

Acting Assistant Secretary Andrew Gradison
Department of Health and Human Services
Administration for Children and Families
330 C St SW, Washington, DC 20201

RE: ACF-2025-0003/RIN 0970-AD16, Unaccompanied Children Program Foundational Rule; Update To Accord With Statutory Requirements

Dear Acting Assistant Secretary Gradison,

Thank you for the opportunity to respond to the Interim Final Rule in regards to key aspects of the placement, care, and services provided to unaccompanied children (UCs). The Center for Law and Social Policy (CLASP) writes to express our strong opposition to the rule as it enables disqualifying potential sponsors based solely on their immigration status, and collecting and sharing information on potential sponsors' immigration status for enforcement purposes. This rule does not make children safer and, instead, will harm families and communities through its implementation.

Founded in 1969, CLASP is a national, non-partisan, non-profit, anti-poverty organization that advances policy solutions for people with low incomes. Our comment draws upon the work of CLASP as experts in the areas of immigration, anti-poverty, and child development policies. As a national anti-poverty organization, we bring a deep commitment to families living with low incomes and knowledge of the challenges that they experience. At CLASP, we are also experts on policies that support children's healthy development, such as promoting access to good nutrition, high quality health care and education, a healthy living environment, and stable, nurturing caregivers. We recognize that harsh and overreaching immigration policies, such as collecting data on unaccompanied children sponsors and allowing agencies to share this data with law enforcement, undermine these very foundations.

Our opposition to the rule is rooted in the simple fact that these changes put children in danger rather than shepherding them towards opportunity, safety, and community. This rule enables the collection of data on the immigration status of potential sponsors, and unlawfully expands access to sensitive data on unaccompanied kids and their sponsors to the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE). Under this rule, we could see children remaining in custody and in detention facilities for prolonged periods of time rather than being released to a trusted caregiver in the community. Detention for any period of time is harmful to children's mental and physical health, and prolonged detention exacerbates short- and long-term negative impacts.

The Rule stokes fears around immigration enforcement and deters family members and responsible adults from sponsoring children.

The Interim Final Rule now permits sponsor disqualification based on immigration status and sharing of sponsor status with law enforcement agencies. From 2017-2018, the first Trump Administration began targeting adult sponsors of unaccompanied children.¹ ICE, CBP, and ORR first entered into an agreement to share information obtained from unaccompanied children amongst the three agencies, and to insert ICE into the approval process for reunification of unaccompanied children with sponsors.² As a result, ICE arrested hundreds of individuals on the basis of information they received when they applied to take custody of unaccompanied children.³ DHS has since admitted to targeting hundreds of sponsors for enforcement, using unaccompanied immigrant children as bait to ensnare the parents and caregivers seeking to protect them.⁴

The prior regulation ensured that children can be placed in safe, loving environments without fear that potential caregivers will be targeted for immigration enforcement. Removing these protections discourage family members and other responsible adults from stepping forward as sponsors, leading to prolonged detention of children in government custody—an outcome that is harmful to children’s mental and physical health.

The Rule uses immigration status as a factor in determining the “suitability” of a sponsor, undermining child welfare principles that prioritize family unity.

Child welfare laws in the U.S. have evolved to reflect the research on the importance of keeping children with their families—whether that be their parents or other trusted relatives—whenever possible to improve their short and long-term outcomes. For that reason, child welfare laws

¹ U.S. Department of Health and Human Services and U.S. Department of Homeland Security. Memorandum of Agreement Among the Office of Refugee Resettlement of the U.S. Department of Health and Human Services and U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection of the U.S. Department of Homeland Security Regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters. April 13, 2018.

<https://www.texasmonthly.com/wp-content/uploads/2018/06/Read-the-Memo-of-Agreement.pdf>

² Devereaux, Ryan. “Documents Detail ICE Campaign to Prosecute Migrant Parents as Smugglers.” The Intercept, April 29, 2019.

<https://theintercept.com/2019/04/29/ice-documents-prosecute-migrant-parents-smugglers/>

³ U.S. Department of Homeland Security. *Memo to the Secretary: Increasing Prosecutions of Immigration Violations*. July 2018.

<https://embed.documentcloud.org/documents/4936850-Part3-From-CBP-2018-070727-Redacted/?mode=document&embed=1#document/p8/a456178>

⁴ Burnett, John. “ICE Has Arrested More Than 400 in Operation Targeting Parents Who Pay Smugglers.” NPR, August 18, 2017. <https://www.npr.org/2017/08/18/544523231/arrests-of-undocumented-parents-sparks-debate-between-federal-officials-and-immi>

prioritize kinship placements, including the most recently passed federal bill, the Family First Prevention and Services Act of 2018, and Maryland's 2024 kinship-first law.

In recognition that the immigration status was hindering the ability of system-involved children to be placed with otherwise suitable family members, several states have published guidance or passed legislation that would prohibit immigration status from being a determining factor in such decisions.⁵ These policies have allowed children to remain with their family as their cases move through the process of reunification, which has helped to decrease the cases of children being placed in non-kinship placements. Sponsors are already mandated to go through a screening process and a background check. As recognized in broader child welfare practice, an adult's immigration status is irrelevant to whether a caregiver is safe for a child, and could actually create a barrier to a placement that upholds a child's best interest.

The Rule puts children at greater risk of being in long term institutional care or detention.

Unaccompanied children should be released to sponsors because it is in their best interests to be placed in a safe and stable environment while awaiting immigration proceedings. Under the Flores Agreement, unaccompanied children have the right to be released from detention “without unnecessary delay” to a trusted adult or sponsor. The fundamental purpose of the Unaccompanied Children Program is to act in the best interests of the children in their custody, prioritizing family reunification as quickly and safely as possible. However, under this rule, sponsors are now required to share immigration status that may not be kept safe or confidential, and may be used for enforcement purposes. Children and the families that sponsor them should not live in the fear that they will be targeted for enforcement actions. Removing the prior protections in place for sponsors will discourage family members and other trusted adults from coming forward as sponsors and will lead to children being in institutional care for extended periods of time.

Detaining children indefinitely can lead to long term physical and mental harm.⁶ Children thrive when integrated into the community, attending school, playing with friends, and having experiences that support their development. Long term detention is not conducive to healthy childhood development. Children have a range of physical, psychosocial, emotional and cognitive developmental needs. All of these can be compromised by the detention experience.

⁵ California. Legislature. Senate. *SB 1064, The Reuniting Immigrant Families Act*. Chapter 845, Statutes of 2013. <https://www.cdss.ca.gov/inforesources/foster-care/sb-1064>; Maryland. General Assembly. Senate. *SB 708, Kinship Care*. 2024 Reg. Sess., effective October 1, 2024. <https://news.dhs.maryland.gov/reports/that/maryland-department-human-services-celebrates-signing-new-laws-advance-well-children-adults-families/#:~:text=SB0708%20%E2%80%93%20Kinship%20Care%20%E2%80%93%20The%20new.%2C%E2%80%9D%20said%20Secretary%20Rafael%20L%C3%B3pez>.

⁶ Mares, Sarah, and Anna Ziersch. “How Immigration Detention Harms Children: A Conceptual Framework to Inform Policy and Practice.” *Psychological Trauma: Theory, Research, Practice, and Policy* 16, Suppl. 2 (2024): S367–S378. <https://doi.org/10.1037/tra0001474>.

Poor nutrition, sanitation and health care in detention can result in children's physical development being impaired.⁷ This not only compounds the trauma of children who have fled grave harm but undermines children's ability to seek legal protection by requiring that they make their cases while alone in detention. Further, research demonstrates that detention is harmful for children of any age, but it is particularly bad for young children.⁸ Persistent and substantial exposure to fear and anxiety—sometimes called “toxic stress”—can do immense damage to children's health. This level of stress can interfere with young children's physical brain development leading to mental health disorders, developmental delays, and physical and mental health problems that last into adulthood. Additionally, some children, experiencing distress as their reunification with their family becomes delayed, may ultimately abandon their claims for protection and request return to their countries of origin. Prolonged detention also creates increased costs for the government and could lead to the creation of new facilities that are inappropriate for children's long-term care.

The Rule raises concerns related to data privacy and the secure storing of sponsor information.

Additionally, the Rule does not specify how information will be used or whether information collected will be securely stored with the proper privacy and oversight. As the federal government seeks to collect and share sponsor immigration status and information, this will inevitably include information about documented immigrants and U.S. citizens. Such overly invasive data collection fuels mass surveillance and allows for administrative data to be repurposed to target and deport even individuals with lawful status.

Combining and repurposing federal administrative data for federal immigration enforcement also comes with the risks of incorrect identifications or matches due to incomplete or poor data quality. When large datasets are combined without appropriate measures to ensure the completeness, accessibility, and quality of data sources, the overall utility and accuracy of the combined dataset is significantly diminished and can often lead to harmful outcomes like the misidentification of individuals targeted for deportation.

Furthermore, research on the chilling effect created by anti-immigrant policies have consistently shown how immigration-related concerns related to sharing information with government agencies can lead to unnecessary and deeply harmful reluctance to engage with government

⁷ National Immigrant Justice Center. *Policy Brief | Snapshot of ICE Detention: Inhumane Conditions and Alarming Expansion*. September 20, 2024.

<https://immigrantjustice.org/research-items/policy-brief-snapshot-ice-detention-inhumane-conditions-and-alarming-expansion>.

⁸ Harvard University Center on the Developing Child, Key Concepts: Toxic Stress, <https://developingchild.harvard.edu/science/key-concepts/toxic-stress/>; National Scientific Council on the Developing Child, Persistent Fear and Anxiety; Jack P. Shonkoff, Andrew S. Garner, et al. “The Lifelong Effects of Early Childhood Adversity and Toxic Stress,” *Pediatrics* 129 (2012)

agencies, leading children—including U.S. citizen children—to lose access to critical programs that support their healthy development.⁹

Conclusion

Given the grave implications at hand, ORR should have afforded stakeholders like CLASP proper time to respond and weigh in on this rule before it went into effect. Instead, this rule went into effect immediately and has likely already caused great harm to children and their families, despite ORR’s mandate to care for children first and foremost. Rather than roll back protections, ORR should be focused on strengthening and expanding services to children and working to ensure that vulnerable children and their sponsors are supported throughout the immigration process. There is never an appropriate reason to detain children for extended periods of time and rob them of their basic needs. Every child who comes into the custody of our government should be guaranteed protection and services to mitigate trauma and promote their healthy development.

We urge ORR to rescind this Rule and maintain the protections that were previously in place to safeguard the information of children and their sponsors and enable children’s release without unnecessary delay. Children deserve to live safely with their families and in community, not in fear that they and their loved ones will be detained and deported.

If you have any additional questions about our comment, please reach out to Priya Pandey (ppandey@clasp.org).

⁹ Roche, Kathleen M., Rebecca M. Vera Cruz, Elizabeth Vaquera, and María Ivonne Rivera. “Impacts of Immigration Actions and News and the Psychological Distress of U.S. Latino Parents Raising Adolescents.” *The Journal of Adolescent Health* 62, no. 5 (2018): 525–531. <https://doi.org/10.1016/j.jadohealth.2018.01.004>; Twersky, S.E. Do state laws reduce uptake of Medicaid/CHIP by U.S. citizen children in immigrant families: evaluating evidence for a chilling effect. *Int J Equity Health* 21, 50 (2022). <https://doi.org/10.1186/s12939-022-01651-2>