



August 19, 2024

Submitted via infocollection@acf.hhs.gov

Toby Biswas
Director of Policy, Unaccompanied Children Program
Office of Refugee Resettlement
Administration for Children and Families
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: Proposed Information Collection Activity; Legal and Advocacy Services for Unaccompanied Children (Office of Management and Budget #0970-0565)

Dear Mr. Biswas,

Immigrant Defenders Law Center (“ImmDef”) submits these comments in response to the Administration for Children’s and Family’s (“ACF”) Proposed Information Collection Activity; Legal and Advocacy Services for Unaccompanied Children (Office of Management and Budget #0970-0565).

ImmDef is a non-profit 501(c)(3) law firm and a Legal Service Provider (“LSP”) at nearly twenty ORR facilities in the greater Los Angeles area, including shelters, transitional foster care, and long-term foster care facilities. We are also the LSP for the lone Unaccompanied Refugee Minor (“URM”) program in Southern California. Additionally, we were the LSP at both Pomona and Long Beach Emergency Intake Sites (“EIS”) when those facilities were operational in 2021, and have represented multiple children placed at Out of Network (“OON”) facilities in the region. We also represent hundreds of children released from ORR custody to sponsors in our service area every year.

Since our founding in 2015, we have developed a wealth of relevant experience representing both children in the care of ORR and those who have been released to sponsors in the community. In total, we have provided legal services to over 20,000 unaccompanied children. We also have extensive experience working alongside relevant stakeholders, such as Federal Field Specialists (“FFS”) and other ORR officials, ORR subcontracted care-provider staff, Child Advocates, community organizations, Immigration and Customs Enforcement Juvenile Coordinators (“FOJC”), the Office of the Principal Legal Advisor (“OPLA”), and the Executive Office for Immigration Review (“EOIR”).

ImmDef writes below in response to ACF's request for public comment on the instant Proposed Information Collection.

First, ImmDef commends ORR for replacing the acronym "UC" with "child" throughout the forms included in this Proposed Information Collection. Language matters, and ImmDef appreciates ORR taking the opportunity to replace a potentially dehumanizing acronym with a word that will remind all participants in ORR processes that we are dealing with *children*. ImmDef writes with additional comments regarding certain specific proposed New Forms and proposed Revisions below.

A. New Forms

a. Case Status Summary for Executive Office for Immigration Review (Form L-9)

Principles of due process and Executive Office for Immigration Review ("EOIR") policy typically limit filings to those submitted by parties (the Respondent and the Department of Homeland Security), or the Respondent's practitioner of record. *See* Executive Office for Immigration Review, *Immigration Court Practice Manual*, Ch. 5.1, available at [https://www.justice.gov/eoir/reference-materials/ic/chapter-5/1#:~:text=\(c\)%20Persons%20not%20Party%20to,Falls%20Church%2C%20VA%2022041](https://www.justice.gov/eoir/reference-materials/ic/chapter-5/1#:~:text=(c)%20Persons%20not%20Party%20to,Falls%20Church%2C%20VA%2022041).

It should be noted that detained children are often unrepresented and therefore unable to meaningfully object to irrelevant or prejudicial information submitted by third parties. Therefore, any submissions by a non-party should be extremely limited in scope to protect these children's due process rights. If, despite these considerations, ORR finalizes Form L-9 for use, ImmDef appreciates that the form is limited in scope, and encourages ORR promulgate policy to disallow the annotation of the form with additional information, or the attachment of additional documents. To further protect child respondents, ORR should note on the form that it is not to be used for evidentiary purposes.

ImmDef further encourages ORR to include brief filing instructions on the form itself to ensure that relevant stakeholders are aware of the purpose and proper use of the Form. In light of the foregoing, ImmDef recommends that Form L-9 be amended to include introductory text as follows:

"Instructions: This form should be completed by the Federal Field Specialist (FFS) or care provider and sent to the Executive Office for Immigration Review ("EOIR") in advance of a child's immigration court hearing. A copy of the form shall also be shared with the child's legal service provider or attorney of record and child advocate (if applicable). The submission of this form shall not be considered evidence in the child's removal proceedings, and is being submitted for informational purposes related to the child's custody status only."

ImmDef commends ORR for noting, in the introductory text to the Proposed Information Collection, that the form (if implemented) should be provided to the child's LSP in advance of or in conjunction with any submission. ImmDef recommends that ORR promulgate policy requiring that the FFS and local LSP come to a written agreement determining the method by which the

form should be shared, and outlining the steps an LSP can take to request a copy on an expedited basis if one is not provided.

B. Revisions to Existing Forms

a. Request for Specific Consent to Juvenile Court Jurisdiction (Form L-1)

First, ImmDef recommends some revisions to the introductory text of the form. While it will typically be attorneys of record on legal service providers who seek Specific Consent on behalf of a child, the regulatory text at 45 C.F.R. § 410.1209(c) anticipates that it may be “attorneys or others acting on behalf of an unaccompanied child” who would request Specific Consent. For clarity, ImmDef recommends that the introductory text be amended as follows

*“This form is required for attorneys of record **[add] or others acting on behalf of an unaccompanied child** who are seeking specific consent from the Office of Refugee Resettlement (ORR) in cases where they are a) seeking Special Immigrant Juvenile legal relief for the unaccompanied child **and** b) also seeking to invoke the jurisdiction of a state court to determine or alter the child’s custody status or placement. Please submit a completed copy of this form and supporting documents to UCHearings@acf.hhs.gov.”*

Additionally, ImmDef notes that Specific Consent is only relevant to scheduled State or Juvenile court hearings, never Immigration Court hearings. Therefore, ImmDef recommends that the relevant language at Section A: Child Information be amended as follows:

*“Scheduled State or ~~Immigration~~ **Juvenile** Court Hearing Relevant to Request.”*

Furthermore, ImmDef has two recommendations regarding Section C: Request for Specific Consent and Signature. First, there is a typo at the third checkbox. It should read “Check ~~is~~ **if** applicable.” Second, ImmDef notes that different states use different words to describe an individual or entity granted legal custody of a child. Therefore, ImmDef recommends against using the word “guardian” in Section C, and suggests the following revision:

*“Name of Intended ~~Guardian~~ **Individual or Entity to be Granted Custody**.”*

Finally, ImmDef notes that requests for Specific Consent are time-sensitive. While the language at “Section D: Next Steps” regarding a 60-day timeline is in keeping with the new Foundational Rule at 45 C.F.R. § 410.1209(f), ImmDef takes this opportunity to reiterate that a 60-day timeline will leave many children with an urgent legal need unprotected.

b. Specific Consent Request Case Summary (Form L-2)

ImmDef notes grammatical errors at “Section B: Child Case Information”. The language at both items 1) and 2) should read:

*“If the child ~~was~~ **were** released from ORR custody into the new custody situation, would there be any risk to...”*

Further, and more urgently, ImmDef is concerned that Item 3 (regarding escape risk) on Page 2 is inappropriately included in the form. 45 C.F.R. § 410.1209(e) directs ORR to consider only whether “ORR custody is required to: 1) ensure the child’s safety; or 2) ensure the safety of

the community.” 45 C.F.R. § 410.1209(e). Further, in the Comments to the Foundational Rule, ORR indicated: “[a]s ORR does not consider runaway risk for purposes of release, it does not intend to do so here for purposes of adjudicating specific consent requests.” *See* Discussion of Elements of the Proposed Rule, 88 Fed. Reg. 68908, 68915 (Oct. 4, 2023). Thus, including escape risk in Form L-2 is *ultra vires* and inconsistent with the Regulations. ImmDef therefore recommends removing Item 3 on Page 2 from Proposed Form L-2.

Furthermore, ImmDef is concerned that Form L-2 places an undue focus on a child’s “behavior” “functioning” and “psychosocial history,” in such a way that it could encourage FFS to inappropriately withhold Specific Consent as a way to punish a child for behaviors that may be related to trauma or detention fatigue, causing a vicious cycle (the child is engaging in behaviors due to detention fatigue, and as a result, their detention is prolonged). Because, as noted above, the regulatory text at 45 C.F.R. § 410.1209(e) directs ORR to consider only whether “ORR custody is required to: 1) Ensure a child’s safety; or 2) Ensure the safety of the community” the form should be revised to collect information that is relevant only to those two factors, which are listed at Questions 1 and 2 on Page 1. Information regarding the child’s “behavior,” “functioning” and “criminal background” are overly broad and do not necessarily go to whether prolonged ORR custody is required to ensure the child’s or the community’s safety. Therefore, Items 4-6 on Page 2 should be removed. If ORR elects to retain these questions, it should also require FFS to include any facts that tend to indicate that *release* from ORR custody might mitigate any of the “behavior.”

For the foregoing reasons, ImmDef also recommends editing the text at Section C: FFS Recommendation, as follows:

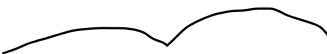
Provide a recommendation whether to grant or deny specific consent to the jurisdiction of the state court based on the summary of the ~~child’s functioning, behavior and psychosocial history~~ and the following factors:

- *If release of the child resents a risk to self **[add] or** the community; ~~or there be any flight risk.~~*
- *If the child has a viable sponsor who is fully vetted, and the reunification is in the best interests of the child.*

C. Conclusion

ImmDef thanks ACF for the opportunity to comment on the Proposed Information Collection Activity. Should you have any questions or require any additional information related to our comments, please do not hesitate to reach out to Legal Services Director Marion (“Mickey”) Donovan-Kaloust at mickey@immdef.org.

Sincerely,



Marion Donovan-Kaloust, Legal Services Director
Immigrant Defenders Law Center