



November 19, 2025

Office of Refugee Resettlement Unaccompanied Children Bureau
Administration for Children and Families
U.S. Department of Health and Human Services

Submitted via email to infocollection@acf.hhs.gov

Re: Expedited Office of Management and Budget Review and Public Comment: Placement and Transfer of Unaccompanied [Alien] Children Into ORR Care Provider Facilities (#: 0970-0554)

To Whom It May Concern:

We write on behalf of the National Center for Youth Law to comment on the above-referenced proposed information collection activity, titled “Placement and Transfer of Unaccompanied [Alien] Children Into ORR Care Provider Facilities,” published on September 30, 2025, by the Office of Refugee Resettlement (“ORR”), Administration for Children and Families, U.S. Department of Health and Human Services (“HHS”).

The National Center for Youth Law (“NCYL”) is a non-profit law firm that has fought to protect the rights of children and youth for over fifty years. Headquartered in Oakland, California, NCYL leads high impact campaigns that weave together litigation, research, policy development, and technical assistance. NCYL also collaborates with public agencies to develop policies and practices to better support children and families. NCYL’s Immigration Team works to ensure that immigrant children are able to live in communities rather than in government custody and have the resources they need to heal and thrive.

ORR proposes changes to the following forms:

- *Notice of Placement in a Restrictive Setting* (Form P-4)
- *Notice of Administrative Review* (Form P-18)
- *Intakes Placement Checklist* (Form P-7)
- *UC Referral* (Form P-7)

These forms relate to the placement and transfer of unaccompanied children in restrictive settings. Under the Trafficking Victims Reauthorization Act (“TVPRA”) and the Unaccompanied Children Program Foundational Rule (“Foundational Rule”), ORR must place unaccompanied children “in the least restrictive setting that is in the best interest of the child.” 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. § 410.1003(f). A child cannot be placed in a secure facility unless they are a danger to themselves or others or have been charged with a criminal offense. 8 U.S.C. § 1232(c)(2)(A). In addition to this general requirement, under the Foundational Rule, a child must meet at least one of three criteria before they are placed in a secure facility. 45 C.F.R. § 410.1105(a)(3). The child must have been charged with or convicted of a crime, or charged or

adjudicated delinquent, and the circumstances of that charge, adjudication, or conviction must demonstrate that the child poses a danger to others; the child must have committed or made credible threats to commit a violent or malicious act directed at others while in immigration custody or in the presence of an immigration officer, ORR official, or ORR contractor staff; and/or the child must have engaged in unacceptable disruptive conduct while in a restrictive placement, and their removal is necessary to ensure the welfare of others and ORR has determined that they pose a danger to others based on such conduct. *Id.* The Flores Settlement Agreement also provides specific guidelines for when a child may be placed in a secure facility.¹ *Flores v. Reno*, No. CV 85-4544, Settlement Agreement (“FSA”), ¶¶ 6, 21.

Even if a child meets secure criteria, ORR “shall not place an unaccompanied child in a secure facility ... if less restrictive alternatives in the best interests of the unaccompanied child are available and appropriate under the circumstances.” 45 C.F.R. § 410.1105(a)(2); *see also* FSA ¶ 23. Furthermore, ORR must base step-up decisions or continued placement in restrictive settings on “clear and convincing evidence.” 45 C.F.R. §§ 410.1105(a)(1), 410.1901(a); *see also Lucas R. v. Becerra*, No. CV 18-5741-DMG (PLAX), 2022 WL 3908829, at *3 (C.D. Cal. Aug. 30, 2022).

The TVPRA, Foundational Rule, and FSA make clear that children placed in secure facilities have an interest in receiving and understanding the bases which the government believes justifies their restrictive detention. Additionally, because placement in secure facilities implicates strong constitutional liberty interests, the Notice of Placement and Notice of Administrative Review must provide adequate procedural safeguards for children. *Lucas R. v. Becerra*, No. CV 18-5741-DMG (PLAX), 2022 WL 2177454, at *17 (C.D. Cal. Mar. 11, 2022) (“Minors’ placement in secure juvenile detention centers or RTCs indisputably implicates their interest in freedom from institutional restraint.”). In particular, it is essential that children receive detailed notice of the reasons for their restrictive placement and are afforded a prompt opportunity to challenge their placement.

The Intakes Placement Checklist and UC Referral forms must therefore provide clear and accurate instructions to ORR staff to ensure that ORR complies with its obligation under federal law and the Foundational Rule to place unaccompanied children in the appropriate setting and to advance their best interests. As such, we suggest the following changes to improve these forms’ utility and compliance with applicable law and regulation.

A. Notice of Placement in a Restrictive Setting (Form P-4)

ORR recognizes that it is “imperative that unaccompanied children placed in restrictive placements understand the reasons for their placement and their rights.” Preamble to ORR Foundational Rule, 89 Fed. Reg. at 34563. Consistent with this recognition, the Foundational Rule requires that a Notice of Placement (“NOP”) be provided to unaccompanied children in

¹ Although the Flores Settlement Agreement was terminated as to HHS, in part, it still applies to unaccompanied children placed in restrictive settings. *See Flores v. Garland*, No. CV 85-4544-DMG (AGRX), 2024 WL 3467715, at *5–6, *9 (C.D. Cal. June 28, 2024) (conditionally and partially terminating the FSA “except Paragraphs 28A, 32, and 33 of the FSA, and those FSA provisions governing secure, heightened supervision, and out-of-network facilities”).

restrictive placements. 45 C.F.R. § 410.1901(b). The NOP must clearly and thoroughly set forth the reasons for restrictive placement and a summary of supporting evidence, in the child’s native or preferred language. *Id.*

The Proposed NOP, however, does not fulfill ORR’s obligation to ensure that unaccompanied children can understand and vindicate their procedural rights. In the “Your Rights to Challenge Your Placement in a Restrictive Setting” section, ORR should add language clarifying the timeline for when the NOP(s) will be provided to the unaccompanied child. For example, the form should state, “This *Notice of Placement* must be provided to you no later than 48 hours after step-up to a restrictive setting, and a *Notice of Placement* will be provided to you every 30 days you remain in a restrictive setting.” *Id.* Clarifying when the NOP will be provided to the unaccompanied child helps ensure that children and their advocates promptly receive all information necessary to contest a restrictive placement.

Similarly, to comply with the requirements of the Foundational Rule, ORR should add language under the “Your Rights to Challenge Your Placement in a Restrictive Setting” section stating, “A copy of this *Notice of Placement* will be automatically provided to your attorney, legal service provider, child advocate, and your parent or legal guardian, no later than 48 hours after step-up, and every 30 days you remain in a restrictive setting.” *Id.* § 410.1901(c). The NOP should also explain that if a copy is not provided to a parent or legal guardian, ORR must document in the child’s case file the child welfare reason(s) it relied on. *Id.* § 410.1901(c)(3). In *Lucas R.*, the federal district court found that NOPS protected the child’s liberty interests in part because they were *automatically* provided to the child’s lawyer, parents, and/or guardians, who could then explain to the child their right to administrative review, “rather than only on demand for counsel.” *Lucas R.*, 2022 WL 2177454, at *21 (“Notice is not an effective safeguard of liberty interests if the child does not understand his or her right.”).

Under the Foundational Rule, children must be informed of their right to contest their placement in a restrictive setting before a Placement Review Panel (“PRP”) and the procedures for doing so. 45 C.F.R. § 410.1901(b)(2); *see also Lucas R.*, 2022 WL 3908829, at *3. The NOP must further inform the child of all other available administrative review processes. 45 C.F.R. § 410.1901(b)(2). Rather than explaining the procedures by which the unaccompanied child can request a PRP in the NOP, ORR has divided this information in two separate notices. The NOP briefly informs children of their right to challenge placement decisions, and only if the child requests a PRP does ORR provide the child with the Notice of Administrative Review, which provides the child with detailed information on next steps to take when requesting review of their placement in a restrictive setting. We recommend ORR revise the NOP to explain the procedures by which the unaccompanied child can request the PRP. It is crucial that children have timely access to the information necessary to exercise their right to appeal, and understanding the process of how to request the appeal may inform their decision as to whether or not to exercise their right to do so.

As proposed, the NOP states that a child may request reconsideration of their placement “[a]t any time” after receiving the NOP. We suggest revising the NOP to state the following: “You may request a Placement Review Panel to reconsider your placement as soon as you receive this *Notice of Placement*, and at any time after receiving it.” This revision would help facilitate

prompt challenges to placements, because the unaccompanied child may not realize that they can immediately request a reconsideration, especially if they do not have an attorney or child advocate. Children in ORR custody often confront unnecessary delays in contesting restrictive placement decisions, and these delays have detrimental consequences for children whose mental health may deteriorate due to conditions in restrictive settings. *See* OIG Report, *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody*, available at <https://oig.hhs.gov/oei/reports/oei-09-18-00431.pdf>; *see also* *Reno v. Flores*, 507 U.S. 292, 318 (1993) (O'Connor, J., concurring) (“The consequences of an erroneous commitment decision are more tragic where children are involved.”) (internal citations omitted).

Lastly, the NOP states the unaccompanied child may request a risk determination hearing from a Departmental Appeals Board judge as a means of requesting reconsideration of their placement in a restrictive setting. However, the Foundational Rule implies that children do not need to take the step of affirmatively requesting such a hearing, as one will be provided to them automatically. *See* 45 C.F.R. § 410.1903(a). As such, ORR should add the following clarification: “You will receive a risk determination hearing, unless you indicate in writing that you refuse such a hearing. You may talk to an attorney before you decide whether or not to decline the hearing.”

B. Notice of Administrative Review (Form P-18)

As described above, under the Foundational Rule, children must be informed of their right to contest their placement in a restrictive setting before a Placement Review Panel (“PRP”) and the procedures for doing so. *Id.* § 410.1901(b)(2); *Lucas R.*, 2022 WL 3908829, at *3. The Notice of Administrative Review form serves as written notice of receipt of a PRP request and contains an explanation of the PRP process and the child’s options to either have a hearing before the PRP or to submit a written statement for the PRP’s consideration. Like the NOP, the Notice of Administrative Review helps ensure that ORR timely and adequately informs children of the reasons underlying their placement decisions, and the process by which unaccompanied children can challenge those decisions, in line with ORR’s obligations under the Foundational Rule. *See* 45 C.F.R. § 410.1901.

In the first paragraph explaining what the PRP is and its purpose, in order to comply with the requirements of the PRP, the Notice of Administrative Review should also state, “Staff members on the Placement Review Panel must have requisite experience in child welfare.” *Id.* § 410.1001. Additionally, Footnote 1 currently directs the child to review ORR policies on placement in Section 1 of the ORR Policy Guide. This footnote should be revised to direct the child to the *specific* portion of the ORR Policy Guide that addresses reconsideration of a restrictive placement, which is § 1.4.7.² Otherwise, the child may have difficulty locating the relevant information, which would be helpful in deciding whether to contest their restrictive placement.

² The version of the ORR Policy Guide discussed here was last accessed on November 15, 2025. ORR frequently amends the policy guide and provides a list of revisions and updates on its website. *See* Office of Refugee Resettlement, *ORR Unaccompanied Alien Children Bureau Policy Guide: Record of Posting and Revision Dates* (current as of Nov. 13, 2025), <https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-record-posting-and-revision-dates>.

The Notice of Administrative Review should also clarify the timeline for when the case file and evidentiary record will be provided to the unaccompanied child to provide the most accurate and comprehensive information to the child as possible. Specifically, ORR should add the following information to the third bullet point on Page 1: “Your entire case file and Evidentiary Record will be provided within a reasonable time frame to assist you, before the PRP review is conducted.” 45 C.F.R. § 410.1902(b). In addition, the Foundational Rule requires ORR to provide the child both evidence in support of step-up or continued restrictive placement, *and* any countervailing or otherwise unfavorable evidence. *Id.* As proposed, the Notice of Administrative Review simply states that the entire case file will be provided to the child. It would be clearer if ORR specified that both favorable and unfavorable evidence are included in this case file in order to avoid any confusion. *See Beltran v. Cardall*, 222 F. Supp. 3d 476, 485 (E.D. Va. 2016) (“It is a principle that has ‘remained relatively immutable’ in due process jurisprudence ‘that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government’s case must be disclosed to the individual so that he has an opportunity to show that it is untrue.’”) (quoting *Greene v. McElroy*, 360 U.S. 474, 496 (1959)). Additionally, the Notice of Administrative Review should clarify that the case file contains *all* evidence ORR will rely on, so the child is not left wondering if there will be any evidence presented at the PRP that they will not have the opportunity to review ahead of time.

The proposed Notice of Administrative Review states the panel will determine whether there is enough information to support the child’s continued placement, but it does not mention that ORR carries the burden of demonstrating by clear and convincing evidence that sufficient grounds exist for the restrictive placement. Although the Foundational Rule does not require this information to be in the notice, we recommend adding this information so that the child and their advocate(s) understand the burden is on ORR to provide clear and convincing evidence to support their decision. 45 C.F.R. § 410.1901(a).

In addition, to comply with the Foundational Rule, we recommend ORR add, “The panel’s written decision will be issued in your native or preferred language,” under the “Option One” section of the Notice of Administrative Review. *Id.* § 410.1902(d). Similarly, under the “Option Two” section, ORR should clarify the child has the option of interpretation services during the hearing and that the hearing must be conducted in a manner that they effectively understand. *Id.* § 410.1902(a).

Lastly, as proposed, the “Your Next Steps” section asks the child to provide the name, email address, and phone number for the attorney or child advocate that will represent them when submitting a request for a hearing. ORR should explain that the child does not need an attorney or child advocate to request a hearing. For example, ORR should add, “If you do not have an attorney or child advocate, you do not need to provide this information.”

C. Intakes Placement Checklist (Form P-7)

As discussed above, pursuant to the TVPRA and Foundational Rule, ORR is required to place unaccompanied children in its custody “in the least restrictive setting that is in the best interest of the child.” 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. § 410.1003(f). In accordance with federal law

and ORR's own regulations, care providers must "continuously assess unaccompanied [] children in their care to review whether the children's placements are appropriate." ORR Policy Guide, § 1.4.1. The proposed Intakes Placement Checklist, which is used by ORR to determine whether placement in a restrictive setting is appropriate, fails to comply with this mandate.

In Section B: Staff Secure Criteria, the Intakes Placement Checklist lists the different aspects of a child's immigration history that ORR staff should consider when assessing their escape risk: the child's final order of removal; prior breach of bond; failure to appear before DHS or immigration court; and/or previous repatriation to home country. The Foundational Rule permits ORR to consider whether the child is "currently under a final order of removal" in assessing the unaccompanied child's escape risk. 45 C.F.R. § 410.1107. However, it does not expressly mention the other listed factors, and therefore those other factors should be removed to prevent placement and transfer decisions based on factors not required to be considered. Requiring ORR staff to rely on these aspects of a child's immigration history in assessing whether they should be placed in a restrictive setting fails to align with ORR's obligation to make decisions guided by child welfare principles. *See* Preamble to ORR Foundational Rule, 89 Fed. Reg. at 34399 (emphasizing ORR's role as a child welfare agency rather than an immigration enforcement agency).

Within the same section, under "Criminal History" on Page 2, the Intakes Placement Checklist provides a list of non-violent criminal offenses, including shoplifting, that the unaccompanied child may have been convicted of or is chargeable with, in determining whether the child should be placed in a staff secure facility. The ORR Foundational Rule permits placement in a heightened supervision facility if a child has committed isolated or petty offenses or "is assessed as ready for step-down from a secure facility." 45 C.F.R. § 410.1105(b)(2). However, these criteria are inconsistent with the FSA: petty offenses cannot be the basis for heightened supervision placement. FSA ¶ 21.A; *see Flores*, 2024 WL 3467715, at *6 ("The Court reads Paragraph 21.A of the FSA to disallow isolated or petty offenses to have any effect upon ORR's decision to place a child in a heightened supervision or secure facility."). As proposed, this instruction to ORR staff invites inappropriate placement and transfer decisions in violation of children's rights under federal law. Therefore, ORR should remove consideration of these offenses from the Intakes Placement Checklist.

In Section C: Secure Criteria, on Page 2, the Intakes Placement Checklist should provide additional clarifying instruction to ORR staff. Specifically, for clarity, the form should remind staff members, "A finding that a child poses a danger to self shall not be the sole basis for a child's placement in a secure facility." 45 C.F.R. § 410.1105(a)(1). Furthermore, we recommend adding language such as, "Even with a determination that the child poses a danger to self, others, or has been charged with having committed a criminal offense, ORR will not place an unaccompanied child in a secure facility if less restrictive alternatives in the best interests of the unaccompanied child are available and appropriate under the circumstances." *Id.* § 410.1105(a)(2).

Finally, in both "Conduct" on Page 1 and "Conduct in ORR Custody" on Page 3, the proposed Intakes Placement Checklist states, "UC was previously in ORR care and ORR records indicate the UC committed, or made credible threats to commit, a violent or malicious act while in ORR

custody.” For clarity, we recommend rewording this instruction to state, “UC was previously in ORR care and ORR records indicate the UC committed, or made credible threats to commit, a violent or malicious act directed at others while in ORR custody.” This revision would more accurately reflect the specific requirements of the Foundational Rule. *Id.* § 410.1105(a)(3)(ii).

D. UC Referral (Form P-7)

The UC Referral Form does not meet ORR’s obligation to ensure that placement and transfer decisions are based on a holistic review of the child’s needs and best interests. 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. § 410.1003(f). The “Placement Request” section of the UC Referral Form requires ORR staff to select from several prepopulated options that justify the child’s placement. “Internal policy” is listed as one of the options on the drop-down menu for “Not Accepted Reason” (Page 2). This is not a permissible reason under the Foundational Rule. 45 C.F.R. § 410.1103(a) (“ORR shall place each unaccompanied child in the least restrictive setting that is in the best interest of the child and appropriate to the unaccompanied child’s age and individualized needs”). ORR should only include reasons provided for in the Foundational Rule and should avoid using vague reasoning that creates a risk that unaccompanied children will be erroneously placed in overly restrictive settings that are not in their best interests, contrary to ORR’s obligations under the TVPRA and Foundational Rule.

Concerningly, the UC Referral Form lists “Gang tattoos” as a potential option on the “Gang Affiliation Determined By” dropdown menu under the Criminal Information section (Page 3). Although the Foundational Rule allows ORR to consider an unaccompanied child’s criminal background in placement decisions, we recommend that more detailed instructions be provided to ORR staff when assessing whether a child is in fact affiliated with gang, given that this factor is overbroad and permits the consideration of unsupported allegations. ORR must base step-up decisions or continued placement in restrictive settings on “clear and convincing evidence.” 45 C.F.R. §§ 410.1105(a)(1), 410.1901(a); *see also* Nicole Acevedo, et al., *Tattoos of Deported Venezuelans Don’t Necessarily Signal Gang Affiliation, Experts Say*, NBC News (Mar. 21, 2025), <https://www.nbcnews.com/news/latino/tattoos-deported-venezuelans-not-necessarily-gang-members-rcna197089>.

Thank you for your consideration of these comments. Please contact us if you would like any additional information.

Best regards,

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