

June 26, 2025

*Submitted electronically via [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain)*

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

**RE: ORR Proposed Information Collection Activity, 89 FR 921; Incident Reporting Forms (OMB #0970–NEW).**

Dear Ms. Jones,

The Young Center for Immigrant Children's Rights (Young Center) is concerned about the recently proposed information collection activity entitled, "Incident Reporting Forms (OMB #0970–NEW)."

On April 24, 2025, ORR published a notice of proposed information collection related to a series of incident reporting forms. According to ORR, the purpose of the information collection is to ensure that serious issues are elevated to ORR and that all incidents, and responses to such incidents, are documented and resolved in a way that protects children's best interests. When evaluating a child's best interests, ORR considers a non-exhaustive list of factors, including the child's: expressed wishes; mental and physical health; family relationships and interactions; adjustment to the community; cultural background and primary language; stability; individualized needs; development and identity.<sup>1</sup>

ORR proposes revisions to the Non-Emergency Significant Incident Report (Form A-9C, hereinafter "Non-Emergency SIR Form") that the agency claims will "better align the forms with related reporting requirements and processes found in ORR agency guidance (i.e., regulations, policies, and procedures), as well as improve the forms' organization, clarity, and functionality."<sup>2</sup> However, we are concerned that the impact of the proposed change will counter ORR's stated intent and undermine children's best interests.

ORR care providers (Case Managers and Clinicians) use the Non-Emergency SIR to report "situations that may immediately affect the safety and well-being of a child, or observations that may affect how a care provider can best meet a child's needs while in care." Among the

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<sup>1</sup> 45 CFR 410.1001 "Best interest", ORR Unaccompanied Alien Children Bureau Policy Guide: Guide to Terms, <https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-guide-terms#bestinterest>

<sup>2</sup> Submission for Office of Management and Budget Review; Unaccompanied Alien Children Bureau Incident Reporting, (Mar. 27, 2025), <https://www.federalregister.gov/d/2025-09375>.

categories of incidents reported on the Non-Emergency SIR Form are “External Threats to (the child).” Prior to this proposed information collection – which went into immediate effect – ORR care providers used the form to document disclosures of the following four subcategories of “external threats:” a) Actual or potential fraud schemes; b) Sex trafficking concerns or risk identified; c) Labor trafficking concern or risk identified; and d) Threats related to crime or organized crime.

ORR now proposes to add a fifth subcategory: “Gang affiliation reported.” ORR provides no justification for why a fifth subcategory is necessary or how care providers should distinguish gang-related threats from threats related to trafficking or organized crime. We oppose the proposed change, which is redundant, unnecessary and would undermine care providers’ ability to accurately address threats to children’s safety.

**I. ORR’s proposed changes to the Non-Emergency Significant Incident Report would cause unnecessary confusion, redundancies and inefficiencies, in violation of the Paperwork Reduction Act.**

The proposal to add a new “gang affiliation reported” subcategory to the Non-Emergency SIR form would be confusing, redundant, and inefficient, contrary to the Paperwork Reduction Act (PRA).<sup>3</sup> The Paperwork Reduction Act requires the federal government to ensure that the collection, use and dissemination of information results in minimum “paperwork burden” and maximum public benefit and utility. The changes ORR proposes to this form do not align with the PRA’s standards.

ORR Case Managers and Clinicians typically document children’s disclosures of gang encounters under the subcategory, “Threats related to crime or organized crime.” The term ‘gang’ is generally understood to be synonymous with ‘criminal organization.’<sup>4</sup> While some gangs operate overtly and may differ from criminal organizations that rely on secrecy and clandestine control, for ORR care providers documenting disclosures made by children targeted by such groups, the distinction is inconsequential. ORR provides no justification for creating a separate category for threats related to “gang affiliation.” Without clarity about this subcategory, and how it differs from the subcategory of “threats related to crime or organized crime,” the proposed addition is redundant and potentially confusing to staff.

For instance, in an initial intake interview with their Case Manager, a child’s decontextualized disclosures of gang involvement may be recorded under the “gang affiliation” subcategory, even though their involvement was the result of threats and coercion. Later, a Clinician hearing more

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<sup>3</sup> 44 USC § 3501 et. seq.

<sup>4</sup> “Gang: an organized group of criminals.” Oxford Advanced Learner’s Dictionary, [https://www.oxfordlearnersdictionaries.com/us/definition/english/gang\\_1](https://www.oxfordlearnersdictionaries.com/us/definition/english/gang_1); “Gangs are associations of three or more individuals who adopt a group identity (and whose) primary purpose is to engage in criminal activity and which uses violence or intimidation to further its criminal objectives.” *Violent Gangs*, Department of Justice Criminal Division, (Nov. 15, 2023), <https://www.justice.gov/criminal/criminal-vcrs/about-violent-gangs>

details may record the same gang interactions as “labor trafficking” or “threats related to organized crime.” While both disclosures should prompt ORR care providers to pursue therapeutic supports for the child, the “gang affiliation” label is likely to elicit unfavorable judgement and biased treatment of the child, undermining the purpose of the information collection.

ORR projects an increase in the number of care providers that would use the form, meaning a greater number of care providers are likely to be confused by this opaque and redundant added subcategory.

## **II. The proposed subcategory on “gang affiliation reported” lacks context and could lead to misrepresentation of children’s experience with gangs, including their victimization by them.**

Gangs prey on vulnerable people and, as some of the most vulnerable members of society, children are often targets. The tactics that gangs use to coerce, lure, or groom children into affiliating with their criminal organizations are well documented.<sup>5</sup> Children who refuse to comply with gang instructions are often threatened with varying forms of harm to themselves and their loved ones. The ‘voluntariness’ of a child’s acquiescence is therefore relative.<sup>6</sup>

Our experience as the independent Child Advocate for children in ORR custody confirms that these tactics continue to impact unaccompanied and separated children. We have been appointed to many children with histories of coercion and exploitation by gangs and other organized criminal groups. ORR staff often refer children for child advocates if they disclose past experiences with gangs. After building trust and understanding with their child advocates, children in these situations often report being persecuted and coerced into performing tasks for gang members.

For these reasons, we believe that the additional subcategory on “gang affiliation reported” could misrepresent a child’s experience and improperly deny them access to appropriate services, placement or the relief from removal for which they are legally eligible. The new subcategory makes the distinction between willful criminal participation in gang activity and victimization by

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<sup>5</sup> “Young people often trust, respect and wish to emulate these older peers or adults. This renders them unaware or unwilling to accept that their ‘role models’ use overt coercion or subtle forms of manipulation to threaten, force or persuade them into become runners or committing any form of crime.” Maxwell, N. (2024). ‘Shove that. There’s always hope’: young people’s lived experience of child criminal exploitation. *Journal of Youth Studies*, 1–17, 1. <https://doi.org/10.1080/13676261.2024.2397025>; *Changing Course: Keeping Kids Out of Gangs*, National Institute of Justice, NIJ Journal, Issue No. 273 (Mar. 2014) <https://www.ojp.gov/pdffiles1/nij/244146.pdf>; *Gangs and Human Trafficking*, National Gang Center, Office of Justice Programs (Jan. 31, 2020), <https://nationalgangcenter.ojp.gov/insights/47/gangs-and-human-trafficking>.

<sup>6</sup> K. Soltis and M. Taylor Diaz, ‘Ganged Up On: How the US immigration system penalizes and fails to protect Central American minors who are trafficked for criminal activity by gangs’, *Anti-Trafficking Review*, issue 16, 2021, pp. 104-122; *Gangs, Violence and Victims*, 2011.

gangs unclear. Staff receiving a child's file may see the subcategory "gang activity" checked on the form, but not see, understand, or appropriately contextualize the child's vulnerability to exploitation and victimization and eligibility for services or protection.

The proposed "gang affiliation" subcategory is overbroad and confusing because it fails to distinguish "affiliation" from trafficking, exploitation and coercion by organized criminal entities and ignores the power dynamics at play in gang exploitation. This opens the door for incorrect and prejudicial attributions of criminality and culpability onto children by ORR, its care providers, and anyone else with access to these forms. For these reasons, the subcategory would be removed

**III. There is an additional risk to children's safety and permanency if forms that improperly indicate "gang affiliation" are shared with law enforcement agencies who use that incorrect information against the child.**

Because the proposed forms seek sensitive information that could be used by government agencies against the child, it is critical that ORR ensure that the information documented and recorded in the forms is accurate and kept confidential, and is not shared with third parties, including federal agencies such as DHS and DOJ who may use the information in ways that are adverse to children's best interests.

Children who disclose a history of gang coercion, exploitation and threats of harm should be supported with mental healthcare, legal, and material support to prevent further exploitation. Yet without contextualization, the indication of "gang affiliation" on the form could be used against the child's best interests both in placement decisions and in their legal claims for protection. This concern is not without precedent. In the past, ORR's collection of information about children's 'prior bad acts' has led to children being placed in secure settings or being denied release to sponsors or programs based on the perception that they might pose a danger to the community.<sup>7</sup> Adding this subcategory to the form increases the risk that incorrect allegations of so-called bad acts—in this case, "gang affiliation" that in fact was a child's experience of trafficking, persecution or coercion—is shared with a law enforcement entity, jeopardizing their legal claims and risk their safety.

**IV. In keeping with federal law, any information collected in the proposed forms should be kept confidential and not shared with other agencies without the child's voluntary and informed consent.**

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<sup>7</sup> Young Center for Immigrant Children's Rights and National Immigrant Justice Center, *Punishing Trauma*, pg. 7, Sep. 2022, <https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2022-09/Punishing-Trauma-Overhaul-SIRs-Report-Sept-2022.pdf>

ORR has an obligation under the Unaccompanied Child Program Foundational Rule and Privacy Act to protect and keep private children's information, particularly when disclosure of that information could be used against the children.<sup>8</sup> Policies regarding the collection of children's information require scrutiny and advance planning.

Protections for children's confidential information are already enshrined in many state and federal laws across a range of issues. For instance, in California, all children, whether citizen or non-citizen, are entitled to the protection of any information or files arising out of dependency and delinquency proceedings; these cannot be disclosed to federal officials, including immigration officials, without the juvenile court's permission.<sup>9</sup>

In fact, disclosing perceived "gang affiliation" to law enforcement agencies would place children as young as 14 years old at risk of disappearance to maximum security prisons in third countries without due process, pursuant to<sup>10</sup> While the administration's inappropriate use of the Alien Enemies Act is being litigated, the threat of incrimination for children is present,<sup>11</sup>

We urge ORR to eliminate information-sharing with DHS and DOJ through this form and other mechanisms, and instead adopt policies to protect children's information in all personal records, including disclosures to case managers, clinicians, and any other ORR or provider staff, from DHS' access. Only a clear firewall between the agencies that prosecute and the agencies that care for children comports with ORR's role and mission to care for and serve the best interests of children in its custody.

## V. Conclusion

Children's disclosures of gang-related threats are already captured on the Non-Emergency SIR Form under response subcategory, "Threats of harm by organized crime." Adding a subcategory that duplicates or is encapsulated by an existing category runs afoul of the Paperwork Reduction Act, risks misrepresenting children's experiences in ways that deny access to services and

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<sup>8</sup> 45 C.F.R. § 410.1201(b); *see also* Office of Refugee Resettlement, Privacy Act of 1974, System of Records, 89 Fed. Reg. 96250, <https://www.federalregister.gov/documents/2024/12/04/2024-28382/privacy-act-of-1974-system-of-records>.

<sup>9</sup> Immigrant Legal Resource Center, *Confidentiality of Juvenile Records in California: Guidance for Immigration Practitioners in Light of California's New Confidentiality Law*, (2016), [https://www.ilrc.org/sites/default/files/resources/confidentiality\\_of\\_juvenile\\_records\\_advisory\\_ilrc\\_4.21.16\\_final.pdf](https://www.ilrc.org/sites/default/files/resources/confidentiality_of_juvenile_records_advisory_ilrc_4.21.16_final.pdf)

<sup>10</sup> Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua, Mar. 15, 2025, <https://www.whitehouse.gov/presidential-actions/2025/03/invocation-of-the-alien-enemies-act-regarding-the-invasion-of-the-united-states-by-tren-de-aragua/>

<sup>11</sup> Young Center for Immigrant Children's Rights, *Anti-Child and Anti-Family: How the Trump Administration is Targeting the Most Vulnerable Among Us*, [https://www.theyoungcenter.org/wp-content/uploads/2025/06/FINAL\\_Anti-Child-and-Anti-Family\\_2025-Explainer\\_Letterhead.pdf](https://www.theyoungcenter.org/wp-content/uploads/2025/06/FINAL_Anti-Child-and-Anti-Family_2025-Explainer_Letterhead.pdf)

undermine their ability to seek safety and protection from removal, and does nothing to advance ORR's goal of addressing children's protection needs.

While we urge ORR to remove this proposed addition to the Non-Emergency SIR Form, ORR should nevertheless safeguard all information collected about children's prior acts and should not share this information with third parties, absent each child's fully informed consent, except with the child's counsel and independent Child Advocate.

Thank you for your consideration.

Respectfully,

Young Center for Immigrant Children's Rights

A handwritten signature in black ink, appearing to read "Ahutchful", written in a cursive style.

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