



Submitted via e-mail to [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov)

Administration for Children and Families  
Office of Planning, Research, and Evaluation (OPRE)  
330 C Street SW, Washington, DC 20201  
Attn: Mary B. Jones, ACF/OPRE Certifying Officer

August 19, 2024

PHOENIX OFFICE  
P.O. Box 32670  
Phoenix, AZ 85064  
Tel: 602-307-1008  
Fax: 602-340-0596

**RE: ORR Proposed Information Collection Activity, 89 F.R. 118;  
Comments on Proposed Information Collection Activity; Legal  
Advocacy Services for Unaccompanied Children (OMB #0970–0565)**

TUCSON OFFICE  
P.O. Box 86299  
Tucson, AZ 85754  
Tel: 520-777-5600  
Fax: 520-829-4154

Dear Ms. Jones,

The Florence Immigrant and Refugee Rights Project (Florence Project) is grateful for the opportunity to provide ACF with feedback regarding the above-referenced proposed information collection activity entitled “Legal Advocacy Services for Unaccompanied Children (OMB #0970–0565),” published on June 18, 2024, by ORR.

As the legal services provider (LSP) in ORR shelters in Arizona, we write to express concerns about the proposed Recommended States List Form (L-11) (hereafter “Proposed RSL Form”). As an LSP, we are required to complete the Proposed RSL Form to recommend states for potential LTFC placement of children at the shelters we serve. We urge ORR to rescind the Recommended States List Process and withdraw in its entirety the Proposed Form as detailed in ORR Policy Guide Sections 1.2.6 Long-Term Foster Care and 1.4.4 Transfer to Long-Term Foster Care. Please see a full explanation of our concerns below.

**I. The Florence Project Is Well-Positioned to Offer Meaningful  
Feedback on the Many Harms of This Form**

The Florence Project is a 501(c)(3) non-profit organization that provides free legal and social services to the thousands of adults and children detained in immigration custody in Arizona on any given day. The Florence Project was founded in 1989 to provide free legal services to asylum seekers and other migrants in a remote immigration detention center in Florence, Arizona where people had no meaningful access to counsel. We have expanded significantly since that time and now provide

free legal and social services to thousands of detained adults and unaccompanied children throughout Arizona. This includes decades of providing services specifically to unaccompanied minors in ORR shelters and in Long-Term Foster Care.

In 2023, about 5,000 adults and unaccompanied children were detained and faced removal in Arizona on any given day. That year, we provided "Know Your Rights" presentations to 17,514 unaccompanied children and direct representation to 1,091 children. We provided direct representation services to about 216 adults in ICE custody and our team at the U.S.-Mexico border provided 6,930 people with legal orientations and consultations, and other services. As the only 501(c)(3) non-profit organization in Arizona dedicated to providing free legal and social services to people in immigration detention, our vision is to ensure that every person facing removal proceedings has access to counsel, understands their rights under the law, and is treated fairly and humanely.

**II. Because we are concerned that the Proposed RSL Form requires attorneys to engage in unauthorized practice of law, spend *hundreds* of hours engaged in inefficiency, and form unnecessary attorney-client relationships, we urge ORR to rescind the Recommended States List Process and Proposed Form In Their Entirety.**

As a legal service provider with a robust program serving thousands of unaccompanied children each year who are placed with ORR in Arizona, we have grave concerns about the use of the Proposed RSL Form to recommend LTFC placement for eligible children. This form, in both its current and proposed iterations, not only poses logistical challenges, but also raises critical ethical dilemmas that could potentially result in professional discipline for attorneys. For these reasons, we propose adopting a procedure for LTFC placement much more similar to that which existed prior to enactment of ORR Field Guidance 18 that would allow legal service providers associated with the receiving LTFC placement to employ their own expertise in determining whether a child was eligible for relief in the location in which they are licensed and ethically competent to practice. Should ORR revert to the guidance in effect before ORR Field Guidance 18 implemented the RSL process, we strongly recommend that

ORR remove the disclosure of legal relief required in the prior Good Faith Letter process, as it is unnecessary and a potential breach of confidentiality.

Under the RSL system, including the Proposed Form, legal service providers are required to meet with children to discuss the Proposed RSL Form within the first 10 business days of receiving a request from the ORR care provider, and then must submit the completed RSL Form within 14 calendar days. The Proposed RSL Form is meant to give children more agency and ensure they can take an active part in their own placement decision. While we appreciate enactment of policies that empower children, the current proposal has severe limitations that undermine the intent behind this new policy, and unintended consequences that harm the attorney/client relationship and a legal service provider's ability to serve children effectively.

**A. The Proposed RSL Form requires attorneys to engage in the unauthorized practice of law.**

First, the current RSL process and the Proposed Form requires legal service providers to assess whether a child will be eligible for relief in another state and discuss the same with a child. This is ethically problematic and unfeasible. Each state promulgates rules for the practice of law in their state, and, generally, an attorney must have permission to practice law in any given state, usually achieved by holding a license to practice law in that state. Advising an individual on how the laws of another state would apply to their case creates a system wherein attorneys are pushed to engage in unauthorized practice of law (UPL) and exposes attorneys to potential discipline.

This is particularly relevant when discussing whether a minor is eligible to receive Special Immigrant Juvenile Status (SIJS). To receive SIJS, a minor must obtain a predicate order from a state court determining that they meet certain criteria. However, each state has different laws governing this procedure, resulting in some children being eligible in one state but not another. Where attorneys advise a minor on how the laws of another jurisdiction would apply to their case, in many cases, they would be deemed to be practicing law in that other jurisdiction; without being licensed in that jurisdiction, or in the absence of other legal authority to do this, an attorney would be conducting UPL. Although the Proposed RSL Form avers that it does not constitute legal advice, the process itself entails researching and applying state law to a specific set of facts, which is the

quintessential act of providing legal advice, and belies the Form's disclaimer. Indeed, the Florence Project has been advised by our own ethics counsel that such a disclaimer is not adequate and cannot be utilized as a protection from a charge of UPL.

While it is unclear whether some states may permit this on a limited basis, others flatly do not, while some others may allow it only contingent on consultation with a licensed attorney in the other state. In practical terms, this would require attorneys to undertake, for each minor, a detailed ethical analysis regarding which states would permit them to offer advice, and then, whether they would need to consult with a licensed attorney practicing in that state. Any competent attorney would exercise caution and decline to offer advice about any state laws except those which they were certain would not run afoul of ethical rules regarding UPL.

Attorneys can advise on federal law, such as a potential asylum case in a different state. However, the attorney may still need to invest time researching the asylum law in different circuits, since the states in which some of the LTFC programs are located are in different circuits, as well as potential consequences of criminal convictions in other states. Although an attorney may not run afoul of UPL prohibitions by advising on asylum law, they still would need to invest time researching the asylum law in every circuit in which a state with an LTFC program is located, if the identified form of relief were asylum. **A more efficient and ethically sound process would have an attorney who practices in the state and circuit in question and has more familiarity with that state's SIJS laws and that circuit's asylum law assess the minor's case for viability in their jurisdiction and be competently able to advise the minor as to their legal options.**

**B. By requiring the referring attorney to understand the law of every jurisdiction instead of requiring the receiving attorney to know only local law, the current RSL process and Proposed RSL Form is deeply inefficient.**

The time spent trying to comply with the current RSL process and Proposed RSL Form requires attorneys to meet with children in shelters, and then contact legal service providers in any state that they would intend to put on the list (if the identified relief is SIJS) to verify that SIJS would be viable in that jurisdiction.

Additionally, the attorney's ethical duty of competency would almost certainly dictate a best practice of consulting a licensed attorney from other states, since not only do state laws change constantly, but the circumstances in which they are applied and enforced can also differ between localities. This would have the effect of precluding attorneys from recommending placement in some states altogether, despite a child's actual options for legal relief in those states. For others, it would entail a time-consuming exercise of numerous email exchanges and phone calls with out-of-state legal service providers and follow-up meetings with minors that would be unlikely to be completed within the deadlines outlined by ORR.

The time invested in attempting to complete the RSL process, including Proposed RSL Form, verifying whether relief is viable in another jurisdiction, and adequately and meaningfully counseling minors is taking time from vital services such as working on the cases of represented clients.

Instead of putting the onus on practitioners in the referring jurisdiction to identify other states where the minor may be eligible for relief, ORR should maintain its prior practice whereby licensed attorneys in the receiving jurisdiction assess a child's eligibility for relief in that jurisdiction before accepting placement of the child in that jurisdiction.

**C. The Current RSL Form and Proposed RSL Form require LSPs to provide legal advice and form an attorney-client relationship, which entails risk of malpractice and causes confusion for vulnerable children.**

The current RSL form and Proposed RSL Form must be completed for clients and non-clients alike. However, to complete the form correctly, the child must be advised about the application of law to the specific facts of that child's case. The attorney must consult a child about potential legal relief based on the child's circumstances, likely coordinating with counsel in other jurisdictions, and finally completing and filing a form with a government agency advocating for this minor's preferences. Best practices dictate finalizing a retainer to establish the rules and expectations of the attorney-client relationship.

Notwithstanding the ethical issues raised above, this process creates logistical challenges that would fundamentally alter the scope of our

practice in ways that have not historically been contemplated. As noted above, in 2022, over 14,000 unaccompanied minors received some form of services from the Florence Project; in 2023, this number was much closer to 18,000. If even only a fraction of those minors who received services also required completion of the Proposed RSL Form, which would realistically take multiple hours to complete, the time dedicated to completing this process would number in the thousands, if not tens of thousands, of hours. This would necessarily require a shift in the limited resources of most legal service organizations and could result not only in fewer resources available to prospective clients, but also, fewer resources available for already existing clients, which carries with it ethical risks of its own.

This stands in contrast to the practice before ORR Field Guidance 18, currently documented on the ORR Policy Guide at section 1.4.4 Transfer to Long-Term Foster Care, wherein attorneys were responsible only for determining whether a referred child was likely eligible for legal relief within their own jurisdiction. Under this process, legal service providers in prospective receiving jurisdictions exercised a gatekeeping function by reviewing LTFC placement candidates and determining whether each would be eligible for relief in their own jurisdiction. This had many benefits. It avoided any potential for attorneys to exercise UPL, because they were not required to advise on the laws of any other state but their own. Additionally, because the child's decision was simply whether they wished to be placed in LTFC or remain in their current placement, no legal advice was required to be given to minors, which allowed non-lawyers to have these discussions. This made it less likely that a minor would incorrectly assume that an attorney-client relationship had been formed, and also safeguarded the limited attorney resources of the organization. Moreover, because the receiving legal service provider could determine eligibility for relief for prospective minors, it improved the likelihood that a minor could actually obtain this relief. This important step was eliminated under ORR Field Guidance 18 and its subsequent incorporation into the ORR Policy Guide and remains absent in the current RSL process and Proposed RSL Form process. In contrast, the proposed process asks attorneys to make judgments on the potential relief a child might have based on the laws of jurisdictions in which they do not practice, only increasing the likelihood that a minor is placed in an LTFC in a state where the minor is not eligible for legal relief.

### III. Conclusion

For the above reasons, we ask that current RSL Process be rescinded and the Proposed RSL Form not be implemented. Instead, we ask that that a process be put in place that more closely resembles the paradigm that existed prior to enactment of Field Guidance 18. We appreciate ORR's efforts to incorporate a child's wishes into the referral process and note that additional mechanisms could be introduced to more fully empower minors to make decisions on their own cases. These could include seeking their input on their geographic preferences in order to be closer to family or friends. As noted above, we believe that when determining which state or states would provide the best possibility of a positive legal outcome, that the people best placed to make that judgment are the legal service providers that practice in each state.

Submitted on behalf of the Florence Immigrant & Refugee Rights Project  
on August 19, 2024, by

*Laura Belous*

---

Laura Belous, Esq.

Florence Immigrant & Refugee Rights Project