



October 26, 2018

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

Via email: aira_submission@omb.eop.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 (October 16, 2018)

Dear Desk Officer:

The American Immigration Lawyers' Association (AILA) submits the following comments in response to the comment request "Sponsorship Review Procedures for Approval for Unaccompanied Alien Children" published in the Federal Register on October 16, 2018.

AILA is a voluntary bar association of more than 15,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. Since 1946, our mission has included the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We believe that our collective experience and expertise make us particularly well-qualified to offer views on this matter.

Background

The Office of Health and Human Services (HHS), Office of Refugee Resettlement (ORR), is responsible for the care of unaccompanied immigrant children who are present in the United States without lawful immigration status, are under 18 years of age, and who do not have a parent or guardian in the United States or one in the United States who is able to provide care and physical custody. *See* 6 U.S.C. § 279(g)(2). Under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), together with the *Flores* Settlement Agreement (*Flores*), the agency must "promptly" place children in "the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2). *Flores* clearly states the order of preference for a child's placement shall be first with a parent, second with a legal guardian, and finally with adult family members.¹ The TVPRA states that institutional confinement is prohibited unless a suitable family member is not available. 8 U.S.C. § 1232(c)(2). ORR is entrusted with the health and well-being of these unaccompanied children, including releasing them to qualified sponsors and family members who can meet the child's physical and emotional needs.

Under comment request 0970-0278, HHS would increase requirements and data collection for sponsors of unaccompanied children by allowing ORR “to vet” potential sponsors “in accordance with a Memorandum of Agreement” with the Department of Homeland Security (DHS).² This memorandum was entered into in May 2018 by ORR and DHS, specifically Immigration Customs Enforcement (ICE) and Customs and Border Protection (CBP). The increased information collection would include biometrics and biographic data of the sponsor, adult household members, and adult caregivers listed in the care plan. ORR would then share the information with other agencies for the purpose of conducting background checks.

AILA acknowledges the agency’s responsibility to safely and appropriately place children under its care in a timely manner. However, AILA is concerned that heightened information collection and sharing would prove detrimental to the same children ORR is obligated to protect, frustrating the purpose of the TVPRA. AILA therefore opposes the proposed changes as well as the May 2018 memorandum of agreement between ORR and DHS.

AILA’s concerns include:

The Proposed Changes Would Create a Chilling Effect Discouraging Sponsors From Coming Forward to Care For Unaccompanied Children – The May 2018 memorandum of agreement between ORR and DHS greatly expands the amount of information on potential sponsors, including their immigration status history, available to DHS. That expansion will deter relatives and other possible caretakers from coming forward to assume custody of unaccompanied children for fear that DHS will use the information for immigration enforcement against them or their household members. In fact, ICE has already begun applying the memorandum of agreement to target such adults. On September 18, 2018, an ICE official testified before the Senate that, since entering into the memorandum of agreement, ICE arrested 41 adults who came forward to sponsor children.³ Of those arrests, 70 percent were categorized as “administrative” arrests for immigration purposes only and were not done for criminal enforcement purposes. The result of the proposed changes: fewer safe and competent sponsors will emerge, while more children languish in ORR shelters or foster care, at increased government expense and at increased cost to the children’s emotional and physical well-being.

The Proposed Changes Conflict with the TVPRA’s Mandate to Place Children in the Least Restrictive Setting – Pursuant to the TVPRA, ORR should place children in the least restrictive setting with the safest, most suitable sponsors. Lawful status is neither a precondition of sponsorship nor relevant to a sponsor’s fitness to provide for a child’s well-being. ORR may gather information about an adult’s immigration status but such information is not used to disqualify a potential sponsor or for immigration enforcement but for the purpose of ensuring the child’s welfare, including the development of a care plan for the child.⁴

To nonetheless enhance information sharing around potential caretakers’ immigration status effectively prioritizes DHS’s enforcement agenda over children’s best interests. In fact, by increasing the probability that ORR will place children with unfamiliar sponsors—potentially heightening those minors’ susceptibility to trafficking—these

changes threaten outcomes fundamentally at odds with the aims of the TVPRA and *Flores* to ensure the safety and protection of these children consistent with their best interests.

Immigration Enforcement Against Sponsors Will Limit Unaccompanied Children's Access to Due Process – Fearing immigration enforcement, family members and other potential sponsors will be reluctant to engage with children in ORR custody and to provide them with evidence that could prove crucial to their immigration cases.⁵ Likewise, if DHS arrests and detains a child's family member after she attempts to become a sponsor, it will become challenging, if not impossible, for the child to communicate with that family member and thereby obtain information essential to establishing eligibility for immigration relief. Isolated in ORR facilities, with little to no access to their support networks, such children will not have the ability to adequately prepare their cases. Indeed, confronted with ongoing detention and absent guidance from family members, children may feel they lack any choice but to abandon valid claims and return to a country where they are in danger.⁶

ORR Has Not Clearly Stated the Intended Uses of the Information the Government Would Collect and Share – The proposed changes authorize the enhanced collection and interagency sharing of personal information about sponsors, adult household members, and adults involved in the care plan of children. Yet ORR has not made clear how and for what purposes the government will carry out these activities or the legal implications of individuals' participation in them. For example, the proposal has prompted, but fails to satisfactorily address, concerns that these individuals will suffer immigration enforcement consequences for coming forward to take in a child. This lack of transparency leaves potential caretakers without adequate notice of the uses of their personal information and precludes their meaningful consent to that information's collection and dissemination.

Conclusion

Rather than improve ORR's ability to efficiently place unaccompanied children in suitable environments with safe caregivers, as prescribed under the TVPRA and *Flores*, the proposed changes would impede such placement, lead to many children's indefinite confinement, and erode their due process protections. As these anticipated effects are inconsistent with the TVPRA, *Flores*, and the best interests of vulnerable minors, AILA opposes the proposal.

AILA appreciates the opportunity to offer these comments on this important issue.

Sincerely,

The American Immigration Lawyers Association

¹ U.S. District Court, Central District of California, *Flores v. Reno*, Stipulated Settlement Agreement, 1997.
<https://www.aila.org/File/Related/14111359b.pdf>

² 83 Fed. Reg. 52221 (Oct. 16, 2018)

³ Tal Kopan, CNN, “ICE arrested undocumented immigrants who came forward to take in undocumented children,” September 20, 2018,

<https://www.cnn.com/2018/09/20/politics/ice-arrested-immigrants-sponsor-children/index.html>.

⁴ ORR, Sponsors and Placement: Release of Unaccompanied Alien Children to Sponsors in the U.S.,
<https://www.acf.hhs.gov/orr/about/ucs/sponsors>.

⁵ See KIND, *Targeting Families* (Dec. 2017), https://supportkind.org/wp-content/uploads/2017/12/Targeting-Families_-December-2017_Final-v.2.pdf.

⁶ See *id.*