National Center for Youth Law

January 20, 2026

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: Correction to Published Federal Register Notice; Office of Management and Budget Review Placement and Transfer of Unaccompanied [Alien] Children Into Office of Refugee Resettlement 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 "Office of Management and Budget Review Placement and Transfer of Unaccompanied [Alien] Children Into Office of Refugee Resettlement Care Provider Facilities," published on December 18, 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 Intakes Restrictive Placement Checklist (Form P-7), which it uses to determine whether unaccompanied children require placement in a secure facility, such as a residential treatment center or a heightened supervision facility. 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). 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).

As proposed, the Intakes Restrictive Placement Checklist fails to comply with ORR's obligations under federal law and its own regulations. We suggest the following changes to ensure compliance and improve the form's utility.

I. Children with Disabilities are Absent from the Checklist

"For an unaccompanied child with one or more disabilities, consistent with section 504 of the Rehabilitation Act, 29 U.S.C. 794(a), ORR's determination under § 410.1105 whether to place the unaccompanied child in a restrictive placement shall include consideration whether there are any reasonable modifications to the policies, practices, or procedures of an available less restrictive placement or any provision of auxiliary aids and services that would allow the unaccompanied child to be placed in that less restrictive facility." 45 C.F.R. § 410.1105(d); *see also* 45 C.F.R. § 410.1311(c) (ORR must make reasonable modifications to enable placement in the most integrated setting appropriate to the needs of a child with a disability).

Contrary to this legal requirement, the proposed Intakes Restrictive Placement Checklist includes no mention of whether a child has a disability and no consideration of what reasonable modifications or additional aids and services could keep a child in a less restrictive setting. To comply with ORR's statutory and regulatory obligations and the Disability Settlement reached in *Lucas R. v. Kennedy*, Case No. 18-05741 (C.D. Cal.), the Checklist must include consideration of a child's disability, if any.

ORR should, at a minimum, include questions on whether the child has been evaluated for disability or has a pending evaluation for disability, whether the child has been identified as having one or more disabilities, whether the child has a Section 504 Service Plan, what reasonable modifications or auxiliary aids and services have been attempted to keep the child in a less restrictive facility, and why the child's needs cannot be met in a less restrictive setting. *See* 45 C.F.R. § 410.1105(d); *Lucas R.* Disability Settlement §§ II.A.2, II.B, IV.B; ORR Policy Guide § 3.8.[1] This information should already be documented in the child's casefile. 45 C.F.R. §§ 410.1311(d).

II. Concerns Regarding Section B: Heightened Supervision Facility Criteria

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.

In Section B: Heightened Supervision Facility Criteria, on Page 1, ORR should provide additional clarification on the "clear and convincing evidence" standard. Specifically, ORR should add the following: "This evidence must be documented in the unaccompanied child's case

[1] The version of the ORR Policy Guide discussed here was last accessed on January 13, 2026. 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 Jan. 6, 2026), https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-record-posting-and-revision-dates.

file." 45 C.F.R. § 410.1105(b)(1). ORR should also add, "In all placement decisions, including the determination to place an unaccompanied child at a heightened supervision facility, ORR must consider whether it is placing the 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." 45 C.F.R. § 410.1103(a).

Under "Criterion 1: Runaway Risk," in the "Determination" section on Page 2, ORR should provide the full definition of "runaway risk" set out in ORR's regulations. ORR defines "runaway risk" as when "it is highly probable or reasonably certain that an unaccompanied child will attempt to abscond from ORR care. Such determinations must be made in view of a totality of the circumstances and should not be based solely on a past attempt to run away." *Id.* § 410.1001. Providing the full definition *before* ORR staff members consider whether the child's runaway risk meets the clear and convincing evidence standard would provide the staff members with better guidance.

Under "Criterion 2: Pattern of Behavior" on Page 2, the Checklist should provide additional clarifying instruction to ORR staff to avoid misapplication of criteria. Specifically, the form should remind staff members, "Significant incident reports may be used as examples of concerning behavior, but the existence of a report itself cannot be used as a basis for an unaccompanied child's step-up to a restrictive placement or as the sole basis for a refusal to step a child down to a less restrictive placement." *Id.* § 410.1303(g)(4).

Under "Criterion 3: Non-Violent Criminal or Delinquent History" on Page 2, Question 4 asks ORR staff to "[s]elect the specific offense(s) for which the child has been convicted, charged, or been adjudicated delinquent (if applicable) that evidences a behavior concern that requires an increase in supervision." The listed offenses on Page 3 include petty theft and status offenses. 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." *Id.* § 410.1105(b)(2). However, these criteria are inconsistent with the *Flores* Settlement Agreement ("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 the district court's order. Therefore, consideration of these offenses must be removed from this checklist to avoid improperly using these offenses as justification for step up.

III. Concerns Regarding Section C: Secure Facility Criteria

Under the TVPRA, 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 FSA also provides specific guidelines for when a child may be placed in a secure facility.[2] *Flores v. Reno*, No. CV 85-4544, Settlement Agreement, ¶¶ 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.

As such, in Section C: Secure Facility Criteria, on Page 3, ORR should revise the first sentence of the second paragraph as follows: "An unaccompanied child cannot be placed in a secure facility unless they are a danger to themselves or others or have been charged with having committed a criminal offense." 8 U.S.C. § 1232(c)(2)(A). ORR should then add, "In addition to this general requirement, a child must meet at least one of the three below criteria before they are placed in a secure facility." 45 C.F.R. § 410.1105(a)(3). This revision would more accurately reflect ORR's obligations under federal law and the Foundational Rule.

After the sentence defining the "clear and convincing evidence" standard, ORR should add, "This evidence must be documented in the unaccompanied child's case file. Also, all determinations to place an unaccompanied child in a secure facility (that is not an RTC) will be reviewed and approved by ORR Federal field staff." *Id.* § 410.1105(a)(1). Furthermore, we recommend adding language under this section 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).

Under "Criterion 2: Violent or Malicious Acts," for each of the three questions under the "Supporting Factors" section on Page 5, ORR should reword these questions to clarify that the violent or malicious act committed by the child, or that the child made credible threats to commit, must have been "directed at others." This revision would more accurately reflect the specific requirements of the Foundational Rule. *Id.* § 410.1105(a)(3)(ii).

Finally, under "Criterion 3: Past Conduct in ORR Custody" on Page 5, ORR should add the following: "Significant incident reports may be used as examples of concerning behavior, but the existence of a report itself cannot be used as a basis for an unaccompanied child's step-up to a

[2] 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 placement or as the sole basis for a refusal to step a child down to a less restrictive placement." *Id.* § 410.1303(g)(4).

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

Best regards,

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