) affirmatively seek feedback from stakeholder organizations that have been unable to provide comments, including the Vera network of legal service providers.

ORR Response: While ORR appreciates the capacity constraints related to the COVID-19 pandemic identified by the commenters, the request for public comment on this proposed information collection remains time-sensitive due to ORR's need to collect this information in order to fulfill its statutory obligations.

3. One commenter stated that the language in the proposed forms is dense and incomprehensible to a child and therefore is not congruent with the recommendation by the American Bar Association that UC be treated differently than adults due to variances in age and development.

ORR Response: The majority of the forms in the proposed information collection activity are used by ORR and care provider staff rather than the child. The two forms that are child-facing, Forms LRG-5/5s and LRG-7/7s, are presented to children pursuant to [ORR Policy Guide Section 3.3](#), which mandates that care providers deliver services, which includes legal services information as detailed in the [Legal Resource Guide for Unaccompanied Children](#), in a manner that is sensitive to the age, culture, native language, and needs of each unaccompanied child.

4. All but one of the commenters noted the harmful consequences to UC of the cumulative impact of the multiple new and revised information collection activities proposed by ORR in early 2021. The commenters requested that ORR review all of the legal service providers' comments on all of ORR's Federal Register proposals of 2021.

ORR Response: ORR is working to launch its new case management system, UC Path. UC Path will streamline information management by consolidating UC information from disparate storage locations, reduce manual paperwork processing conducted outside the system, maximize the use of auto-population so that information is not entered more than once, enforce business rules through automated workflow management, and improve business intelligence capabilities by automating reporting and data analytics. The proposed information collection activities referenced by the commenters represent not only new proposed forms to be incorporated into UC Path, but also revisions to existing approved forms that will permit their incorporation in UC Path.

Legal Service Provider List for UC in ORR Care (Forms LRG-5/5s)

1. One commenter noted that the proposed form fails to document whether ORR care provider or staff explained the form contents to the UC. Absent such an explanation the commenter observes that a UC may sign the form confirming receipt but without understanding the contents or his/her legal rights.

ORR Response: Form LRG-5/5s is explained verbally to children pursuant to [ORR Policy Guide Section 3.3](#), which mandates that care providers deliver services, which includes legal services information as detailed in the [Legal Resource Guide for Unaccompanied Children](#), in a manner that is sensitive to the age, culture, native language, and needs of each unaccompanied child. ORR notes that this form was previously approved under OMB Number 0970-0498 and is being reinstated without change under this OMB number.

2. One commenter noted that in spite of the statement on Form LRG-5/5s that UC may reach out to any legal service provider on or off the list of ORR-funded legal service providers, UC may lack sufficient access to methods for communicating with legal service providers. The commenter recommended that Form LRG-5/5s provide some guarantees that UC will have proper access to telephones or internet to contact legal service providers.

ORR Response: This comment relates not to the information collection, but to the underlying policy of providing UCs with access to means for contacting legal service providers. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR notes that telephones are available to children in all facilities, including for this purpose, and that ORR policy allows children unrestricted access to communicate with attorneys per [ORR Policy Guide Section 3.3.10](#).

Comments Directed at Multiple Forms (Request for a Flores Bond Hearing, Forms LRG-7/7s, Motion to Request a Bond Hearing - Secure or Staff Secure Custody, Form LRG-8A, Motion to Request a Bond Hearing - Non-Secure Custody, Form LRG-8B)

1. One commenter noted that the proposed bond hearing forms create an obstacle to, rather than facilitate, ORR's fulfillment of its statutory obligation to place each UC in the least restrictive setting in the best interest of the child. The commenter noted the harms of detention for children, the extensive average length of restrictive setting placement, and the propensity for error in the basis for such placement as putting into question whether ORR's current policies adequately ensure placement in the least restrictive setting in a child's best interest. In addition, the commenter noted the inadequacy of mechanisms safeguarding UC due process rights, including the reduced legal services access for UC in emergency or influx facilities. The commenter made several recommendations to promote UC best interests by capturing UC expressed views and adding safeguards for understanding content, as well as to promote administrative and judicial efficiency.

Form LRG-7/7s: The commenter recommended that ORR ensure that the form expresses the view of the UC appropriate to his/her age, experience, and development, and that the form reflects that the UC understands the positive and negative equities involved in making the Flores bond hearing decision. The commenter recommended that ORR revise the form as follows:

- Provide simplified versions of Form LRG-7/7s with age-appropriate instructions. The commenter recommended either using ORR's internal data organization for age (0-5, 6-12, 13-14, 15-16, 17+) or recognized child development stages such as those used by the American Academy of Pediatrics (toddler (1-2), preschool (3-4), early grade school (5-9), late grade school (10-12), early teen (13-14), late teen (15-17)). The commenter suggested that the form version for younger UC could replace the top paragraph description with an infographic using pictures and developmentally-appropriate words to explain what an immigration judge does, what happens in a Flores bond hearing, and how UC might interact with an immigration judge in a Flores bond hearing.

- Include spaces for checkmarks next to technical terms to verify that UC actually understands the meaning of the term, with language such as “If you do not understand the meaning, leave the box blank.” This would allow any reviewer of the form to ascertain what terms may need further explanation for the UC. The commenter provided an example of this technique: “You have the opportunity as an unaccompanied child in the custody of the Office of Refugee Resettlement (ORR) to request a Flores bond hearing [] before an immigration judge []. In a Flores bond hearing, an immigration judge reviews your case to determine whether you pose a danger to the community [].”
- After the second “select one” choice set and before “signature,” leave a set of lines for the child to express in their own words their request for a Flores bond hearing. The commenter suggested language for such a prompt: “(Optional): In your own words, write why you want the immigration judge to hear your request for a Flores bond hearing before the IJ, or why you want to withdraw that request.”

ORR Response: Per [ORR Policy Guide Section 3.3](#), care providers must deliver services, which includes legal services information as detailed in the [Legal Resource Guide for Unaccompanied Children](#) and includes the Request for a Flores Bond Hearing, Form LRG-7/7s, in a manner that is sensitive to the age, culture, native language, and needs of each unaccompanied child.

Forms LRG-8A and LRG-8B: The commenter recommended that ORR change its internal policy to make Flores bond hearings opt-out rather than opt-in for UC in secure or staff secure placement. The commenter further recommends that e-signatures and e-filing be permitted for bond hearing requests.

ORR Response: These comments relate not to the information collection itself, but to underlying policy concerning *Flores* bond hearings. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited.

2. Multiple commenters stated their objection to portions of the Spanish translation in the Request for a Flores Bond Hearing - Spanish, Form LRG-7s. They recommended the following revisions to the form:

| Proposed Form | Recommended Change: |
|--|--|
| <p>First paragraph:</p> <p><i>En una audiencia de fianza, el juez de inmigración estudiara su caso para determinar si usted representa un riesgo para la comunidad.</i></p> | <p>We recommend changing the word “estudiara” to “revisara,” as it is a more accurate translation.</p> |
| <p>Second paragraph:</p> <p><i>...dicha decisión invalida a determinación que ORR haya tomado al respecto.</i></p> | <p>We recommend replacing that section with: dicha decisión anula la determinación que ORR haya hecho al respecto.</p> |
| <p>Third paragraph:</p> <p><i>Una audiencia de fianza Flores ante un juez de inmigración no la decisión que ORR tome al respecto de la habilidad de su patrocinador;</i></p> | <p>Most importantly, the translation is missing the word “affect.”</p> <p>We recommend changing to:</p> <p>Una audiencia de fianza Flores ante un juez de inmigración no afecta la decisión que ORR tome al respecto a la aptitud de su patrocinador para recibirle; solamente ORR tiene el poder para hacer esa decisión.</p> |
| <p>Third paragraph:</p> <p><i>La audiencia no su caso de inmigración ni en el hecho de poder permanecer en los Estados Unidos.</i></p> | <p>The translation is again missing the word “affect” and has an unnecessary word.</p> <p>We recommend changing to:</p> <p>La audiencia no afecta su caso de inmigración ni en el hecho de poder permanecer en los Estados Unidos.</p> |
| <p>Fourth paragraph:</p> <p><i>Para comprender plenamente la audiencia de fianza Flores...</i></p> | <p>Recommend replacing the word “plenamente” with “completamente”.</p> |
| <p>Fourth paragraph:</p> | <p>We recommend changing to:</p> |

| | |
|---|---|
| <p><i>Si desea hablar con un abogado, infórmele a un personal de este establecimiento para ponerlo en contacto con un abogado sin cargo alguno, o puede solicitar hablar con su abogado si tiene uno.</i></p> | <p>Si desea hablar con un abogado, infórmele a un personal de su albergue para ponerlo en contacto con un abogado gratuito, o puede solicitar hablar con su abogado si tiene uno.</p> |
| <p>The second section that indicates: <i>Seleccione Uno</i>, third option which translates “on my own behalf”:</p> <p><i>Soy el niño mencionado anteriormente y estoy presentando la solicitud en mi propio nombre.</i></p> | <p>Comment: In our experience working with UACs, we believe that a better translation for “request on my own behalf” would be:</p> <ul style="list-style-type: none"> - estoy presentando mi solicitud por mi mismo [OR] - estoy presentando mi solicitud abogando por mi mismo |

ORR Response: ORR will re-translate the form to ensure that the Spanish version is clear and consistent with the English version.

3. Multiple commenters stated that having a separate Motion for Flores Bond Hearing for UC in secure or staff secure custody is prejudicial to those UC. The commenters noted that the Federal Register notice lacks any explanation or justification for providing a separate motion for UC in restrictive placements. The commenters stated that while ORR may wish to alert the immigration judge to the issues raised by the motion, this goal does not outweigh the prejudice to UC in secure or staff secure placement by forcing them to disclose potentially harmful information to the court, not least given their lack of choice in using the form in order to access the immigration court.

ORR Response: ORR uses separate Motions for a Flores Bond Hearing for UC in secure or staff secure custody to help notify immigration court administrators and ORR of the need for prompt scheduling of a Flores bond hearing. The policy underlying this information collection is found in [ORR Policy Guide Section 2.9](#).

4. Multiple commenters noted that the Flores bond hearing is the primary means for UC to challenge their placement before a neutral adjudicator with the opportunity to present evidence and review and rebut any evidence presented against them. The commenters stated that the government should bear the burden of proof with respect to the UC’s placement and any determination that the UC poses a danger or flight risk. The commenters added that forcing UC in secure or staff secure placement to disclose potentially harmful information through the Motion for a Bond Hearing form provided by ORR inappropriately shifts the burden of proof on to UC.

ORR Response: These comments relate not to the information collection itself, but to whether ORR or the UC should bear the burden of proof in Flores bond hearings for UC in secure or staff secure custody. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR will consider whether the use of distinct Motion to Request a Bond Hearing forms is necessary or appropriate in light of the potential for prejudice to UC as well as to ensure consistency, coherence and compliance with appropriations-related obligations.¹

¹ See H.R. Rep. No. 116-450, at 28 (2021).

5. In one joint comment submitted by six organizations, the commenters requested that ORR clarify that the proposed forms represent only ORR's view of their obligations and the weight of the immigration judge's decision at a Flores bond hearing. The commenters recommended that at a minimum ORR add language stating that ORR must release a UC to a viable sponsor in the child's best interests.

ORR Response: This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR notes that the form already informs UC that a "Flores bond hearing...does not affect ORR's decision on the suitability of your sponsor; only ORR makes that decision." ORR will evaluate whether this language adequately conveys the nature of ORR's statutory responsibilities and corresponding release policies under [ORR Policy Guide Section 2](#).

6. In one joint comment submitted by six organizations, the commenters requested that ORR, in the case that ORR only provides the Request for a Flores Bond Hearing, Forms LRG-7/7s for the purposes of a dangerousness analysis, and not a review of release determination, produce another form to assist UC with a habeas request where appropriate. The commenters further recommended that ORR develop a parallel process to notify all children of their right to bring a habeas claim in federal district court.

ORR Response: ORR notes that in both the currently approved and proposed revision to the Notice of Placement in a Restrictive Setting Form P-4/4s under OMB 0970-0554, ORR includes the following statement: "If you believe you have not been properly placed or that you have been treated improperly you may also ask a Federal District Court to review your case. You may call a lawyer to assist you." ORR acknowledges and will consider the suggestion to produce a separate form to assist UC with a request for federal district court review.

The comment relating to the development of a parallel process to notify children of their right to federal court review relates to the underlying policy, not the information collection itself, and is therefore outside the scope of the purpose for which comments on the information collection were solicited.

Comments Directed at Multiple Forms (Request for Specific Consent to Juvenile Court Jurisdiction, Form L-1, Specific Consent Request Case Summary, Form L-2)

1. One commenter noted the absence of any publicly available information on ORR's policies and procedures related to specific consent that the proposed information collection revision purports to implement. The commenter noted that proposed Specific Request Case Summary Form L-2 refers to another form, the "Specific Consent Request Internal Clearance Form", of which no mention or explanation is made in the proposed information collection activity, nor is it otherwise available. The commenter requested that ORR make its policies and procedures on specific consent available to stakeholders in order to adequately assess the potential impact of the proposed revisions to the specific consent information collection.

ORR Response: The Specific Consent Request Internal Clearance Form referenced in Form L-2 is an internal routing form free of substantive content.

The remainder of the comment addresses the public availability of agency guidance, not the information collection itself, and is therefore outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR notes that it

publishes its [Special Immigrant Juvenile Status - Specific Consent Program Instructions](#) under [Key Documents for the Unaccompanied Children Program](#), published May 19, 2021. The [Specific Consent Program Instructions](#) were issued December 24, 2009. The instructions' section on "Considerations" notes that "[t]aking into consideration its responsibilities under the [Trafficking Victims Protection Reauthorization Act] TVPRA of 2008 and the Homeland Security Act to provide safe and secure care and placement for UC, HHS will evaluate whether continued HHS custody is required to ensure a child's safety or the safety of the community, or to prevent risk of flight. HHS may review its files concerning a child prior to making a decision. However, HHS will not make a *prima facie* determination on whether the child is eligible for SIJ status and will not evaluate any documentation for this purpose."

2. One commenter noted that the proposed Specific Consent Request Case Summary Form L-2 appears to reflect a policy and procedure change that goes unexplained by ORR through the inclusion of a section eliciting the Federal Field Specialist (FFS) recommendation on the specific consent request. The commenter noted that this addition changes the form from one where the FFS provides case summary information to one where the FFS takes a role in ORR's decision-making regarding the specific consent request.

ORR Response: This comment relates to underlying policy and not the information collection itself. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR notes that the FFS has always had a central role in collaborating with the care provider regarding the consideration of the specific consent request. ORR has always solicited evidence and input from the FFS in its consideration of a Specific Consent Request as the FFS is best positioned to provide information due to their familiarity with the child's case.

3. Multiple commenters noted the current and proposed content of the Specific Consent Request Case Summary Form L-2 and its focus on behavioral incidents and criminal history, particularly through the reference to Significant Incident Reports (SIRs). The commenters stated that these questions on Form L-2 directly relate to the Unaccompanied Children Program's various proposed information collection activities published in the Federal Register in early 2021, which propose extensive recording and reporting of alleged gang or cartel involvement and a greater emphasis on negative behavior generally. The commenters stated their objection to the proposed forms and their failure to take a child-centric, trauma-informed approach, reliance on historically inaccurate and misleading gang allegations, undermining of ORR's child welfare mandate, increase in placement and length of stay in restrictive settings, promotion of racial inequality, and prejudicial effect on UC immigration cases.

ORR Response: This comment relates to underlying policy and not the information collection itself. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nonetheless, ORR observes that the first three questions under Section B: UC Case Information of proposed Specific Consent Request Case Summary Form L-2 cover the three elements of child safety, community safety, and flight risk. There are no questions on this form that specifically ask ORR to indicate or assess whether the child is gang or cartel-affiliated. ORR will evaluate whether the remaining three questions in Section B are necessary and appropriate for ORR to carry out its consideration of the request pursuant to its specific consent and other related policies.

4. One commenter noted Form L-2's reference to and proposed incorporation of SIRs. The commenter noted that SIRs document specific moments of a child's behavior while in ORR custody without setting forth a full portrait of the child or a broader context of the child's behavior during a single incident. The commenter stated that while such incident reports might be common in the child welfare setting, those proceedings are governed by the best interest principle, as opposed to the adversarial nature of removal proceedings in which UC in ORR custody find themselves and where the government often uses SIRs against them.

ORR Response: This comment relates to underlying policy and not the information collection itself. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR notes that information from SIRs may be necessary to make a well-informed Specific Consent decision.

5. One commenter noted the focus on behavioral incidents and criminal history in the Specific Consent Request Case Summary Form L-2 in light of the common characteristics of trauma history and detention fatigue shared by many UC who seek specific consent. The commenter observed that many children who seek specific consent have come to the United States after fleeing situations of abuse and neglect that caused profound trauma. The commenter added that many of these children lack family in the U.S., which leads to longer stays in ORR custody where their trauma is compounded by detention fatigue, leading to acting out. The commenter cited care provider testimonies in the Department of Health and Human Services (HHS) Office of the Inspector General (OIG) September 2019 report [Care Provider Facilities Described Challenges Addressing the Mental Health Needs of Children in HHS Custody \(OEI-09-18-00431\)](#) reporting various manifestations of behavioral and emotional deterioration among UC with prolonged stays in ORR custody.

ORR Response: This comment relates to underlying policy and not the information collection itself. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR will evaluate whether revisions to the Specific Consent Request Case Summary Form L-2 may be necessary for ORR to appropriately and adequately consider specific consent requests pursuant to its specific consent and other related policies.

6. Multiple commenters recommended that ORR revise Request for Specific Consent to Juvenile Court Jurisdiction Form L-1 to permit legal service providers to submit urgent requests more than 30 days prior to a UC's 18th birthday. Two commenters recommended that ORR permit requests at least 60 days prior to the 18th birthday, while six organizations on one joint comment suggested ORR permit urgent requests 180 days prior to a UC's 18th birthday. The commenters noted that UC with vulnerabilities or barriers often experience delays in their juvenile court processes that are outside of their control. Two commenters noted that UC who are rare language speakers often have their hearings rescheduled for lack of an available interpreter, while one of those commenters added that telephonic connectivity issues with parents in foreign countries also cause rescheduling delays in juvenile court. The commenters who recommended 180 days noted that this increase would allow children to seek reconsideration should the specific consent request be denied while giving ORR sufficient time to consider requests.

ORR Response: ORR acknowledges the commenters' concerns with respect to the provision of adequate time for urgent requests. ORR will consider revising the "Reason for Urgent Request"

portion under Section B: Requesting Party to more adequately reflect timing constraints that may arise in state juvenile court. ORR will also correct all typographical errors in this section.

7. Several commenters noted the lack of reliability of the gang and cartel-related and other incriminating information ORR collects and purports to rely on through the proposed Specific Consent Request Case Summary Form L-2. The commenters stated that ORR primarily relies on self-disclosures by UC and noted that such self-disclosures are frequently unreliable due to factors related to child development, past trauma, and elicitation in coercive law enforcement contexts such as CBP border facilities. The commenters noted that in addition to self-disclosures, ORR relies on subjective assessments of whether personal appearance or effects are gang- or cartel-related. Six organizations that submitted one joint comment noted that ORR and its care provider staff may deem subsequent behavior by a UC who discloses past gang involvement as gang-related regardless of accuracy. Multiple commenters also noted the absence of information on the criteria used by ORR for identifying a UC or incident involving UC as gang or cartel-related or affiliated.

ORR Response: This comment relates to underlying policy and not the information collection itself. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. As noted above, ORR clarifies that there are no questions on this form that specifically ask ORR to indicate or assess whether the child is gang or cartel-affiliated. Nevertheless, ORR notes that it assesses and attempts to corroborate any disclosure of the child's criminal or juvenile delinquency history made by the child, their family, or their sponsor to ensure that the child is placed in the least restrictive setting that meets their individual needs, the child receives appropriate services, and that ORR is able to make a well-informed release decision and specific consent decision.

8. One commenter noted that criminal background information is often gathered and documented without reference to the broader context critical to determining its relevance to whether a child presents a risk to him/herself or others. The commenter stated that ORR and care provider staff are not nor should be trained to decode complicated criminal records. At the same time, the commenter recommended that ORR exclude from consideration whether a child presents a risk to him/herself or others in ORR custody based on any criminal charges that have not resulted in convictions. The commenter noted that criminal charges that have been withdrawn or dismissed have been deemed to lack probable cause given the criminal court determination that they were unfounded.

In one joint comment, six organizations stated that the use of the term "criminal" is often inaccurate, confusing, and contrary to a trauma-informed, child-centric approach, given that most child behaviors are not criminal. The commenters noted the distinction between juvenile delinquency and adult crimes as recognized across state and federal law, including immigration law.

ORR Response: This comment relates not to the information collection, but to the underlying policy. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR attempts to corroborate and understand any disclosure of the child's criminal or juvenile delinquency history made by the child, their family, or their sponsor, as noted above.

9. One commenter stated that the Specific Consent Request Case Summary Form L-2 fails to provide a definition or other legal standard for the “best interest of the child” recommendation elicited by the form when it prompts the FFS to provide his/her recommendation on whether the reunification is in the best interest of the child. The commenter recommended that ORR provide a clear definition on the form of the definition or legal standard ORR uses for best interest of the child.

ORR Response: This comment does not relate to the information collection itself, but to the legal definition of “best interest of the child” applied by ORR. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR’s mandate to place UC in the least restrictive setting in the best interest of the child is imposed by federal law through the TVPRA. This obligation refers to a legal term of art recognized in child welfare systems across the United States and the world. Consistent with child welfare best practices, ORR does not exclusively define the best interest of the child. Instead, as described in [ORR Policy Guide Section 1.2.1](#), ORR uses a non-exhaustive list of factors to guide ORR staff and care providers in decision-making regarding UC.

10. All but one of the commenters stated that the Specific Consent Request Case Summary Form L-2 disregards the TVPRA mandate to place UC in the least restrictive setting in the best interest of the child by its deficit-oriented approach. The commenters noted that although the TVPRA permits ORR to consider danger to self, danger to community, and risk of flight in making its placement determinations, these considerations are only permissible in consonance with the statutory obligation to promptly place UC in the least restrictive setting in their best interest. The commenters stated that with a single exception of one question referring to a UC’s safety, Form L-2 only seeks to document negative factors related to danger to self, community or flight risk. The commenters stated that Form L-2 places ORR in violation of its statutory obligation to ensure the least restrictive setting given the information collection focused on factors militating against release to the least restrictive setting in a child’s best interest.

The commenters recommended ORR incorporate the holistic elements of the best interest of the child (a child’s safety, views, identity, rights to health and education, situation of vulnerability, and preservation of family environment and relations) recognized by the Convention on the Rights of the Child into Form L-2. The commenters suggested that these elements could be expressed in Form L-2 through the following information collection: the child’s expressed views; proposed placement’s access to religious and cultural identity; consideration of family unity; consideration of detrimental effects of detention on child’s mental health; and ability to enroll in state-accredited school.

One commenter recommended that Form L-2 be revised to elicit information regarding a child’s strengths, growth, and progress while in government custody, and the positive impact that specific consent would have in promoting a child’s development, health, and safety.

ORR Response: As described in the [Special Immigrant Juvenile Status - Specific Consent Program Instructions](#), ORR’s evaluation of whether continued ORR custody is required to ensure the safety of the child or community or prevent flight risk derives directly from ORR’s statutory obligation under the TVPRA to provide safe and secure care and placement for UC through placement in the least restrictive setting in the best interest of the child. ORR will evaluate whether revisions to the Specific Consent Request Case Summary Form L-2 may be necessary for ORR to ensure coherence, consistency and compliance with its statutory obligations and recent

policy updates. In particular, ORR will consider the commenters' suggestions regarding the collection of additional information related to the best interest of the child.

11. Multiple commenters stated that the Specific Consent Request Case Summary Form L-2 indicates that ORR is using an erroneous standard to govern whether it grants specific consent by permitting ORR to deny specific consent if there is any risk of danger to the child or of flight. The commenters stated that the TVPRA's least restrictive setting mandate must be the central inquiry. The commenters recommended that ORR revise the form to clarify that the standard is not "any risk" in the proposed placement but rather how the risk in the proposed placement compares to the risk in the UC's current placement.

ORR Response: As explained in the [Special Immigrant Juvenile Status - Specific Consent Program Instructions](#), ORR's evaluation of whether continued ORR custody is required to ensure the safety of the child or community or prevent flight risk derives directly from ORR's statutory obligation under the TVPRA to provide safe and secure care and placement for UC through placement in the least restrictive setting in the best interest of the child. ORR will evaluate whether revisions to the Specific Consent Request Case Summary Form L-2 may be necessary for ORR to ensure coherence, consistency and compliance with its statutory obligations and recent policy updates. In particular, ORR will consider the commenters' suggestion regarding the clarification of the legal standard underlying the specific consent request inquiry.

12. All but one of the commenters noted the significant risk of harm to UC in the case of denial of a specific consent request--in the form of the inability to seek legal status and permanency in the U.S. through Special Immigrant Juvenile Status, prolonged detention, or adversarial use of collected information against UC in their immigration proceedings--and the corresponding importance of comprehensive consideration of the request. The commenters noted Form L-2's instructions for the FFS to complete the form only in collaboration with the case manager and recommended that the case summary be completed instead in collaboration with the case manager, clinician, the facility's lead clinician, the UC, the UC's counsel, and Child Advocate, if any. The commenters requested that ORR ensure that the inquiries related to the information collection on the UC's "functioning, behavior, and psychosocial history" be made at minimum in collaboration with the UC's clinician and the approval or participation of the facility's lead clinician.

ORR Response: This comment relates not to the information collection itself, but to ORR's specific consent request policy. Nevertheless, ORR notes that although Specific Consent Request Case Summary Form L-2 is completed by the FFS in collaboration with the case manager, both parties continuously collaborate on the UC's case with other stakeholders, such as the clinician, UC's counsel, and child advocate. As such, ORR will consider whether revisions to the instructions are necessary in order to accurately portray the involvement of care provider staff beyond the case manager and other stakeholders as appropriate.

13. One commenter noted the importance of specific consent to allow UC to seek transfer to the state child welfare system where they can access long-term, stable placement and critical supports and services. The commenter noted that those UC who seek specific consent do so because they require a change in their custody or placement to ensure their health, well-being, and safety. The commenter added that such UC have often been in ORR custody for a long period of time, have no family in the U.S., and are approaching 18 and the risk of aging out of ORR custody into ICE detention. The commenter noted that in these cases the denial of specific

consent means that not only does a vulnerable UC face an even longer time in ORR custody, but also the significant risk of transfer to ICE detention upon turning 18 and the corresponding harms that attach to such detention. The commenter requested that ORR ensure that its specific consent request process considers the best interest of the child and does not result in the prolonged and unnecessary detention of children in its custody, including transfer to ICE detention.

ORR Response: This comment relates not to the information collection itself, but to ORR's specific consent request policy. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR concurs with the commenter's concern regarding the critical significance of a specific consent request for UC. ORR will consider whether revisions to the Specific Consent Request Case Summary Form L-2 may be necessary for ORR to ensure coherence, consistency and compliance with its statutory obligations and recent policy updates.

14. Multiple commenters recommended that ORR provide a written decision justifying its reasons for denying a specific consent request. In one joint comment, six organizations requested that ORR, in cases where the agency intends to deny a specific consent request, produce a detailed report including an individualized assessment of the child's history since birth by a multidisciplinary team, in line with the Convention on the Rights of the Child. One commenter recommended that prior to denial of a request, the UC and his/her attorney or Child Advocate, if any, are provided with the Specific Consent Request Case Summary Form L-2 and given an opportunity to respond to the conclusions of the FFS and case manager and to correct, clarify, or provide supplemental information regarding the information upon which ORR is relying to make their recommendation. The commenter stated that the Child Advocate should be permitted to submit their Best Interest Determination with the Case Summary Form L-2. Finally, the commenter recommended that ORR ensure that the UC has an opportunity to present additional relevant evidence responding to ORR's reasons for denying the request as part of a request to reconsider a denial.

ORR Response: This comment relates not to the information collection itself, but to ORR's specific consent request policy. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, as described in [ORR Policy Guide Section 2.3.4](#), Child Advocates formally submit their recommendations to ORR in the form of Best Interest Determinations (BIDs), which ORR considers in making decisions regarding a specific consent request. Moreover, nothing in the [Special Immigrant Juvenile Status - Specific Consent Program Instructions](#) prevents a UC or their representative from presenting additional relevant evidence with a request for reconsideration.

15. Several commenters noted the lack of clarity regarding whether ORR considers the information proposed for collection to be subject to state and federal laws governing the protection of children's information and privacy, especially in light of mandatory information-sharing with DHS pursuant to [ORR Policy Guide 5.8](#). The commenters stated that legislatures have chosen to protect children's confidentiality in light of their inherent vulnerability and to promote rehabilitation. The commenters then requested that ORR ensure the adequate safeguarding of collected information and compliance with state and federal laws governing the protection of children's criminal information, as well as medical information as protected by the Health Insurance Portability and Accountability Act (HIPAA).

Several commenters recommended that the proposed information collection forms clearly indicate that they are to be maintained separately from the UC's "Alien File." The commenters stated that as ORR is bound by the Flores Agreement's provision for children to have a "reasonable right to privacy" and as ORR's website states that "HHS has strong policies in place to ensure the confidentiality of [UCs] personal information", it follows that UC must have the right to privacy of their own records and ultimately all information they provide to ORR. The commenters noted that the Flores Agreement requires agencies and organizations to develop a system of accountability which preserves the confidentiality of client information and protects the records from unauthorized use or disclosure. As a result, the commenters stated that UC ORR files should not be accessible by third parties without UC authorization.

ORR Response: This comment relates to underlying policy regarding safeguarding and confidentiality of UC information, not the information collection itself. Nevertheless, ORR notes that UC case file information is maintained by ORR care providers and is stored in the UC Portal and with the care provider. These files are maintained separately from UC A-Files, which are maintained by DHS. ORR abides by all applicable state laws governing the confidentiality of juvenile records. ORR established a system of records to ensure the level of confidentiality pursuant to the Privacy Act, 5 U.S.C. § 552(a). The System of Records Notice (SORN) was published on July 18, 2016 at 81 FR 46682.

In addition, Forms L-1 and L-2 are internal workflow documents not subject to routine disclosure. In the current proposed revision to the Authorization for Release of Records, Form A-5, as published in OMB 0970-0547, ORR makes clear in the form instructions that Legal Information records will not be released to government agencies without the signature of the UC (or their caregiver or parent/legal guardian as applicable), a court-issued subpoena or order, or an official statement describing the scope of the investigation with a case reference number.

Notice of Attorney Representation (Form L-3)

1. All but one of the commenters stated opposition to the adoption of the proposed Notice of Attorney Representation, Form L-3 for being duplicative and unnecessary. The commenters noted that USCIS Form G-28 has long been used to notify ORR of an attorney's representation of a UC in ORR custody and that ORR does not provide any explanation for why a unique notice of representation of UC is necessary. The commenters recommended that ORR withdraw the proposed form in its entirety and continue to use and accept Form G-28 as a standard notice of representation.

ORR Response: The Notice of Attorney Representation, Form L-3 is neither duplicative nor unnecessary. Unlike USCIS Form G-28, the Notice of Attorney Representation, Form L-3 recognizes that attorneys represent unaccompanied children on matters beyond immigration related issues and who also want to provide limited representation to specific matters. In comparison, the instructions for Form G-28 expressly limits its purpose to immigration matters before the U.S. Department of Homeland Security (DHS). ORR is an agency within the U.S. Department of Health and Human Services (HHS) and not a party to the unaccompanied child's immigration case. Therefore, ORR developed a form that better aligns with the broader scope of attorney representation for unaccompanied children and distinguishes the two Departments.

2. All but one of the commenters stated their opposition to the adoption of the proposed Notice of Attorney Representation, Form L-3 for lacking authority in federal or state law or regulation and

for its coercive terms that interfere with an attorney's representation of his/her UC client. The commenters noted the statement under Section E: Signature of Attorney or Accredited Representative and its requirement that attorneys make certain attestations under penalty of perjury in order to (a) receive updates on the UC's case during the course of representation; and (b) request and receive a copy of the UC's ORR case file. The commenters noted that part of this attestation requires attorneys to swear that they have read and will abide by "the ORR policies governing representation of UC", on which ORR has provided no information nor made available with the proposed form. The commenters stated that ORR does not cite any legal authority for making access to UC information contingent on compliance with ORR policies governing representation of UC for which they have not provided any notice, much less justification or legal authority.

ORR Response: ORR acknowledges the commenters' concerns and will assess if revisions to Section E: Signature of Attorney or Accredited Representative are necessary to comply with applicable law and regulation.

3. All but one of the commenters stated their opposition to the adoption of the proposed Notice of Attorney Representation, Form L-3 for impermissible interference with attorney representation of UC clients. The commenters noted the requirement under Section E: Signature of Attorney or Accredited Representative that attorneys swear that they "will not unreasonably interfere with or obstruct ORR from performing its charged duties, including but not limited to releasing the UC from ORR custody." The commenters stated that by requiring this statement, ORR is obstructing representation and thus UC access to counsel by making the attorney sign a broad statement unrelated to the representation. The commenters stated that this proposed form statement is impermissible given that circumstances may obligate an attorney to intervene on behalf of their client and failure to do so could result in the attorney violating their professional duties under their state licensing jurisdiction. One of the commenters noted that whether "reasonableness" would be the applicable standard is a question of law that could vary from jurisdiction to jurisdiction and is not ORR's to impose.

ORR Response: This comment relates not to the information collection, but to the underlying policy. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited.

4. In one joint comment submitted by six organizations, the commenters stated their objection to and requested the removal of the sections covering the scope and course of representation. The commenters noted that in many cases the scope of representation is unclear until the attorney has reviewed the child's case file. The commenters stated that, as the proposed form and a designation of the scope and course of representation would be required in order to obtain the UC case's file as well as case updates, through the proposed information collection ORR inserts itself inappropriately into the agreement between child and attorney.

ORR Response: Form L-3 replaces USCIS Form G-28, which is neither an ORR form nor intended for the purpose of accessing UC case file information in the possession of ORR. Form L-3's section on the scope and course of representation is similar to Part 3 of USCIS Form G-28. However, Form L-3 broadens the scope of matters for which an attorney can represent a UC more than the limitation to immigration matters imposed by USCIS Form G-28. ORR permits attorneys to resubmit updated versions of the Notice of Attorney Representation, Form L-3. Therefore, attorneys can expand or change the scope of representation, if, after reviewing the

UC case file, they commence representation on a new or additional matter. Providing ORR written documentation that an attorney represents a UC on a specific matter in order to access UC case file information is a longstanding policy. The current version of this policy, published April 14, 2014, is available online at <https://www.acf.hhs.gov/orr/policy-guidance/requests-uac-case-file-information>.

Motion for Change of Venue (Form L-7)

1. All but one of the commenters stated their objection to the proposed revision to the Motion for Change of Venue, Form L-7 that provides for a custodian's signature. The commenters noted ORR's lack of explanation and justification for this addition, as well as the lack of clarity on who has the legal authority to sign as custodian. The commenters noted that the signature of a custodian who is neither a parent or legal guardian nor a party to the removal proceedings before the immigration court likely violates Executive Office for Immigration Review (EOIR) regulations and the Office of the Chief Immigration Judge (OCIJ) Practice Manual.

ORR Response: ORR acknowledges the commenters' concerns and notes that ORR has long used (and EOIR has accepted) this form to assist sponsors and UC in filing a change of venue. Nevertheless, ORR will review whether revisions to the proposed form may be necessary to comply with applicable law, regulation, and policy.

2. All but one commenter stated that the proposed custodian signature is unnecessary. The commenters noted that neither 8 C.F.R. § 1263.3 nor the OCIJ Practice Manual contain any specific guidance on how to file a motion for change of venue for unaccompanied children. The commenters requested that ORR retract the proposed Form L-7 and collaborate with legal service providers to create forms or other uniform procedures that meet local practice requirements. Three commenters noted having seen their local immigration courts regularly change venue for UC where ORR care provider staff provided the ORR Verification of Release and EOIR-33 Change of Address forms to the court. The commenters noted this process as the most efficient and least burdensome for all involved. In the alternative, the commenters recommended that ORR remove the custodian section from proposed Form L-7.

ORR Response: ORR acknowledges the commenters' concerns and notes that ORR has long used (and EOIR has accepted) this form to assist sponsors and UC in filing a change of venue. Nevertheless, ORR will review whether revisions to the proposed form may be necessary to comply with applicable law, regulation, and policy.

3. All but one commenter noted the potential for the custodian section of the form to prejudice UC in their removal proceedings by causing undue delay, reducing administrative and judicial efficiency, and increasing resource burdens on ORR, its care provider staff, and the immigration court. The commenters noted the potential for EOIR to reject the motions to change venue as improper for including custodian signatures despite the absence of legal authorization. One commenter, a legal service provider, described the prejudice and resource burden caused when an immigration judge required sponsor signatures on all *pro se* motions to change venue.

ORR Response: ORR acknowledges the commenters' concerns and will notes that ORR has long used (and EOIR has accepted) this form to assist sponsors and UC in filing a change of venue. Nevertheless, ORR review whether revisions to the proposed form may be necessary to comply with applicable law, regulation, and policy.

Post Legal Status Plan (Form L-8)

1. All but one of the commenters noted the lack of justification for why the proposed new Post Legal Status Plan, Form L-8, is necessary. The commenters also noted a lack of clarity regarding from whom ORR intends to collect the information, and who within ORR will be responsible for collecting the information. The commenters, who are legal service providers, stated that in their experience ORR staff lack an accurate understanding of a UC's legal case, which increases the risk that information collected by ORR agency or care provider staff will be inaccurate. The commenters cited the history of ORR sharing UC case files with the Department of Homeland Security (DHS) as increasing the potential for the proposed information collection to prejudice UC, particularly if the information collected by ORR is inaccurate. The commenters requested that ORR retract the proposed form or, in the alternative, provide justification for the proposed information collection.

ORR Response: Per [ORR Policy Guide Section 2.8.6](#), ORR is not authorized to have custody of any child with lawful immigration status or U.S. citizenship and therefore must promptly release any such children from ORR-funded care provider facilities. The Post Legal Status Plan Form L-8 is an instrument permitting case managers and Federal Field Specialists (FFS) to develop and approve, respectively, the release plan for a UC upon their gaining lawful immigration status. It is a child welfare instrument facilitating the ability of ORR to provide for the safety and well-being of children who cannot remain in ORR care in a manner tailored to the child's individual needs. ORR works with the legal service provider or UC attorney of record to obtain information that may affect the child's legal status.

2. All but one commenter noted that attorney rules of professional conduct prohibit attorneys from sharing any information about their representation without their client's consent and that as a result asking the UC's attorney to provide the information proposed for collection could lead to a violation of attorney-client confidentiality. In one joint comment from six organizations, the commenters stated that a child should not have to consent to the proposed information collection in order to receive necessary services from ORR and access counsel.

ORR Response: The Post Legal Status Plan Form L-8 is an instrument permitting case managers and Federal Field Specialists (FFS) to develop and approve, respectively, the release plan for a UC upon their gaining lawful immigration status. While a child remains a UC, neither their rights nor ORR's duties toward them are contingent upon the proposed information collection. Instead, the instrument is meant to safeguard the safety and well-being of the child by facilitating continuity of care once a child must leave ORR custody.