

NATIONAL IMMIGRANT JUSTICE CENTER

November 11, 2018

Attn: Desk Officer for the Administration for Children & Families
Office of Management and Budget
Paperwork Reduction Project

Email: OIRA_SUBMISSION@OMB.EOP.GOV

Via e-mail: infocollection@acf.hhs.gov

RE: Sponsorship Review Procedures for Approval for Unaccompanied Alien Children, OMB No.: 0970–0278, FR Doc. 2018-22461, Federal Register Volume 83, Number 200 (Oct. 16, 2018)

Dear Desk Officer:

The National Immigrant Justice Center (NIJC) appreciates the opportunity to comment on the Sponsorship Review Procedures for Approval for Unaccompanied Alien Children published on October 16th, 2018 (the “Notice”) by the office of Administration for Children (ACF), Office of Refugee Resettlement (ORR), Department of Health and Human Services (HHS, or the “Department”). *See* Federal Regulation No. 200, Vol. 83 at 52221 - 52222.

The National Immigrant Justice Center (NIJC) is dedicated to ensuring human rights protections and access to justice for immigrants, refugees, and asylum seekers. NIJC provides direct legal services to and advocates for these populations through policy reform, impact litigation, and public education. Since its founding more than three decades ago, NIJC has been unique in blending individual client advocacy with broad-based systemic change. NIJC is the largest legal service provider for unaccompanied immigrant children in Illinois, Indiana and Wisconsin, including children held in or released from ORR custody. More broadly, NIJC provides legal services to more than 10,000 individuals each year, including numerous caregivers of citizen and noncitizen children.

The release of unaccompanied children from ORR custody to the care of safe and capable sponsors, most often parents or close family members, plays a critical role in the ability of children to process and work through painful experiences, adapt to a new country and

community, and coordinate with legal counsel to prepare their legal cases. As such, NIJC has a strong interest in the content of the Notice's proposed instruments.

We are gravely concerned about immigration screening and enforcement against individuals who are likely to be the safest and most capable caregivers for unaccompanied children. ORR is legally bound to place children in the "least restrictive setting" in their best interests, pursuant to the Homeland Security Act of 2002, the Trafficking Victims Protection Reauthorization of 2008 (TVPRA), and the *Flores* Settlement Agreement. The new procedures put forward in this Notice (as first proposed on May 11, 2018 in a previously published notice) will alter longstanding practice and frustrate ORR's ability to meet this legal mandate. Furthermore, the instruments do not give the potential sponsor or the unaccompanied child adequate notice of the information-sharing with the Department of Homeland Security (DHS), nor of the potential uses DHS may make of their data. Quite simply, this Notice and the Memorandum of Agreement it is intended to implement are already causing severe harms to the very children whose care has been entrusted to HHS.

NIJC urges HHS to rescind the new procedures and cancel its Memorandum of Agreement with DHS to ensure ORR's ability to prioritize the best interests of unaccompanied immigrant children and comply with its legal responsibility for identifying, vetting, and placing children with safe and capable caregivers. NIJC offers the following comments detailing the ways in which the MOA and this implementing Notice preclude ORR from fulfilling this responsibility.

A. The Notice's new sponsorship review procedures create a pronounced chilling effect, deterring sponsorship of unaccompanied children for release from government detention and leading to prolonged detention of children in ORR custody.

The changes outlined in the Notice have already effectuated a broad and troubling shift in the focus of the sponsor review process from child welfare and family reunification to immigration enforcement. In addition to disregarding the best interests of children, the use of information obtained through the sponsorship process to arrest and deport capable caregivers increases the vulnerability of children to trafficking and other harm.

In vetting potential sponsors for unaccompanied children, ORR requires interviews and background checks of potential sponsors, along with the completion of a family reunification application. Fingerprinting is also required for some sponsors, including non-parents and those seeking to sponsor children identified as victims of trafficking and abuse. As part of routine background checks, immigration status information may appear and be documented in ORR's

system, but is used for child welfare rather than enforcement purposes.¹ Under previous requirements, within 24 hours of a child’s release, ORR routinely provided DHS with demographic information and the child’s and sponsor’s names, address, and relationship, for use in connection with the child’s immigration proceedings. When seeking further information, DHS was generally treated similarly to all other individuals and entities and was required to submit a detailed, individualized request.²

The new Memorandum of Agreement (MOA) entered into between ORR and DHS in April 2018—implemented in part through the publication of this Notice—markedly expands the universe of information readily available to DHS about children in ORR care, their potential sponsors, and others living in the sponsors’ homes.³ In implementing this agreement, ORR provides DHS biographic and biometric information, names, addresses, and other information regarding potential sponsors as well as any adults residing in the potential sponsors’ homes.⁴ DHS, in turn, has published a Notice of Modified System of Records explicitly reserving the authority to use this information for enforcement purposes and in fact clarifying enforcement as a central purpose of the policy change.⁵

These policy changes will not only foreclose the reunification of children with safe and capable caregivers who may be undocumented, they will also deter individuals who are lawfully present, including U.S. citizens, from sponsoring unaccompanied children in order to avoid interacting with Immigration and Customs Enforcement (ICE) or exposing others living with or near them to potential interaction or enforcement.⁶ A similar chilling effect emerged during the summer of 2017, following ICE’s enforcement actions against sponsors as part of the agency’s “Human Smuggling Disruption Initiative.” Despite lacking any involvement in smuggling, the

¹ ORR, *Sponsors and Placement: Release of Unaccompanied Alien Children to Sponsors in the U.S.*, <https://www.acf.hhs.gov/orr/about/ucs/sponsors>.

² ORR, *Request for UAC Case File Information*, <https://www.acf.hhs.gov/orr/resource/requests-for-uac-case-file-information>.

³ See Memorandum of Agreement among the ORR, ICE, and U.S. Customs and Border Protection (CBP) of the U.S. Department of Homeland Security regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters, Apr. 13, 2018.

⁴ *Id.* See also Notice of Modified System of Records published by the Department of Homeland Security concurrently with the first version of this Notice to implement the MOA, at 83 Fed. Reg. at 20844 - 20850.

⁵ See *id.* at 20846 (noting among purposes of the system “[t]o screen individuals to verify or ascertain citizenship or immigration status and immigration history, and criminal history to inform determinations regarding sponsorship of unaccompanied alien children . . . and to identify and arrest those who may be subject to removal”). Categories of individuals covered by the proposed system include “[i]ndividuals seeking approval from HHS to sponsor an unaccompanied alien child, and/or other adult members of the potential sponsor’s household.” *Id.* See also Eli Hager, *The Marshall Project*, “Trump’s Quiet War on Migrant Kids: How the administration is turning child protection into law enforcement,” May 1, 2018, <https://www.themarshallproject.org/2018/05/01/trump-s-quiet-war-on-migrant-kids>.

⁶ See Kids in Need of Defense, *Targeting Families* (Dec. 2017), <https://supportkind.org/wp-content/uploads/2017/12/Targeting-Families-December-2017-Final-v.2.pdf>.

fear of immigration or criminal enforcement caused some potential caregivers with legal status to forgo sponsoring children out of ORR custody.⁷

In the mere months since the MOA and this Notice have been implemented, evidence of harmful consequences is evident. The expansion of information sharing and failure to cabin DHS's use of the information shared is already proving a powerful deterrent to individuals seeking to sponsor their children or relatives out of ORR custody, with devastating consequences for children and families. ICE has begun to utilize information obtained pursuant to the MOA for enforcement actions; agency leadership testified before Congress that 41 individuals had already been arrested pursuant to such actions as of September 2018.⁸ The fear these enforcement actions has caused among immigrant communities has already resulted in deceleration of the rate by which ORR is able to reunify children to a safe home environment and acceleration in the average length of stay of children in ORR custody.⁹ These changes are so significant as to have overwhelmed the ORR system: the number of children in custody has reached historic highs, more than five times last year's average despite the numbers of unaccompanied children arriving on the border holding relatively steady over that save time period.¹⁰ To accommodate the growth, the government has resorted to the use of soft-sided tent facilities to hold thousands of children with limited access to educational or legal services.¹¹ The prolonged confinement of children in federal facilities runs counter to basic child welfare principles and particularly exacerbates the trauma and distress of survivors of violence and abuse.¹²

⁷ See *id.* at 12-13.

⁸ Matthew Albence, testifying before the Senate Homeland Security and Government Affairs Committee Hearing on "The Implications of the Reinterpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives" (Sept. 18, 2018), <https://www.hsgac.senate.gov/hearings/the-implications-of-the-reinterpretation-of-the-flores-settlement-agreement-for-border-security-and-illegal-immigration-incentives>.

⁹ CNN reports that the daily discharge rate of unaccompanied children from ORR custody has plummeted from 2 per 100 in 2017 to .6 per 100 today; and the average length of a child's stay in ORR custody has ballooned from 35 days in 2016 to 59 days presently. Tal Kopan, *CNN*, "The simple reason more immigrant kids are in custody than ever before," Sept. 14, 2018, <https://www.cnn.com/2018/09/14/politics/immigrant-children-kept-detention/index.html>. An HHS official recently told the *New Yorker* that in fact the average length of stay is even higher than that, up to 74 days as of October. Jonathan Blitzer, *The New Yorker*, "To free detained children, immigrant families are forced to risk everything," Oct. 16, 2018, <https://www.newyorker.com/news/dispatch/to-free-detained-children-immigrant-families-are-forced-to-risk-everything>.

¹⁰ Caitlin Dickerson, *The New York Times*, "The Government is Moving Migrant Children to a Texas Tent City. Here's What's Behind It," Oct. 1, 2018, <https://www.nytimes.com/2018/10/01/us/migrant-children-tent-city-camp-texas.html>.

¹¹ Victoria Lopez, American Civil Liberties Union, "Warehousing Immigrant Children in the Texas Desert," Nov. 1, 2018, <https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/warehousing-immigrant-children-texas-desert>.

¹² See, e.g., U.N. Convention on the Rights of the Child (September 2, 1990); General Comment 6 to the Convention para. 47, "Treatment of Unaccompanied and Separated Children Outside their Country of Origin" (CRC 2005) ("[States] should, in particular, take into account the fact that unaccompanied children have undergone separation from family members and have also, to varying degrees, experienced loss, trauma, disruption and violence. Many of such children, in particular, those who are refugees, have further experienced pervasive violence and the stress associated with a country afflicted by war. This may have created deep-rooted feelings of helplessness and

Far from protecting children, as the MOA’s information-sharing purports to intend, these outcomes will increase the risk that children, isolated and fatigued by prolonged detention, will be forced into a cruel choice between indefinite detention and a return to the same dangers from which they fled. This result not only endangers children, but renders hollow critical humanitarian protections enacted by Congress and runs contrary to our country’s obligations under international law.¹³

B. The chilling effect of the new Memorandum of Agreement will likely necessitate increased release to unrelated and unfamiliar sponsors, putting children at greater risk of trafficking or other harm.

In cases where parents or trusted caregivers are afraid to come forward because of the MOA, or where ICE has deported the parent or trusted caregiver subsequent to an apprehension pursuant to the information shared under the MOA, ORR must depend on the willingness of other, unfamiliar individuals to serve the role of sponsor. The placement of children with sponsors with whom they do not have a familial or personal relationship is likely to put children at greater risk of trafficking or other harm upon their release from ORR custody, and may otherwise negatively impact children’s welfare.¹⁴

C. The modified Authorization for Release of Information and Family Reunification Packet do not adequately inform potential sponsors of the sharing of their data with and use by Department of Homeland Security as described in the Notice and

undermined a child’s trust in others. . . .The profound trauma experienced by many affected children calls for special sensitivity and attention in their care and rehabilitation.”); Am. Academy of Pediatrics, *Detention of Immigrant Children*, Pediatrics (Apr. 2017), at 6-7,

<http://pediatrics.aappublications.org/content/pediatrics/early/2017/03/09/peds.2017-0483.full.pdf> (discussing research finding “high rates of posttraumatic stress disorder, anxiety, depression, suicidal ideation, and other behavioral problems” among unaccompanied immigrant children who are detained and noting the vulnerability of children who have experienced trauma and violence to additional trauma and fear); see also Am. Psychological Ass’n, *Disrupting Young Lives: How Detention and Deportation Affect US-born Children of Immigrants*, CFY News (Nov. 2016), <http://www.apa.org/pi/families/resources/newsletter/2016/11/detention-deportation.aspx> (noting that immigrant detention “is related to persistent negative mental health outcomes, including depression, PTSD and anxiety”).

¹³ See 8 U.S.C. § 1158 (asylum); Article 33 (1) of the 1951 Convention Relating to the Status of Refugees, which states that, “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” While the U.S. is not a signatory to the 1951 Convention, it has acceded to the 1967 Protocol Relating to the Status of Refugees, which incorporates this obligation through Article I(1) of that agreement.

¹⁴ See, e.g., FBI, *New Fraud Schemes Targeting Families of Unaccompanied Children* (July 19, 2014), <https://www.fbi.gov/contact-us/field-offices/sanantonio/news/press-releases/new-fraud-schemes-targeting-families-of-unaccompanied-children>.

Memorandum of Agreement in a manner consistent with obtaining their meaningful consent.

The Notice states that,

“The information collection allows ACF to conduct suitability assessments to vet potential sponsors of unaccompanied alien children in accordance with a Memorandum of Agreement (MOA) between ORR and the Department of Homeland Security. Specifically, the information collection allows ORR to obtain biometric and biographical information from sponsors, adult members of their household, and adult care givers identified in a sponsor care plan, where applicable. ORR in turn shares the information collected with other federal departments to conduct background checks.”

However, the Authorization for Release of Information form FRP-2 makes no mention of the uses DHS may make of a potential sponsor’s information as described in the MOA. Rather, the other family reunification forms direct applicants to a privacy notice, while the Authorization for Release of Information only requires the signatory to affirm his or her understanding that:

“My biometric and biographical information, including my fingerprints, is shared with Federal, state, or local law enforcement agencies and may be used consistent with their authorities, including with the U.S. Department of Homeland Security (DHS) to determine my immigration status and criminal history, and with the U.S. Department of Justice (DOJ) to investigate my criminal history through the National Criminal Information Center.”

This statement is too vague to adequately disclose to an individual completing the application that the information he or she is sharing may be used for law enforcement purposes by DHS. The statement implies that the information will be used only to determine whether the individual is an appropriate sponsor. Furthermore, this statement in the Authorization for Release of Information does not indicate any durational limitations on the information sharing, potentially authorizing perpetual use of any information, including invasive biometric data, gathered from the applicant.

The Notice and Authorization for Release of Information form also lack precision and detail in their descriptions of information sharing. The proposed instruments do not provide complete and specific information on all of the potential uses ICE or other DHS components may make of the information, nor do they capture the scope of information DHS may request from ORR. As a result, ORR asks potential sponsors and other adult household members to provide *carte blanche* authority to ORR, ICE, and any other federal, state, or local law enforcement authority to receive, possess, and use their biographical and biometric information indefinitely and without clear limitations.

In addition, the new Authorization for Release of Information form asks for information “required for background check,” and “conducting my background investigation or sponsorship assessment,” suggesting that the information is being collected for the purposes of completing a background check on the sponsor. The authorization requested includes not only personally identifying information such as names and addresses, but also biometrics for potential sponsors and other adults living in a potential sponsors’ homes. The agency’s vague reference to assessing “ability to provide appropriate care and placement of a child and for providing post release services, as needed...” fails to provide sponsors and potential caregivers or household members with adequate notice of how and for what purpose their personal information will be collected and disseminated. In the absence of such clarity, sponsors will be unable to provide meaningful consent to the collection of their information by DHS directly or by ORR, which pursuant to the new MOA will routinely share information with DHS.

Page two of the Family Reunification Application includes a “Frequently Asked Questions” section that poses the question, “Can I sponsor my child if I am undocumented” with a response, “Yes. ORR/DUCO prefers to release a child to a parent or legal guardian, regardless of your immigration status.” This statement is misleading to potential sponsors because it fails to mention the law enforcement use that DHS will make of their data pursuant to the MOA, which this Notice aims to implement. In its System of Records Notice implementing the MOA, ICE explicitly lists one of its purposes for information on potential sponsors and adult household members shared by ORR “to identify and arrest those who may be subject to removal.”¹⁵ ORR cannot obtain meaningful consent from potential sponsors applying through these proposed instruments while failing to acknowledge (1) the full extent of the information sharing and (2) ICE’s true purposes for collecting information on potential sponsors.

D. The new procedures frustrate the ability of the Office of Refugee Resettlement to place unaccompanied children in the “least restrictive setting” in their best interests consistent with federal law and settlement authority.

The Homeland Security Act of 2002 transferred most of the duties and responsibilities of the former Immigration and Naturalization Service to the Department of Homeland Security. Congress recognized, however, that assigning care and custody of the most vulnerable migrant children to an enforcement agency would not be appropriate and instead transferred these responsibilities to ORR, in light of its extensive and specialized experience working with refugee children.¹⁶ Since that time, ORR has provided care for unaccompanied children through a network of contracted shelters and facilities nationwide.

¹⁵ See n. 4, *supra*.

¹⁶ See, e.g., 148 Cong. Rec. S8180 (2002) (letter from Sen. Lieberman & Sen. Thompson): “Currently, INS has responsibility for the care and custody of these children. It would not be appropriate to transfer this responsibility to

Pursuant to the TVPRA, ORR is obligated to ensure that unaccompanied children are “promptly placed in the least restrictive setting that is in the best interest of the child.”¹⁷ ORR evaluates potential sponsors for their ability to provide for a child’s safety and well-being¹⁸ and to ensure the child’s appearance at immigration proceedings.¹⁹ Pursuant to the *Flores* Settlement Agreement, parents and legal guardians receive priority among potential sponsors, who may also include other immediate relatives, distant relatives, or unrelated individuals.²⁰ Lawful immigration status is not a prerequisite for sponsorship, in recognition that children are better served with safe and capable caretakers in a home than by remaining in federal detention and that a potential caretaker’s immigration status is not relevant to his or her fitness to care appropriately for a child. Indeed, in the past, ORR has explained that while the agency has received information about a potential sponsor’s immigration status since 2005, it has been the agency’s policy to enable “the release of unaccompanied alien children (UAC) to undocumented sponsors, in appropriate circumstances and subject to certain safeguards.”²¹

In its System of Records Notice implementing the MOA, DHS explicitly lists one of its purposes for gathering information on potential sponsors and adult household members shared by ORR as its pursuit “to identify and arrest those who may be subject to removal.”²² ICE’s use of immigration status information from the sponsorship process to identify targets for immigration enforcement will likely prevent many children from reunifying with the best and

Department of Homeland Security. This legislation transfers responsibility for the care and custody of unaccompanied alien children who are in Federal custody . . . to the Office of Refugee Resettlement . . . ORR has decades of experience working with foreign-born children, and ORR administers a specialized resettlement program for unaccompanied refugee children.”

¹⁷ 8 U.S.C. § 1232(c)(2)(A).

¹⁸ 8 U.S.C. § 1232(c)(3)(A) (“[A]n unaccompanied alien child may not be placed with a person or entity unless the Secretary of Health and Human Services makes a determination that the proposed custodian is capable of providing for the child’s physical and mental well-being. Such determination shall, at a minimum, include verification of the custodian’s identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child.”).

¹⁹ 6 U.S.C. § 279(b)(2)(A).

²⁰ *Flores Settlement Agreement* ¶ 14; 8 U.S.C. § 1232(c); ORR, *Sponsors and Placement: Release of Unaccompanied Alien Children to Sponsors in the U.S.*, <https://www.acf.hhs.gov/orr/about/ucs/sponsors>; U.S. Dep’t of Health and Human Services, Office of Inspector General, HHS’s Office of Refugee Resettlement Improved Coordination and Outreach to Promote the Safety and Well-Being of Unaccompanied Alien Children (July 2017) (“ORR releases most children to their parents or an immediate relative.”).

²¹ ORR, *Sponsors and Placement: Release of Unaccompanied Alien Children to Sponsors in the U.S.*, <https://www.acf.hhs.gov/orr/about/ucs/sponsors>.

²² See n. 4, *supra*. Categories of individuals covered by the proposed system include “[i]ndividuals seeking approval from HHS to sponsor an unaccompanied alien child, and/or other adult members of the potential sponsor’s household.”

safest caregivers for them, as a result of their relatives' arrest or deportation by ICE, or more general fear of interaction with or potential mistreatment by ICE.²³

Enforcement against potential sponsors and others living with them poses significant and enduring psychological and emotional trauma and mental health consequences for children, as documented in a December 2017 complaint to DHS' Office of Inspector General and Office of Civil Rights and Civil Liberties regarding the agency's targeted enforcement actions against sponsors last year.²⁴ Indeed, the use of information provided for sponsorship purposes for immigration enforcement increases the likelihood that children will interpret their own search for protection as the cause of their sponsor's interaction with ICE, or potential detention or deportation.

Compounding this trauma, children are already facing significantly prolonged periods of detention prior to reunification since the issuance of the MOA. It is reported that the average length of an unaccompanied child's stay in ORR custody is now at least 74 days, more than double the average at the start of 2016.²⁵ In addition to imposing significant costs on ORR,²⁶ prolonged detention and the unavailability of familial sponsors increase the likelihood that children will be placed with unrelated or unfamiliar caregivers, at increased risk of trafficking and other harm. This result, far from being in the best interests of children, is the very opposite of that intended by both *Flores* and the TVPRA.²⁷

²³ See, e.g., Janell Ross, Aaron C. Davis & Joel Achenbach, *Washington Post*, "Immigrant community on high alert, fearing Trump's 'deportation force,'" Feb. 11, 2017 ("Fear and panic have gripped America's immigrant community as reports circulate that federal agents have become newly aggressive under President Trump, who campaigned for office with a vow to create a 'deportation force.'"); Kathleen M. Roche, et. al, *Impacts of Immigration Actions and News and the Psychological Distress of U.S. Latino Parents Raising Adolescents*, J. of Adolescent Health (2018) at p. 5, http://www.jahonline.org/pb/assets/raw/Health%20Advance/journals/jah/jah_10367.pdf ("Evidence for adverse consequences of immigration actions and news across residency statuses is consistent with research indicating that immigration policy can be equally harmful to documented and undocumented Latinos.").

²⁴ See, e.g., Nat'l Immigrant Justice Center, et al., Complaint to DHS Acting Inspector General and DHS Office of Civil Rights and Civil Liberties Re: ICE and CBP Coercive Enforcement Actions against Sponsors of Unaccompanied Children Conducted in Violation of Family Unity, Protection, and Due Process Rights, at 3 (Dec. 6, 2017), http://www.immigrantjustice.org/sites/default/files/content-type/press-release/documents/201712/Sponsor%20Enforcement-OIG_CRCL_Complaint_Cover_Letter-FINAL_PUBLIC.pdf; Wendy Cervantes and Christina Walker, Center for Law and Social Policy (CLASP), *Five Reasons Trump's Immigration Orders Harm Children*, Apr. 2017; Leila Schochet, Center for American Progress, *Trump's Immigration Policies Are Harming American Children*, Jul. 31, 2017.

²⁵ See n. 9, *supra*.

²⁶ See Government Accountability Office, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody*, at 66 (July 2015), available at <https://www.gao.gov/assets/680/671393.pdf> (estimating the average daily cost per bed in a basic shelter at \$248 for fiscal year 2014).

²⁷ See Cong. Record (House), William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Dec. 10, 2008, at H10902, Statement of Rep. Smith (NJ) ("By protecting the victims and not sending them back to their home country where they are often exploited in a vicious cycle of exploitation, we say to the victims we will make every effort to make you safe and secure."); *id.* at 10903, Statement of Rep. Loretta Sanchez (CA) (The

A potential sponsor or sponsor's household member's immigration history and status offers no useful benefit for ORR's ability to evaluate that sponsor's ability to offer a safe home. The unique bonds and support shared by parents and their children, and the benefits of family reunification, exist *regardless* of one's immigration status. This recognition is reflected in child welfare practice throughout the country. ICE's use of sponsor information for enforcement effectively disrupts family reunification in the absence of evidence indicating any correlation between a proposed sponsor's immigration status and danger to a child. Determinations about the most appropriate sponsors for vulnerable children should be based on a child welfare professional's individualized assessment of a child's unique needs and best interests, *not* on DHS's immigration enforcement priorities.

E. Enforcement against sponsors and other adults in the potential sponsors' households frustrates access to due process for unaccompanied children.

Expanded information sharing with DHS, coupled with ICE's explicit intention to use the information of potential sponsors and adult household members to identify and arrest those subject to deportation, also creates significant barriers for the legal cases of unaccompanied children. Given the pervasive fear caused by targeted enforcement, potential sponsors may hesitate to interact with children in ORR custody. In addition to erecting hurdles to routine communication vital to children's welfare, enforcement and its related chilling effect will deprive children of access to information and documentation that may be necessary to prove their legal cases.

Parents and other close family members frequently possess contextual information and evidence that is essential to substantiate children's asylum cases but that may be unavailable to children, owing to their tender age or their parents' efforts to shield them from the dangers facing their families.²⁸ The detention and deportation of proposed caregivers will make it more difficult for children to obtain critical information and documents to prove their cases, due to difficulties in communicating with parents who are detained or residing in remote areas in foreign countries.

Adding to these challenges, enforcement against caregivers will require that children navigate their legal cases while in detention awaiting others who might step forward to sponsor them out of ORR custody. In addition to frustrating access to attorneys and social services,

TVPPRA "provides additional protections for trafficking survivors who are threatened by trafficking perpetrators, and for children who are at risk of being repatriated into the hands of traffickers or abusers.")

²⁸ See, e.g. Kids in Need of Defense, *Betraying Family Values: How Immigration Policy at the United States Border is Separating Families* (Jan. 2017), https://supportkind.org/wp-content/uploads/2017/04/BetrayingFamilyValues_April-2017.pdf at 13-14 (discussing the due process implications of separating family members).

detention imposes significant psychological and emotional burdens on children who have endured past trauma and who are seeking humanitarian relief.²⁹ With uncertainty about the whereabouts of their loved ones and when they will be released from detention, children will be faced with the cruel choice of remaining confined indefinitely or returning to the dangers from which they fled. A process designed to reunite children with caregivers while they await immigration proceedings should never be used to undermine children’s very participation in these proceedings, which may determine their safety and their futures.

F. The MOA and implementing Notice subvert ORR’s child welfare mission to prioritize ICE’s political agenda of pursuing potential sponsors and family members for civil immigration enforcement.

Although the Notice claims that ORR will share the information because DHS seeks the biographical and biometric information of potential sponsors and their adult household members to “inform determinations regarding sponsorship of unaccompanied alien children who are in the care and custody of HHS”, the Notice fails to demonstrate *in any way* that the proposed immigration and criminal background checks by DHS safeguard the best interests of children in HHS custody. This silence is not surprising, given that DHS leadership has already stated publicly that it is indeed using this information for civil immigration enforcement purposes³⁰ and DHS’s explicit admission in its System of Records Notice that the sponsor information will be used “to identify and arrest those who may be subject to removal.”³¹ Neither DHS nor HHS has bothered, as good governance should require, to conduct or make public an analysis of the likely effects on the unaccompanied children at the center of this policy.

DHS officials have publicly claimed that its new system of records, enabled by these procedures, is meant to protect children.³² However, as in this Notice, these claims lack any evidence-based justification for using information obtained from unaccompanied children to take civil immigration enforcement action against the very adults with whom these children hoped to find safety. When considered in the context of DHS’s poor track record of safeguarding the safety and rights of children³³ and coupled with DHS’s stated purpose of using unaccompanied

²⁹ See *supra* note 12.

³⁰ See n. 8, *supra*.

³¹ See n. 9, *supra*.

³² See, e.g., Nick Miroff, *Washington Post*, “Trump’s ‘zero tolerance’ at the border is causing child shelters to fill up fast,” May 29, 2018, https://www.washingtonpost.com/world/national-security/trumps-zero-tolerance-at-the-border-is-causing-child-shelters-to-fill-up-fast/2018/05/29/7aab0ae4-636b-11e8-a69c-b944de66d9e7_story.html?utm_term=.bfc26eccc3ea.

³³ See, e.g., Government Accountability Office, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody*, July 14, 2015, <https://www.gao.gov/products/GAO-15-521>; Am. Academy of Pediatrics, *Pediatrics, Detention of Immigrant Children* (Apr. 2017), <http://pediatrics.aappublications.org/content/pediatrics/early/2017/03/09/peds.2017-0483.full.pdf>; Report of the

children as conduits for civil immigration enforcement actions against their families, circumstances suggest that DHS is giving lip service to child welfare concerns as a shield to obscure practices that disregard children's wellbeing.

NIJC is deeply concerned by the corruption of ORR's process for reunifying unaccompanied children with family members in the service of DHS civil law enforcement priorities. DHS enforcement actions against sponsors and those living in their homes—and fear of such actions—have already begun having far-reaching emotional and psychological consequences for children and frustrating the ability of ORR to identify and promptly place children with the best and safest caregivers. This result runs contrary to both *Flores* and the TVPRA, and negatively impacts children and families. **We urge HHS to rescind these procedures and cancel its Memorandum of Agreement with DHS to ensure that best interests of children remain the overarching priority of ORR's sponsorship review process.**

Sincerely,

/s/

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