



LEGAL AID
JUSTICE CENTER

July 10, 2018

ACF Reports Clearance Officer
Administration for Children & Families
Office of Planning, Research, and Evaluation
330 C Street, S.W.
Washington, D.C. 20201

Via email: infocollection@acf.hhs.gov

RE: HHS ACF Sponsorship Review Procedures for Approval for Unaccompanied Alien Children, OMB No.: 0970-0278

Dear Reports Clearance Officer:

The Legal Aid Justice Center appreciates the opportunity to provide the following comments concerning information sharing between the Office of Refugee Resettlement (ORR) and the Department of Homeland Security (DHS, or the “Department”) in response to the request for written submissions issued on May 11, 2018 by the Department of Health and Human Services (HHS). *See* Federal Regulation No. 94, Vol. 83 at 22490-22491.

The Legal Aid Justice Center (LAJC) has been providing legal representation for low-income individuals in Virginia since 1967. Our mission is to seek equal justice for all by solving clients’ legal problems, strengthening the voices of low-income communities, and rooting out the inequities that keep people in poverty. LAJC’s Immigrant Advocacy Program supports low-income immigrants in their efforts to find justice and fair treatment. In addition to representing clients with individual legal issues, we promote systemic reforms to reduce the abuse and exploitation of immigrants, and advocate for state and local policies that promote integration and protect immigrants from overly aggressive immigration enforcement. Our work aims to end the mass detention and deportation of immigrants, with a special focus on child refugees fleeing violence and individuals and communities targeted for enforcement by overzealous federal immigration agents. LAJC combats family separation by working with children and families throughout the reunification process to ensure prompt reunification of children with their families. Through this work, LAJC works with families in the community who are potential sponsors of children in ORR custody and represents children who are in ORR custody.

The prompt release of unaccompanied children from ORR custody to the care of appropriate sponsors, usually parents or family members, is essential to children’s ability to cope with painful experiences, successfully move through the immigration legal system, and continue to grow and develop in a healthy way to become contributing members of their communities. As such, LAJC has a strong interest in the proposed changes to the sponsor reunification process titled “Sponsorship Review Procedures for Approval for Unaccompanied Alien Children” (hereinafter, the “Procedures”), and the accompanying Memorandum of Agreement (MOA)

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between HHS and DHS, both of which propose vastly expanded information collection from potential sponsors of unaccompanied children and other adults in the potential sponsor's households and unprecedented information sharing between ORR and DHS. LAJC also has a strong interest in the clarity and content of the ORR documents that will be used to carry out these Procedures, the Family Reunification Application (ORR UAC/FRP-3); Authorization for Release of Information (ORR UAC/FRP-2); Fingerprint Instructions (ORR UAC/FRP-7); Letter of Designation for Care of a Minor (ORR UAC/FRP-9).

Prior to the changes instituted by the new Procedures, ORR vetted potential sponsors through interviews and background checks of the sponsor, in addition to a sponsor's completion of a family reunification application. Some sponsors were required to submit fingerprints, including non-parents and potential sponsors of children who had been identified as victims of trafficking and abuse. As part of routine background checks conducted by ORR, immigration status information often appeared and was documented in ORR's system, but was used exclusively for child welfare purposes.¹ It was not used for immigration enforcement purposes. When a child was released from ORR custody, ORR provided DHS with basic demographic information and the child's and sponsor's names, address, and relationship, for use in connection with the child's immigration proceedings. DHS was generally required to submit a detailed and individualized request for all other information.²

The proposed Procedures would introduce DHS' participation in the evaluation of potential sponsors of unaccompanied children and allow the agency access to information from the ORR family reunification process for the purpose of identifying individuals for immigration enforcement and deportation. LAJC is deeply concerned that the Procedures introduce an unavoidable conflict of interest between two agencies with starkly different goals and missions. The mandated collection and sharing of information will alter longstanding practice and impede the ability of ORR to promptly place children in the "least restrictive setting" pursuant to the Homeland Security Act of 2002, the Trafficking Victims Protection Reauthorization of 2008 (TVPRA), and the *Flores* Settlement Agreement.

LAJC offers the following comments to ensure HHS' continued ability to comply with its legal responsibilities to identify, vet, and place unaccompanied children with safe and capable caregivers.

A. The proposed collection and transfer of information will impede the proper performance of the functions of ORR and will have little practical utility.

ORR is responsible for the care of unaccompanied immigrant children who arrive in the United States seeking relief and protection. Congress tasked ORR, rather than DHS, with caring for these children because of its experience working with refugee children, and because it would

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> (last updated Dec. 8, 2017).

be inappropriate for an enforcement agency to be responsible for caring for vulnerable children.³ The law requires that ORR promptly place children with sponsors outside of detention while they pursue immigration relief.⁴ Thus, ORR evaluates potential sponsors to determine if a caregiver is able to provide for a child's safety and well-being, and places the majority of unaccompanied children with parents or relatives.⁵ Lawful immigration status is not a prerequisite for sponsorship.⁶

The proposed Procedures mark a dangerous shift away from child welfare and family reunification to immigration enforcement. This shift comes at the expense of the children ORR has been tasked with caring for and protecting. Under the proposed Procedures, ORR will now collect and share sensitive and personal information about children's sponsors and adult household members with Immigration and Customs Enforcement (ICE) in *every* child's case, regardless of any specific concerns for the child's safety, enabling ICE to vastly expand its enforcement activities against these same potential sponsors and household members. The foreseeable result will be significant delays in the reunification process for children and their sponsors and will keep more children in detention longer. This policy will also increase children's vulnerability to trafficking and other harms by causing ORR to place children with more distantly related caregivers. It will also obstruct children's ability to successfully pursue their legal claims and win relief to which they are entitled. Finally, this policy will disproportionately impact and target immigrant families who live in shared housing and mixed status families without promoting the best interests or safety of unaccompanied children.

i. The Procedures will lead to children's prolonged detention and will cause long-term harm to children's health and development.

The Procedures will significantly prolong children's detention, causing harm to their mental health, welfare, and development, and imposing significant cost on ORR and taxpayers.⁷ ORR will now require significantly more time to identify a sponsor willing to provide their and their family members or roommate's information to ICE, and will often require ORR to turn to more distantly related adults, further prolonging a child's time in ORR custody. The more distant a sponsor's relationship to a child, the more in-depth screening is required to ensure that the

³ See, e.g., *Flores v. Sessions*, 862 F.3d 863, 869-71 (9th cir. 2017).

⁴ Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), 8 U.S.C. § 1232(c)(2)(A) (The federal government must ensure that children are "promptly placed in the least restrictive setting that is in the best interest of the child").

⁵ ORR, Sponsors and Placement: Release of Unaccompanied Alien Children to Sponsors in the U.S., <https://www.acf.hhs.gov/orr/about/ucs/sponsors>; see also 154 Cong. Rec. S10886-01, 2008 WL 5169970 (Statement of Sen. Feinstein).

⁶ ORR, Sponsors and Placement, <https://www.acf.hhs.gov/orr/about/ucs/sponsors>; ORR, Children Entering the United States Unaccompanied ("ORR Guide") § 2.5.2, § 2.6

⁷ See Government Accountability Office, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody*, at 66 (July 2015), <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).

sponsor is appropriate and can properly care for the child. A child's average stay in detention has already almost doubled in the past year.⁸

Prolonged detention will exact immediate and permanent damage to a child's mental health and negatively affect a child's development.⁹ Moreover, children who feel that they do not have a possibility of being reunited with their families or may be in custody indefinitely are inclined to accelerate their release from custody by abandoning their legal claims and returning to their home country even if it is extremely unsafe to do so.¹⁰ Children in custody are left to deal with the trauma of their past experiences and journey to the U.S., the toxic stress of being in custody, and are left to fend for themselves in their immigration proceedings.¹¹

Delays or failures in the family reunification process leave children without the necessary emotional support of family members and caregivers. Children are likely to feel isolation, guilt, and hopelessness in finding protection.¹² If sponsors or household members are detained or deported after initiating the reunification process, children are likely to interpret their own

⁸ Robert Moore, Texas Monthly, *Relatives of Separated Children Are Now in ICE's Sights*, (June 29, 2018), <https://www.texasmonthly.com/news/agency-overseeing-separated-kids-telling-immigration-officials-claiming-children/>

⁹ See, e.g., *L.V.M. v. Lloyd*, No. 18 CIV. 1453 (PAC), 2018 WL 3133965, at *10 (S.D.N.Y. June 27, 2018) (citing experts who assert that for the child plaintiffs, "even a short detention can have 'deleterious effects' on minors, causing 'psychological trauma and induce[ing] long-term depression, anxiety and PTSD' that are not necessarily resolved once the detainee is freed" (internal citations omitted)). See also, e.g., U.N. Convention on the Rights of the Child (September 2, 1990); General Comment 6 to the Convention pg. 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 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 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"); Sarah Mares, *The Mental Health of Children and Parents Detained on Christmas Island*, Health Hum Rights, 2016 Dec; 18(2), 219-232, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5395006/>.

¹⁰ See, e.g. KIND, *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).

¹¹ Steven Davy. NPR, *Trauma Separated Children are Dealing with*, <http://wesa.fm/post/discussion-what-trauma-separate-migrant-children-now-dealing#stream/0>.

¹² Wendy Cervantes and Christina Walker, Center for Law and Social Policy, *Five Reasons Trump's Immigration Orders Harm Children*, (Apr. 2017), <https://www.clasp.org/sites/default/files/public/resources-and-publications/publication-1/Five-Reasons-Immigration-Enforcement-Orders-Harm-Children.pdf>; Leila Schochet, Center for American Progress, *Trump's Immigration Policies Are Harming American Children*, (Jul. 31, 2017).

custody and attempt to be placed in the care of their sponsors as the cause for their sponsor's deportation or prosecution.¹³ This feeling of guilt compounded with psychological aftermath of the dangers unaccompanied minors either flee from or encounter on their journey, is overwhelming for children to face alone and is creating dangerous levels of toxic stress among unaccompanied children.¹⁴

Harm to unaccompanied children will also result from the Procedures active discouragement of the most appropriate and capable caregivers from completing the reunification process and bringing their children home. Children require a consistent and responsive parent or caregiver for healthy development, especially younger children who rely on a supportive relationship during overwhelming and traumatic experiences.¹⁵ Highly stressful events such as the sudden or forced separation from a parent or caregiver, is very traumatic to children. Trauma can lead to negative impacts in a child's development which manifests in their learning capacities, behavior, and long term mental health. The best way to reduce the effects of trauma in children in ORR custody, is to promptly reunite them with their parent or reliable caregiver. Even more troubling, using sponsor and household member information for increased immigration enforcement purposes will cause enduring psychological and emotional trauma and mental health consequences for the children placed in a sponsor's home if caregivers and other reliable adults are detained or deported.¹⁶ This was the result of DHS's actions against sponsors in 2017 and will certainly happen again as a result of the Procedures and accompanying MOA.¹⁷ For these reasons, the Procedures harm children's wellbeing by depriving them of the adults most able to help them recover from their experiences prior to and during detention¹⁸

¹³ See KIND, *Targeting Families* (Dec. 2017), https://supportkind.org/wp-content/uploads/2017/12/Targeting-Families_-December-2017_Final-v.2.pdf.

¹⁴ Steven Davy, NPR, *Discussion: What Trauma are Separated Migrant Children Dealing With?*, (June 28, 2018), <http://wesa.fm/post/discussion-what-trauma-are-separated-migrant-children-now-dealing#stream/0>.

¹⁵ See Jack P. Shankoff, Harvard University's Center on the Developing Child, *Statement on Separation of Families*, <https://developingchild.harvard.edu/about/press/shonkoff-statement-separating-families/>

¹⁶ 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).

¹⁷ *Id.*

¹⁸ See Kristen Weir, *Maximizing children's resilience*, American Psychological Association Monitor on Psychology, (September 2017), <http://www.apa.org/monitor/2017/09/cover-resilience.aspx>, ("Resilient participants tended to have . . . supportive relationships with at least one reliable family member and other caring adults such as teachers and community elders").

ii. The Procedures place children at *greater* risk of being placed with less appropriate caregivers or traffickers.

The Procedures cause a deep chilling effect deterring otherwise capable and loving sponsors from coming forward to claim their children. The new information collecting and sharing Procedures prevent children from being released to family members or relatives who may be best suited to care for the child. Caregivers at risk of detention or deportation are forced to choose between getting their child released from ORR custody and their own ability to remain out of detention and in the country to provide care their children. These caregivers are often the sponsor most able to support and care for the child throughout their court proceedings and trauma recovery. This policy will result in children being released to more distantly related adults who may have more secure immigration status but may have limited or no relationship to the child.

The new Procedures further undermine the already strained relationship between children, potential sponsors, and the federal government. As a result, many sponsors will be too afraid to provide this information, despite having no involvement in smuggling or any criminal activity. Further, their family or other household members may be unwilling to provide the requested information despite a sponsor's willingness and ability to care for a child. The Procedures functionally give any member of the household veto power over a sponsor's desire to proceed with reunification and welcome their child into their home. Because of this policy, sponsors will face even steeper barriers when trying to be reunited with their children.¹⁹

Further harm to the child is caused if a parent sponsor or other caregiver is detained or deported due to immigration enforcement resulting from ORR's information gathered during the reunification process. In this situation, the child will be left with an unvetted sponsor or, if the child is still in ORR custody, ORR will have to repeat the reunification process. Releasing a child to a sponsor who is not familiar to the child may negatively impact their trauma recovery and increase the chances of a child ending up in the hands of someone who will not have the child's best interest at heart.²⁰

The result of ORR being unable to identify closely related sponsors for the children in its care, and any subsequent enforcement action by DHS against a child's sponsor or the other adults in that sponsor's home, will place children at significantly *greater* risk of being trafficked,

¹⁹ See 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>; see also, KIND, *Targeting Families* (Dec. 2017), https://supportkind.org/wp-content/uploads/2017/12/Targeting-Families_-December-2017_Final-v.2.pdf.

²⁰ See, e.g. KIND, *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).

smuggled, or otherwise abused.²¹ We urge HHS to rescind the Procedures and cancel its MOA with DHS to avoid placing more children in harm's way, and to ensure ORR's ability to comply with its legal obligation to promptly place unaccompanied children with the best and safest caregivers, unimpeded by DHS's competing immigration enforcement priorities.

iii. The Procedures will obstruct children's ability to successfully pursue their legal claims.

The new information collection and sharing outlined in the Procedures and MOA will impede unaccompanied children's ability to effectively pursue their legal claims. Prolonged detention or placement with more distant caregivers will limit vital communication with their families during their legal proceedings.²² Many children may not know the details or have all the documentation related to their asylum claim, especially younger children who may not be able to speak clearly.²³ Additionally, some children who have been victims of trauma may not be able to convey the danger they fled from or even explain the protection they need.²⁴ Children often rely on support from parents or family both to recover from their past experiences and to navigate the process of making a legal claim for relief.²⁵ Without a support system or family, children in custody have to rely on themselves regardless of their age, developmental stage, or mental health needs.²⁶ Beyond prolonged separation from family while in ORR custody, increased ICE enforcement against sponsors and household members further deprives children of important supports and resources as they move through their immigration proceedings.

In addition, the Procedures and MOA will likely force more children to navigate their legal claims while detained. Detention itself severely limits peoples' ability to gather evidence and prepare for immigration proceedings, even for adults.²⁷ The burdens on children will be even greater and will further harm children's mental and physical wellbeing.²⁸

²¹ 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/pres-releases/new-fraud-schemes-targeting-families-of-unaccompanied-children>.

²² Michelle Brane, Washington Post, *This is What Really Happens to Kids on the Border*, (May 30, 2018), https://www.washingtonpost.com/news/monkey-cage/wp/2018/05/30/this-is-whats-really-happening-to-kids-at-the-border/?noredirect=on&utm_term=.323a5552bb5d.

²³ See KIND, *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).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Michelle Brane, Washington Post, *This is What Really Happens to Kids on the Border*, (May 30, 2018), https://www.washingtonpost.com/news/monkey-cage/wp/2018/05/30/this-is-whats-really-happening-to-kids-at-the-border/?noredirect=on&utm_term=.323a5552bb5d.

²⁷ See *Abdi v. Duke*, 280 F. Supp. 3d 327 (W.D.N.Y. 2017), *order clarified sub nom. Abdi v. Nielsen*, 287 F. Supp. 3d 327 (W.D.N.Y. 2018).

²⁸ See, e.g., *L.V.M. v. Lloyd*, No. 18 CIV. 1453 (PAC), 2018 WL 3133965 (S.D.N.Y. June 27, 2018).

iv. The Procedures will disproportionately impact mixed-status families, undocumented sponsors, and families in shared living arrangements.

The MOA between HHS and DHS significantly increases the amount of information ICE will have about not only potential sponsors but of all other adults in the sponsor's household.²⁹ Mixed-status families, undocumented sponsors and families in shared living arrangements will be disproportionately impacted. If a sponsor is present in the U.S. lawfully or is even a U.S. citizen, but lives with others who are not, they are far less likely to engage or interact with ORR for fear of jeopardizing and exposing other members of their household.³⁰ Undocumented sponsors who have children at home and a child in custody will be deterred from engaging with ORR if it means taking the risk of leaving behind a child already in their care.³¹ This will create a "Sophie's Choice" scenario for parents who will be forced to choose between caring for their children in their home or their children in ORR custody.

The policy also targets sponsors who live in shared home spaces, such as sub lease arrangements, who will have to reveal information about adults who are not associated with the family unit of the child. These individuals may simply be unwilling to provide or share their information, stymying the reunification process. Furthermore, capable sponsors or family members will be less likely to share information with ORR that could help children in custody, such as the existence of a family member capable of caring for the child.³² Ultimately these policies serve to discriminate against undocumented sponsors, low-income families in shared living situations, and mixed status families, raising equal protection concerns.

B. The agency's estimate of the burden of the proposed collection of information fails to consider the significant costs of prolonged detention, additional individuals it will be required to evaluate, and additional resources needed to follow up with children released to sponsors who have since been detained or deported.

As described above, the Procedures and MOA will lead to significantly longer detention of children in ORR custody. The result will be an increased burden on facilities and staff serving these children. With fewer children being promptly released, the population of children in ORR custody is likely to grow. This will require additional staff, facilities, and resources to serve the government-caused ever-expanding child population in ORR's care. It will also require additional resources to evaluate a greater number of individuals for each potential reunification. As discussed above, there may be a greater number of reunifications initiated but not completed as a result of this policy, leading to inefficiencies and wasted resources. Finally, ORR, which is

²⁹ 83 Fed. Reg. 22490-2291 (May 15, 2018).

³⁰ See KIND, *Targeting Families* (Dec. 2017), https://supportkind.org/wp-content/uploads/2017/12/Targeting-Families_-December-2017_Final-v.2.pdf.

³¹ Leila Schochet, Center for American Progress, *Trump's Immigration Policies Are Harming American Children*, (Jul. 31, 2017).

³² KIND, *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 4-5 (discussing the failure to identify family relationships).

tasked with ensuring successful placements of children with sponsors, will have to expend additional resources to locate and communicate with children who were placed with a sponsor who has since been detained or deported, and is now living with a different caregiver. None of these considerations are represented in the burden estimates presented in the proposed Procedures.

C. The information to be collected has low utility and low quality, and the ORR forms to be used for collection are not clear.

i. There is little to no utility for this policy because it does not provide additional information that would increase the safety or wellbeing of children.

Collecting and sharing information related to sponsors' or household members' immigration history and status, particularly beyond what is already collected by ORR, bears no relation to a sponsor's ability to offer a safe home. In fact, the only new information that would be produced from this agreement would be the immigration status of adults whose status would otherwise not appear in ORR's routine background checks, namely undocumented individuals who have no prior contact with DHS.³³ This information is unrelated to a sponsor's ability to provide for a child, particularly when it relates to a household member rather than the primary sponsor. The bonds between children and their parents or family members exist regardless of immigration status. Immigration status does not affect an adult's ability to provide loving, responsible care to his or her child. HHS has not offered any evidence indicating any correlation between a proposed sponsor's immigration status and danger to the child. The additional information that would be collected and shared is of no utility for evaluating the safe and appropriate placement of children, nor for ensuring their wellbeing.

Further, the additional criminal background checks provided for in the Procedures duplicate those that ORR currently performs.³⁴ According to the MOA, ORR will continue to be responsible for criminal history checks on the national, state, and local level, some of which would alert ORR about a sponsor's or household member's immigration status.³⁵ Duplicative background checks serve only to waste time and resources of two already over-burdened agencies.

ii. The quality of this data to be collected is low.

Immigration history information provides only a partial picture of that history and contains little if any information about possible avenues of immigration relief. Sponsors or household members may be investigating potential avenues of relief or may already be in the process of preparing applications for relief. Perhaps even more concerning, where an adult has

³³ *Id.*

³⁴ HHS-DHS MOA, at 5.

³⁵ *Id.*

already submitted an application for relief but has not yet received a visa, ICE will have access to information enabling it to preemptively detain or deport an individual before relief is available, raising serious concerns about due process, fundamental fairness, and even government retaliation.

Similarly, the criminal history information that the Procedures propose to collect and share originate from databases that are notoriously incomplete and error-prone, making them unreliable sources of information about potential sponsors.³⁶ For example, up to half of all final outcomes of criminal records are missing from the FBI database.³⁷ According to the Government Accountability Office, many states report data inconsistently leaving criminal records weeks or months out of date because of irregular updates.³⁸ Given the nature of how criminal records are maintained, DHS will certainly not be producing more accurate records than what ORR already has access to.

iii. The ORR forms designed by ORR to collect the information required by the Procedures and MOA collect unnecessary information and will fail to obtain meaningful consent for information collection and sharing because do not clearly warn potential sponsors about the legal and practical implications of ORR’s information collection and sharing.

ORR has released forms designed to implement the Procedures and MOA. These forms include the Family Reunification Application (ORR UAC/FRP-3); Authorization for Release of Information (ORR UAC/FRP-2); Fingerprint Instructions (ORR UAC/FRP-7); Letter of Designation for Care of a Minor (ORR UAC/FRP-9). These forms collect information with extremely limited utility, coerce sponsors into sharing information by requiring it for release of their children, and are unclear regarding the legal and practical implications for providing the information required in the sponsor reunification packet.

As explained above, there is no utility to collecting information about the immigration status of a sponsor’s household members, and very limited utility in collecting information regarding the immigration status of sponsors. For example, there is little utility or justification for requiring *all* sponsors to designate an alternative caregiver without any indication that a specific risk that a sponsor “might need to leave the United States or become unable to care for the minor(s)” exists.³⁹ If this person is not a member of the household, requiring an additional person’s information, which will be shared with DHS, far extends the reach of ORR and DHS in its information gathering abilities. Another example of information that may be of limited utility is requiring proof of a Minor’s identity from every potential sponsor is unclear, especially if

³⁶ Roy Maurer, Society for Human Resource Management, *Relying on FBI Fingerprint Background Checks is Flawed*, (May 24, 2016), at <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/fbi-fingerprint-background-checks-flawed.aspx>

³⁷ *Id.*

³⁸ *Id.*

³⁹ ORR UAC/FRP-3

ORR already has a copy of the minor’s birth certificate.⁴⁰ Requiring this information from every sponsor adds no value once ORR already has a copy of the birth certificate, and it will present a significant hurdle to reunification for many non-parent sponsors.

The Authorization for Release of Information form FRP-2 is not designed to obtain meaningful consent from those signing the form. The Authorization for Release of Information coerces sponsors into authorizing information sharing with DHS and “federal, state, or local law enforcement agencies” and use of “any. . . sources of information” about the sponsor by “the U.S. Government, its employees, grantees, contractors, and other delegated personnel” in exchange for bringing their children home.⁴¹ Signing these forms, providing *all* requested information and authorizing ORR to share all information, “gathered . . . verbally or in writing” are prerequisites for gaining approval as a sponsor.⁴² These forms therefore force sponsors, household members, and any potential caregiver to submit themselves to immigration enforcement or to let their child languish in ORR custody.⁴³

Additionally, the ORR forms do not clearly and simply alert potential sponsors that the information they submit about themselves *and any other household members or caregivers* will be shared with DHS and may be used for the purposes of immigration enforcement against them or their household members per the MOA.⁴⁴ The Authorization for Release of Information refers obscurely to use of sponsors’ and household members’ information “consistent with [agencies’] authorities” without referring to the authority of DHS not only to determine immigration status and criminal history but more importantly, to carry out immigration enforcement.⁴⁵ The statements in the ORR forms regarding information sharing are too vague to adequately disclose to an individual completing them that their personal information may, and likely will, be used for law enforcement purposes by ICE. Further, the Authorization for Release of Information does not establish any durational limitation for use of the information shared, potentially authorizing any part of the U.S. Government to access and use sensitive personal information gathered from the applicant in perpetuity. The Authorization for Release of Information form, claiming to require information “required for background check[s]” and “conducting my background investigation or sponsorship assessment,” gives a *carte blanche* to ORR, ICE, DHS, and any other government entity to access and use individuals biographical and biometric information without limitation for as long as they like. The Authorization for Release of Information is overly broad, unclear bordering on deceptive⁴⁶, and in no way enables sponsors, household members, or caregivers to provide meaningful consent to the collection and sharing of their information.

⁴⁰ *Id.*

⁴¹ ORR UAC/FRP-2.

⁴² *Id.*

⁴³ ORR-UAC/FRP-3 (“We may reject your application if any of the required information is missing, incomplete, or inaccurate.”)

⁴⁴ ORR-UAC/FRP-2; HHS-DHS MOA.

⁴⁵ ORR-UAC/FRP-2

⁴⁶ 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

Finally, none of the forms alerts sponsors of their right to seek the assistance of a lawyer or to refuse any request by ORR. Instead, FAQs inform sponsors that they do not need an attorney to sponsor a child and should instead communicate with the ORR Case Manager in charge of their child's case.⁴⁷ There is no proposed requirement that case managers warn sponsors and related adults of the risks of sharing their information or how it will be used. Instead, case managers typically work to convince and cajole sponsors into providing as much information as possible with little to no understanding of how that information will be used or shared. Requiring broad authorization to share and request sensitive personal information without alerting potential sponsors, household members, or caregivers to the very real legal and practical implications of sharing this information directly with DHS raises serious questions of due process and government coercion.

D. HHS can minimize the burden of the Procedures and MOA by canceling the MOA and by requesting this additional information only on a case by case basis.

HHS can minimize the negative effects of the Procedures by collecting information only where additional immigration or criminal history screening is warranted by the facts of the case. ORR should only collect information about parents and specific household members where ORR child welfare staff have concerns about the sponsor's ability to provide a safe environment for the child. ORR should not share this information with DHS unless it specifically lacks information it can show it needs about a given person that DHS can produce. Narrowly tailoring these Procedures to limited cases based on specific need would minimize the burden of information collection and transfer on respondents, protect the vast majority of children from unnecessarily remaining in government custody, prevent the negative effects of prolonged custody among minors, and significantly reduce the resource burden on all federal agencies involved.⁴⁸

* * *

The proposed Procedures would fail to serve ORR's mission of placing children in safe and loving homes and serve only to turn ORR into an arm of ICE to further immigration enforcement actions. DHS access to sponsors' immigration status and criminal backgrounds only serves to identify removable immigrants rather than to evaluate the suitability of potential sponsors. Exposing immigration status of sponsors and any other adult they live with is

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".

⁴⁷ ORR-UAC/FRP-3

⁴⁸ See 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-b944de66d9e7story.html?utm_term=.bfc26eccc3ea.

disrupting the reunification of families, frustrating access to legal and emotional support, and causing deep and lasting harm to the children in ORR's care.

The agreement and Procedures are negatively effecting ORR's sponsor vetting process and run contrary to upholding the children's best interests. LAJC urges HHS and DHS to modify or abandon this regulation and the accompanying Memorandum of Agreement because it is counterproductive to the efforts and obligations of ORR to protect unaccompanied children.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Wolozin".

Rebecca Wolozin
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