YOUNG CENTER FOR IMMIGRANT CHILDREN'S RIGHTS

www.theyoungcenter.org
Chicago, IL | Harlingen, TX | Houston, TX | Los Angeles, CA
New York, NY | Phoenix, AZ | San Antonio, TX | Washington, DC

December 1, 2025

Submitted via infocollection@acf.hhs.gov.

Mary C. Jones
Division of Unaccompanied Children Policy
Unaccompanied Children Bureau
Office of Refugee Resettlement
Administration for Children and Families
Department of Health and Human Services

Re: Young Center Comment on Emergency Information Collection Request 0970-0554 Placement and Transfer of Unaccompanied Children into ORR Care Provider Facilities -- Proposed Changes to Form P-4 and Form P-7.

Dear Ms. Jones,

The Young Center for Immigrant Children's Rights (Young Center) serves as the federally-appointed independent Child Advocate, akin to a best interests *guardian ad litem*, for trafficking victims and other vulnerable unaccompanied immigrant children in government custody, as authorized by the Trafficking Victims Protection Reauthorization Act (TVPRA).[1] The Young Center is authorized by ORR to advocate for the best interests of children in its custody.

On September 15, 2025, Office of Refugee Resettlement (ORR) submitted an emergency request to revise and use with immediate effect Form P-4 (Notice of Placement in a Restrictive Setting, hereinafter the "Placement Form") and Form P-7 (Unaccompanied Child Referral/Intakes Restrictive Placement Checklist, hereinafter the "Referral/Intakes Form"). ORR sought rushed approval of these changes "due to secure beds becoming available on September 15, 2025," the same day of its announcement.

The changes ORR has "proposed" for both forms – which have since been in effect – undermine their stated purpose and endanger children by removing critical child protection guardrails enshrined by federal statute, regulation, case law, and ORR's own policies. Rather than center children's best interests and needs, the changed forms open a wider door for discrimination against children with disabilities, and for DHS and ORR to harm children using family separation and prolonged detention. We strongly oppose this egregious erosion of protections for children.

[1] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), 8 U.S.C. § 1232(c)(6)(A). Congress passed the TVPRA in 2008 with strong bipartisan support and, as discussed below, recognizes that immigrant children's welfare and safety should be paramount considerations.

I. The proposed changes disregard and undermine safeguards for children that are established under federal law, regulations, and legal precedent.

The changes that ORR has made to both forms systematically dismantle legal protections established through the Trafficking Victims Protection Reauthorization Act (hereinafter, "TVPRA"), Section 504 of the Rehabilitation Act ("Section 504"), the Unaccompanied Children Foundational Rule ("Foundational Rule"), and the *Lucas R. v. Becerra* Disability Settlement Agreement ("*Lucas R.*").

The Referral/Intake Form P-7 serves as the initial placement screening tool when children are referred to ORR custody. It is used by federal agencies – mainly the Department of Homeland Security (DHS) – "to refer unaccompanied children to ORR custody and by ORR intakes staff to place children in care provider facilities. It also contains a checklist that is used by ORR intakes staff to determine whether placement in a restrictive setting is appropriate for the child."[2] The Notice of Placement Form P-4 is "used to *document and inform* unaccompanied children of the reason they have been placed in a restrictive setting."

Both forms focus exclusively on risk assessment and security concerns, with no mechanism to weigh them against the child's developmental needs, health, relationships, and long-term wellbeing. Neither form asks staff to consider or explain how their recommendation accounts for:

- the child's expressed preferences and fears;
- how restrictive placement will impact the child's educational continuity;
- how the child's separation from family impacts their behavior;
- or the impact of isolation and restriction on the child's mental health.

By limiting the safety determination requirements and obscuring decision-making criteria, ORR has created forms that facilitate rather than prevent inappropriate restrictive placements.

ORR claims the purpose of these revisions is to "align criteria with the Foundational Rule" but fails to publish the specific revised criteria for public review. However, it's clear that the

[2] OMB Information Collection Request 0970 – 0554, Supporting Statement Part A – Justification, September 2025 (emphasis added) https://www.reginfo.gov/public/do/DownloadDocument?objectID=162864901

proposed changes fall short of criteria and safeguards established under federal law and regulations.

A. Federal law requires ORR to default to the least restrictive placement suited to children's individualized needs and best interests – except under rare conditions.

The TVPRA requires that unaccompanied children apprehended by federal agencies be "promptly in the least restrictive setting that is in (the child's) best interest."[3] The statute further prohibits placement in restrictive facilities "absent a determination that the child poses a danger to self or others or has been charged with having committed a criminal offense."[4]

Section 504 of the Rehabilitation Act provides that no child "shall, solely by reason of (their) disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program...conducted by any Executive agency."[5]

The TVPRA "least restrictive setting" requirement and Section 504 integrated setting requirement are codified and expanded upon in federal regulations (the UC Foundational Rule, codified at 45 CFR Part 410) and ORR policy, which require ORR to consider factors such as the child's age, gender, disability, LGBTQI+ identity, language access, sibling unity, whether they are parenting or pregnant, and any specialized services or treatment they require.[6]

While ORR *may* also consider, "to the extent that they are relevant," whether the child presents a risk of running away, endangering themself or others, the law clearly establishes a high bar, making restrictive placement the rare exception. A child's dangerousness to themselves can *never* be the sole basis for placement in a restrictive non-residential treatment facility.[7]

This opacity is concerning because the TVPRA requires that placement decisions consider "the child's danger to self or others" and "the child's possession of a communicable disease requiring treatment in a residential medical facility" as the sole grounds for secure placement. Any expansion of criteria beyond these narrow justifications violates the statute.

---

[3] 8 U.S.C. 1232(c)(2)
[4] 8 U.S.C. § 1232(c)(2)(A)
[5] 29 U.S.C. § 794
[6] 45 C.F.R. § 410.1103 ("*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,*** *provided that such setting is consistent with the interest in ensuring the unaccompanied child's timely appearance before DHS and the immigration courts and in protecting the unaccompanied child's well-being and that of others.")*
[7] 45 C.F.R. § 410.1105(a)

The law allows ORR to *consider* placing children in restrictive facilities *only if* the child's actual behavior – not their diagnosis, background, or ORR's shelter capacity – creates a safety risk demonstrable only by "clear and convincing evidence documented in the child's case file."[8]

Merely exhibiting behavior that ORR staff considers "chargeable" or threatening to the child's safety or that of others is not sufficient to warrant a child's restrictive placement. ORR staff must show and prove that the child has "been charged with or convicted of a crime, or is the subject of delinquency proceedings, delinquency charge, or has been adjudicated delinquent."

This requirement to document "clear and convincing evidence" is critical for transparency and accountability, to ensure that irrelevant factors like a child's experiences before custody, their country of origin, language barriers, or dislike of ORR staff are not used to justify punishing them with restrictive placement. It is also important that all staff – including case managers, case coordinators, and ORR federal field specialists – clearly define and record the basis for their placement recommendations on to prevent subjective bias or discrimination.

B. Federal law requires that ORR identify and provide reasonable accommodations for children with disabilities.

Section 504 of the Rehabilitation Act requires that federally funded agencies provide reasonable accommodations that would allow children with disabilities to succeed in an integrated setting.[9] Federal regulations require that ORR hire staff trained to evaluate children's disability needs and provide trauma-informed care. This includes consulting with experts to provide independent assessments of children's individualized needs and develop Section 504 care plans that address them (also known as Individualized Service Plans or ISPs). Further, ORR is obligated under a court-ordered settlement agreement in *Lucas R. v. Becerra* (hereinafter Disability Settlement), to first evaluate each child for disability if they are being considered for step-up to a more restrictive facility based on their perceived dangerousness to self or others.[10] Instead, ORR proposes form changes that would make it easier for its staff to place children who exhibit

[8] *Id.*
[9] 34 C.F.R. § 104.4(b)(2).
[10] *Lucas R. v. Becerra,* Stipulated Settlement, 2:18-CV-05741 DMG PLA ("If a child is considered for step-up to an RTC or secure facility based on danger to self or danger to others(unless an evaluation for disability has already been completed in connection with the consideration for step-up, in which case, if a disability is identified, the child will be considered for an individualized service plan pursuant to Section II.B)")

behaviors consistent with developmental and cognitive behavioral disabilities in restrictive settings without transparency or staff accountability.

There is abundant evidence and real case examples showing that children with trauma-based and/or cognitive disabilities, such as Post-Traumatic Stress Disorder (PTSD), Autism Spectrum Disorder (ASD), Oppositional Defiance Disorder (ODD), or Attention-Deficit Hyperactivity Disorder (ADHD), struggle with impulse control, emotional regulation, and difficulty following shelter rules.[11] Such challenges often contribute to disabled children's conflicts with peers and staff. It is also well-documented that separation from family and prolonged time in federal custody exacerbates and may even cause such conditions.[12]

While the proposed forms ask ORR staff to identify whether a child has been diagnosed with a disability and what support services they would need, the forms do not require ORR staff to document whether the behavior at issue is a manifestation of the child's disability or how accommodations or support services in a less restrictive setting could address it. Nor do the forms require ORR staff to explain how placement in a restrictive setting would meet children's disability needs, as required under Section 504 and the *Lucas R.* settlement.[13] ORR does not inquire about whether a 504 care plan is in place, staff qualifications or efforts to attempt accommodations before resorting to restrictive placements.

Implementing the proposed forms in this way has had and continues to have devastating consequences for children's development, education, and mental health. In 2020-2024, the Young Center was appointed to dozens of children who were placed in or recommended for restrictive placements following encounters with law enforcement. About 30% of the cases involved children with diagnosed disabilities who had no service plan in place and the majority (about 60%) of children had never been evaluated.

---

[11]Complex Trauma in Children and Adolescents, National Child Traumatic Stress Network (NCTSN); Christoffersen MN, Thorup AAE. Post-traumatic Stress Disorder in School-age Children: A Nationwide Prospective Birth Cohort Study. J Child Adolesc. Trauma. 2024 Feb 22;17(2):139-157. doi: 10.1007/s40653-024-00611-y. PMID: 38938938; PMCID: PMC11199452.

[12] Teicher MH., *Childhood trauma and the enduring consequences of forcibly separating children from parents at the United States border.* BMC Med. 2018 Aug 22;16(1):146. doi: 10.1186/s12916-018-1147-y. PMID: 30131056; PMCID: PMC6103973. ("Clinically, evidence from studies of unaccompanied minors seeking asylum reveals that forced detention is associated with a high risk of posttraumatic stress disorder, anxiety disorder, depression, aggression, psychosomatic complaints, and suicidal ideation."; *Also*, "These consequences will be magnified in youths forcibly separated from their parents, particularly younger children who depend on attachment bonds for self-regulation and resilience.")

[13] *Lucas R. v. Becerra,* Stipulated Settlement, 2:18-CV-05741 DMG PLA, p. 82 ("If a child is considered for step-up to an RTC or secure facility based on danger to self or danger to others(unless an evaluation for disability has already been completed in connection with the consideration for step-up, in which case, if a disability is identified, the child will be considered for an individualized service plan pursuant to Section II.B.")

II. The proposed forms discriminate against and disproportionately harm children with marginalized identities.

A. The proposed forms create a pathway for those with disabilities and behavioral support needs to be warehoused in restrictive facilities without the procedural protections and care they are legally entitled to receive.

The Young Center has witnessed that children with disabilities and high behavioral support needs have been systematically placed in restrictive settings without adequate understanding or effort to meet their individualized needs. Consistently, ORR shelter staff have recommended restrictive placement for children with known disabilities based solely on "an increased pattern of behavioral dysregulation and safety concerns," without mentioning the child's 504 Individualized Service Plan or recording their attempts to accommodate the child's disability needs in a less restrictive setting.

For example, a 17-year-old child who was previously in ORR custody and diagnosed with PTSD was arrested by local police on suspicion of theft. Though no charges were filed against them, the child was held in police custody under an ICE detainer due to their undocumented status and the local county's cooperative agreement with DHS. Based on the circumstances of their arrest and the "chargeability" of their prior behavior, despite no clear and convincing evidence, the child was placed in a restrictive facility with no adequate therapeutic or educational supports.

Another 16-year-old child was re-apprehended during a routine ICE check-in. They were initially placed in a restrictive (heightened security) placement based on a referral by DHS agents that apprehended them. After two months in ORR restrictive custody, staff at the restrictive placement recommended for step-up to a more restrictive secure facility (juvenile jail), citing three documented instances of self-harm (banging their head against a wall) and occasional physical altercations with staff and peers. Despite their diagnosis, the child had never received a Section 504 evaluation or ISP care plan. The only therapeutic response to their behavior was playing music and taking walks outside.

In both cases, when the Young Center child advocate was appointed and met with the children, they did not understand why they were placed in the restrictive facility or how long they would be there. Nowhere in the incident reports documenting each child's behavior did ORR staff discuss their behavioral strengths, progress in building relationships with staff or peers, or their responsiveness to staff intervention. In fact, there is no space on either proposed form to record the child's perspective, responsiveness to staff intervention, or understanding of the basis of their

recommended restrictive placement. There is barely feedback or inquiry from ORR supervisory staff reflected on the form. As the Young Center has observed, the supervising ORR federal field staff rarely, if ever, say more than "The GDIT/FFS concurs with the recommendation."

This systemic disregard for children's disability needs and preferencing of confinement over behavioral support and prompt reintegration into community settings is precisely the type of unconstitutional discrimination that Section 504 prohibits and UC Foundational Rule attempts to regulate.

B. Black, Brown and Indigenous children – being disproportionately affected by policing and immigration enforcement – are more likely to be placed in restrictive settings.

The proposed form changes will exacerbate existing racial disparities in restrictive placement, continuing a well-documented pattern of criminalizing and over-policing Black, Brown, and Indigenous children in every system they encounter.

The referral pathway itself is racially disparate. Children are apprehended by border agents and ICE – both agencies with documented histories of racial profiling[14] – and arrive in ORR custody with characterizations like "gang-affiliated", "aggressive" or "evasive", based on assumptions and racial stereotypes. These racially-coded labels, embedded in law enforcement documentation, follow children through the placement process and become grounds for restrictive placement under forms that require no critical examination of source bias.

Research consistently shows that children of color, particularly Black and Indigenous children, are systematically viewed as more dangerous, more threatening, and less deserving of compassion than their white peers exhibiting identical behaviors. In schools, Black students are nearly four times more likely to receive out-of-school suspensions than white students for the same infractions and are disproportionately referred to law enforcement for behaviors that would be handled administratively for white students.[15] In child welfare systems, Black and Indigenous

[14] *The Legacy of Racism within the U.S. Border Patrol*, American Immigration Council, February 10, 2021 (https://www.americanimmigrationcouncil.org/report/legacy-racism-within-us-border-patrol/); Sophia Porotsky, *Rotten to the core: racism, xenophobia, and the border and immigration agencies*, Georgetown University School of Law Immigration Law Journal, Vol. 36:349, 374 https://www.law.georgetown.edu/immigration-law-journal/wp-content/uploads/sites/19/2022/01/GT-GILJ210008.pdf ("The conflation of the threat of terrorism with border and immigration security inherent in DHS's structure reflects longstanding patterns of racism and xenophobia in U.S. national security policy.")

[15] Emily Peterson, *Racial Inequality in Public School Discipline for Black Students in the United States,* Ballard Brief. September 2021. www.ballardbrief.org; *Black Students Nearly 4 Times As Likely to Be Suspended,* ABC News June 7, 2016, https://abcnews.go.com/US/black-students-times-suspended/story?id=39670502 (citing, U.S. Department of Education Office for Civil Rights, Civil Rights Data Collection)

children are removed from their families at higher rates and more likely to be placed in institutional rather than family-based settings.[16] In the juvenile justice system, Black youth are five times more likely than white youth to be detained or committed to secure facilities, even when charged with similar offenses and with similar prior records.[17]

The Young Center has witnessed this same pattern replicated in ORR's care system, where the overwhelming majority of unaccompanied children – predominantly from Guatemala, Honduras, and El Salvador – are Indigenous and Brown youth already subjected to generations of systemic racism, violence, and marginalization in their home countries and during their journeys to the United States. We have been appointed to dozens of cases where children spent months in secure detention based on DHS referral language reflecting racist assumptions rather than actual evidence of dangerousness. By removing transparency requirements and failing to mandate anti-bias safeguards, the proposed forms perpetuate the school-to-prison and child welfare-to-prison pipelines that have devastated communities of color – now repackaged as an immigration detention pipeline for Brown and Indigenous immigrant children.

C. The intersection of immigration enforcement and policing creates particularly acute risks for children with language access needs.

Many of the children in ORR custody face language barriers and cultural misunderstandings that staff untrained in cultural competency frequently misinterpret as "defiance," or "non-compliance." These include Indigenous youth who speak Mam, Q'eqchi', K'iche', or other Indigenous languages; Haitian Kreyol-speaking youth, West African Bambara, Pulaar or Akan-speaking youth; Middle-Eastern or North African youth who speak languages like Farsi or Arabic.

The Young Center has documented numerous cases where children's culturally specific behaviors – such as avoiding direct eye contact with authority figures as a sign of respect, expressing emotion or distress differently than expected by ORR staff, or struggling to understand instructions given in Spanish – were pathologized as behaviors justifying restrictive placement. Without explicit anti-discrimination safeguards in the forms, these cultural and

[16] Strategy Brief: Strong Families, p. 1, Sept. 2023, https://www.casey.org/media/23.07-QFF-SF-Residential-placements-values_fnl.pdf.

[17] The Color of Justice: Racial and Ethnic Disparity in State Prisons, The Sentencing Project, 2021, https://www.sentencingproject.org/app/uploads/2022/08/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf ("Black Americans are imprisoned at a rate that is roughly five times the rate of white Americans...Black youth as young as nine years old express feelings of disparate treatment by law enforcement.")

linguistic differences will continue to be weaponized against Indigenous and Brown children, funneling them into restrictive settings at disproportionate rates.

III. The proposed changes reflect the dangerous subordination of ORR's child welfare mission to Immigration and Customs Enforcement's (ICE) detention and removal priorities.

The proposed revisions to Forms P-4 and P-7 represent a fundamental breach of ORR's statutory obligation to serve as a child welfare agency that prioritizes children's best interests, safety, and wellbeing. ORR is a child welfare agency under the Department of Health and Human Services.

The fact that ORR sought emergency approval of these changes solely "due to secure beds becoming available on September 15, 2025" exposes ORR's distorted priorities. As of September 15th, there were 6 restrictive facilities in the ORR network and just over 2,000 children in ORR custody. Yet ORR estimated 2,394 responses for the Referral/Intakes form, anticipating that nearly every child in its custody will be considered for restrictive placement. That ORR is already further expanding its restrictive bed capacity reflects its prioritization of incarceration over care for children entrusted to its custody.[18]

DHS has escalated its enforcement tactics and expanded the use of detention as an immigration enforcement measure for all immigrants – including children – regardless of their documented status. Already this year, ICE has apprehended and placed a record 600 children in ORR custody – more than the record for the four previous years combined.[19] DHS has already "checked on" more than 24,400 children and arrested dozens of sponsors and children. DHS has also set up a call center encouraging state and local law enforcement in states with 287(g) cooperation agreements to turn in unaccompanied children in their database.[20]

Without explicit safety criteria, there is a high risk that restrictive placements will be based on administrative convenience, bed availability, or other factors unrelated to the child's actual needs

[18] Sources Sought Notice Licensed Secure Care Beds – Texas, deadline on Dec. 1, 2025 (seeking to locate 30 more secure residential beds for children ages 13-17). https://sam.gov/workspace/contract/opp/d2269d52d74e49808ac4006b2a7fe482/view

[19] Mica Rosenberg, MArio Ariza, McKenzie Funk, Jeff, Ernsthausen, Gabriel Sandoval, *ICE Sent 600 Immigrant Kids to Detention in Federal Shelters This Year. It's a New Record.* ProPUBLICA, November 24, 2025, https://www.propublica.org/article/ice-detentions-immigrant-kids-family-separations.

[20] *Planned ICE call center aims to track down unaccompanied migrant minors,* Reuters, Nov. 6, 2025, https://www.nbcnews.com/news/us-news/ice-call-center-unaccompanied-minors-trump-rcna242313.

or behavior. Insufficient clarity around restrictive placement decision-making standards ensures this risk and has already resulted in inappropriate restrictive placements.

By systematically removing transparency requirements, obscuring decision-making criteria, and eliminating critical safeguards, these forms transform ORR's placement process from a child-protective framework into an administrative pipeline to detention.

IV. Conclusion: The Proposed Forms Undermine ORR's Mandate and Will Only Serve to Harm Children.

ORR's job is to care for children until they can be safely released to their families (sponsors). Instead on focusing on those priorities, ORR is devoting resources to expand its restrictive detention network and circumventing critical procedural safeguards to fill those beds.

The harms caused by these proposed changes are real, profound and enduring. Children – particularly children with disabilities, language barriers and from racially-marginalized groups – are being punished for their trauma and disabilities instead of supported with care and accommodations. The prolonged detention under restrictive conditions derails children's educational trajectories and robs children of their adolescence and relationships with family, friends and support systems. The combination of these harmful factors re-traumatizes children and seriously deteriorates their mental health.

The Young Center urges OMB to reject the proposed changes and require ORR to develop placement forms that truly serve their stated purpose: ensuring that restrictive placement is rare, thoroughly justified, subject to rigorous review, and always prioritizing children's needs and best interests.

Sincerely,

Young Center for Immigrant Children's Rights

Abena Hutchful
Policy and Litigation Attorney
ahutchful@theyoungcenter.org