



Office of the General Counsel

3211 FOURTH STREET NE • WASHINGTON DC 20017-1194 • 202-541-3300 • FAX 202-541-3337

September 22, 2020

Administration for Children and Families
Office of Planning, Research and Evaluation (OPRE)
330 C Street SW
Washington, DC 20201

-Submitted Electronically-

Re: “Expedited OMB Review and Public Comment; Proposed Information Collection Activity; Release of Unaccompanied Alien Children from ORR Custody” Docket No. 2020-16053

Dear ACF Reports Clearance Officer,

The United States Conference of Catholic Bishops Migration and Refugee Services (“USCCB/MRS”) appreciates the opportunity to provide public comment and share our concerns with the Department of Health and Human Services, Office of Refugee Resettlement (“HHS/ORR”) regarding the above referenced Proposed Information Collection Activity within the Unaccompanied Alien Children Program, published in the Federal Register on July 24, 2020 (85 Fed. Reg. 44,895).¹

USCCB is a nonprofit organization whose members are the active Catholic Bishops of the United States. USCCB advocates and promotes the pastoral teachings of the U.S. Catholic Bishops in diverse areas of the nation’s life. MRS, a USCCB Department, has operated programs working in collaboration with the U.S. government to help protect unaccompanied children from all over the world for nearly 40 years. Since 1994, USCCB/MRS has operated the “Safe Passages” program, serving undocumented children apprehended by the Department of Homeland Security (“DHS”) and placed in the custody of the HHS/ORR. Through cooperative agreements with HHS/ORR and in collaboration with primarily Catholic community-based social services agencies, the Safe Passages program provides residential care (foster care and small-scale shelter placements) to unaccompanied children in HHS/ORR custody, as well as family reunification services (pre-release placement screening (“home studies”) and post-release social services for families (“post-release services” or “PRS”). In fiscal year 2019, the

¹ Expedited OMB Review and Public Comment; Proposed Information Collection Activity; Services Provided to Unaccompanied Alien Children, 85 Fed. Reg. 44,895 (July 24, 2020).

USCCB/MRS Safe Passages program served 1,982 youth who arrived as unaccompanied children—1,520 through the family reunification program and 462 through residential care programs.

Additionally, the U.S. Catholic Church has long worked to support families who have experienced some aspect of immigrant detention, through the provision of legal orientation and assistance, visitation, and pastoral accompaniment to those in immigrant detention facilities, as well as social services assistance to released detainees and their families. USCCB/MRS has also operated several alternatives to detention programs in partnership with DHS to assist families and other vulnerable populations and is currently working with DHS in the administration of its alternatives to detention programs utilizing case management.² Through all this work, the vital necessity and importance of the protections set forth in the *Flores* Settlement³ and the Trafficking Victims Protection Reauthorization Act (TVPRA)⁴ are continually evident. In furtherance of these protections, the U.S. Catholic Church has worked with the current administration as well as past administrations to help implement and ensure government compliance with these requirements. We are heartened to learn that HHS/ORR is working to further ensure the protection of unaccompanied children via the Forms proposed in the Proposed Information Collection Activity “Release of Unaccompanied Alien Children from ORR Custody.” While the proposed Forms are a step in the right direction, USCCB/MRS is concerned with some of the current and proposed questions included in these Forms. Below is a description of the Forms and the elements we believe require revision:

Discharge Notification (Form R-2)

The Proposed Information Collection Activity includes a section for “Local Law Enforcement”⁵ that, as worded, is a concern to USCCB/MRS. The Form does not specify the reason why this information is needed or how the collected information will be used. Moreover, while we note that this is not a new provision and is in use on the current version of this Form, we are concerned about continuing to include it because it is unclear whether the term “local law enforcement” would include cooperation with Immigration and Customs Enforcement (ICE), the federal agency that enforces immigration law. Cooperation between ICE and local law enforcement has made immigrant communities more vulnerable to detention and deportation, increasing the reluctance of immigrant communities to share information with local law enforcement.

² See e.g., USCCB Migration and Refugee Services, *et al.*, *The Real Alternatives to Detention*, JUSTICE FOR IMMIGRANTS, available at <https://justiceforimmigrants.org/wp-content/uploads/2019/06/The-Real-Alternatives-to-Detention-June-2019-FINAL-v.2.pdf> (last visited Sept. 10, 2020).

³ Settlement Agreement, *Flores, et al. v. Reno, et al.*, Case No. CV 85-4544 (C.D. Cal., Jan. 1, 1997), available at <https://www.aila.org/File/Related/14111359b.pdf>.

⁴ 8 U.S.C. § 1232.

⁵ Expedited OMB Review and Public Comment; Proposed Information Collection Activity; Services Provided to Unaccompanied Alien Children, Tab C – Discharge Notification.

While USCCB recognizes the right of nations to enforce immigration law, and also appreciates the work of law-enforcement officers, it fears that, as written on the form, it is unclear whether local law enforcement agencies will facilitate information sharing between local and federal agencies, potentially leading to the detention and deportation of unaccompanied children. We know that immigration-related issues such as detention and the increased presence of ICE has had a deleterious impact on the mental health of children, particularly unaccompanied children who experience great trauma both in their home country and on their journey to the United States.⁶ Further, we are concerned that notifying local law enforcement could potentially lead to enhanced monitoring of a child and family with no prior criminal history. Additionally, an unaccompanied child released from ORR custody could be immediately detained by local law enforcement or ICE without evaluating the child's needs and the availability of least restrictive placement option such as reunification with an approved sponsor, violating the Flores Settlement Agreement.⁷ We urge that this question be eliminated from the Form R-2. Alternatively, if the question is to remain, we urge that the information on the Form R-2 explain where and with whom this information will be shared. At the very least, HHS/ORR should provide specific information to case managers and care providers on the purpose for requesting this information and the ways it can and may be used. This information should be communicated to the unaccompanied child and/or to the approved sponsor.

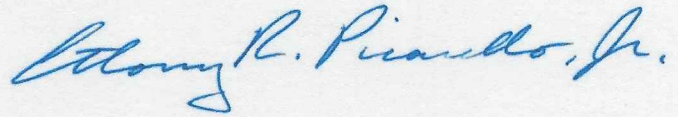
Conclusion

For the reasons set forth above, we note that the section on law enforcement included in the R-2 Discharge Notification Form fails to be transparent on the ways the information requested will be used and with whom it may be shared. This creates concerns for the future and well-being of an unaccompanied child. USCCB welcomes the opportunity to work with HHS/ORR on this matter in the future--both in discussing the child welfare and policy implications of such a policy, and in helping to secure suitable non-detention placements for unaccompanied children who have aged out and are to be released from HHS/ORR. The care and safety of unaccompanied children is vital to our mission and to the humanitarian interests of this country.

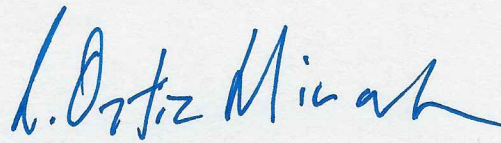
⁶ See e.g., Julie Linton, *et al.*, Am. Academy of Pediatrics, *Detention of Immigrant Children*, 139 PEDIATRICS 4, 6 (Apr. 2017), available at <https://pediatrics.aappublications.org/content/pediatrics/early/2017/03/09/peds.2017-0483.full.pdf>; see also Julie Linton & Andrea Green, Am. Academy of Pediatrics, *Providing Care for Children in Immigrant Families*, 144 PEDIATRICS 3, 8 (Sept. 2019), available at <https://pediatrics.aappublications.org/content/pediatrics/144/3/e20192077.full.pdf>.

⁷ Settlement Agreement, *supra* note 3 at ¶ 11.

Respectfully submitted,

A handwritten signature in blue ink that reads "Anthony R. Picarello, Jr." in a cursive style.

Anthony R. Picarello, Jr.
Associate General Secretary and General Counsel
United States Conference of Catholic Bishops

A handwritten signature in blue ink that reads "Carlos Ortiz Miranda" in a cursive style.

Carlos Ortiz Miranda
Associate General Counsel
United States Conference of Catholic Bishops



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¹ Expedited OMB Review and Public Comment; Proposed Information Collection Activity; Services Provided to Unaccompanied Alien Children, 85 Fed. Reg. 44,895 (July 24, 2020).

Additionally, the U.S. Catholic Church has long worked to support families who have experienced some aspect of immigrant detention, through the provision of legal orientation and assistance, visitation, and pastoral accompaniment to those in immigrant detention facilities, as well as social services assistance to released detainees and their families. USCCB/MRS has also operated several alternatives to detention programs in partnership with DHS to assist families and other vulnerable populations and is currently working with DHS in the administration of its alternatives to detention programs utilizing case management.² Through all of this work, the vital necessity and importance of the protections set forth in the *Flores* Settlement³ and the Trafficking Victims Protection Reauthorization Act (TVPRA)⁴ are continually evident. In furtherance of these protections, the U.S. Catholic Church has worked with the current administration as well as past administrations to help implement and ensure government compliance with these requirements. We are heartened to learn that HHS/ORR is working to further ensure the protection of unaccompanied children via the Forms proposed in the Proposed Information Collection Activity “Services Provided to Unaccompanied Alien Children.” While the proposed Forms are a step in the right direction, USCCB/MRS is concerned with some of the current and proposed questions included in these Forms. Below is a description of the Forms and the elements we believe require revision:

I. Sponsor Assessment (Form S-5)

The Proposed Information Collection Activity includes questions that are of concern to USCCB/ MRS. While we note that the following questions are currently in use within the existing ORR Forms, we have concerns related to their continued inclusion, namely, the purpose for the questions and the ways in which this information could potentially be used. Given the increase in Immigrations and Customs Enforcement (“ICE”) enforcement over the last several years at the state and local level,⁵ families are more vulnerable to enforcement, detention, deportation, and ultimately the incidence of family separation that could result in detrimental emotional and psychological effects for the child.⁶ ICE is tasked with federal level immigration enforcement. Increased enforcement activity between ICE and local law enforcement has made

² See e.g., USCCB Migration and Refugee Services, *et al.*, *The Real Alternatives to Detention*, JUSTICE FOR IMMIGRANTS, available at <https://justiceforimmigrants.org/wp-content/uploads/2019/06/The-Real-Alternatives-to-Detention-June-2019-FINAL-v.2.pdf> (last visited Sept. 10, 2020).

³ Settlement Agreement, *Flores, et al. v. Reno, et al.*, Case No. CV 85-4544 (C.D. Cal., Jan. 1, 1997), available at <https://www.aila.org/File/Related/14111359b.pdf>.

⁴ 8 U.S.C. § 1232.

⁵ See e.g., Randy Capps, *et al.*, *Delegation and Divergence A Study of 287(g) State and Local Immigration Enforcement*, MIGRATION POLICY INSTITUTE 9-18 (Jan. 2011), available at <https://www.migrationpolicy.org/research/delegation-and-divergence-287g-state-and-local-immigration-enforcement>.

⁶ See e.g., Julie Linton, *et al.*, Am. Academy of Pediatrics, *Detention of Immigrant Children*, 139 PEDIATRICS 4, 6 (Apr. 2017), available at <https://pediatrics.aappublications.org/content/pediatrics/early/2017/03/09/peds.2017-0483.full.pdf>; see also Julie Linton & Andrea Green, Am. Academy of Pediatrics, *Providing Care for Children in Immigrant Families*, 144 PEDIATRICS 3, 8 (Sept. 2019), available at <https://pediatrics.aappublications.org/content/pediatrics/144/3/e20192077.full.pdf>.

immigrant communities less likely to share critical information with local law enforcement.⁷ Further, information sharing between agencies has made it so that many parents and close caregivers of unaccompanied children are afraid to come forward as potential sponsors out of fear of immigration enforcement.⁸

Specifically, the Sponsor Assessment (Form S-5) includes the following questions that are of concern to us:

a. Family Relationships

As noted, the increase in ICE collaboration at the state and local level to increase immigration enforcement efforts by local law enforcement officers that has occurred during the last two Presidential Administrations gives us pause over the inclusion of the following question in this category: “*Did any of your children come to the U.S. with you? (If not born in the U.S.)*.”⁹ USCCB/MRS is concerned that the inclusion of this question could result in a number of harmful consequences including enforcement against other undocumented members of the sponsors household and/or the criminalization of the sponsor. There is also a concern that this question could create fear and not ensure that parents share all the information that is needed for safe family reunification when asked other biographical questions by caseworkers in other family reunification interviewing and biographical data collections. We further dispute the relevance of a question pertaining to other children’s migration and/or immigration status(es) to the assessment of the sponsor’s ability to care for the child. The immigration status of the sponsor’s other children, if any, should have no bearing on the suitability of the placement and care arrangement for the unaccompanied child that is the focus of the specific reunification effort.

While we understand and appreciate the need for thorough vetting of the sponsor with which an unaccompanied minor is placed, requiring a potential sponsor to disclose whether he or she has children in the U.S. that were born in another country could lead to: a) potential enforcement against other undocumented members of the sponsor’s household, some of which may still be minors; b) criminalization of the sponsor; and c) deterring a potential sponsor that would answer ‘Yes’ to this question from taking an unaccompanied child into their home,

⁷ See American Immigration Council, *Local Law Enforcement of Immigration Laws Through the 287(g) Program* (Apr. 2, 2010), available at <https://www.americanimmigrationcouncil.org/research/local-enforcement-immigration-laws-through-287g-program> (quoting the International Association of Chiefs of Police: “local police agencies depend on the cooperation of immigrants...in solving all sorts of crimes...without assurances that they will not be subject to an immigration investigation and possible deportation, many immigrants with critical information would not come forward, even when heinous crimes are committed against them or their families.”); see e.g., Lindsay Kee, *The Consequences and Costs of a 287(g) Jail Agreement: One Tennessee County’s Story*, ACLU (Jan. 2, 2013), available at <https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/consequences-and-costs-287g-jail-agreement>.

⁸ See USCCB Migration and Refugee Services, *et al.*, *The ORR and DHS Information-Sharing Agreement and Its Consequences*, JUSTICE FOR IMMIGRANTS, available at <https://justiceforimmigrants.org/wp-content/uploads/2019/10/Updated-formated-MOA-backgrounder-10.2.19.pdf> (last visited Sept. 14, 2020).

⁹ Expedited OMB Review and Public Comment; Proposed Information Collection Activity; Services Provided to Unaccompanied Alien Children, 85 Fed. Reg. 44,895, Tab C – Sponsor Assessment Form, at 2.

creating a chilling effect. The increasing number of sponsors who are unable or afraid to step forward has led to some unaccompanied children remaining in ORR custody longer and is contributing to a ballooning population of children in ORR care – putting these children at risk of prolonged family separation.¹⁰ While the share of unaccompanied children being released to parents was nearly 60% from 2014 to 2015, it had dropped to 41% in fiscal year 2018.¹¹

For the reasons mentioned above, we recommend that this question be excluded from the Sponsor Assessment Form in its entirety unless a legitimate reason for its need can be stated. If the question remains on the Form, alternatively we strongly suggest that an additional disclaimer be written in to the form noting that the information collected will not be used for enforcement purposes, nor for sponsor suitability purposes, and that there be explicit instruction included in the form to read this disclaimer out for those sponsors who are illiterate and are having the form read to them.

b. Proof of Immigration Status or U.S. Citizenship

The new proposed Sponsor Assessment Form creates a new category for the sponsor's immigration status.¹² The current Sponsor Assessment Form used within ORR includes an inquiry of the potential sponsor's immigration status at the outset of the questionnaire. The new proposed form, however, creates a new section for proof of immigration status and requests proof of any authorizing documents.¹³ There is no safety, family reunification, or public policy reason stated for the need for the new information. We are concerned that information sharing between agencies would lead to the use of this question for enforcement purposes against the sponsor should they be undocumented, in removal proceedings, or any other status that could be flagged for ICE. Moreover, this could create a chilling effect for sponsors who are wary of including their immigration status and further contribute to a child's prolonged stay in ORR custody. Lastly, we have concerns regarding those sponsors who present proof of their legal immigration status, as the Trump Administration has been aggressive in its institutional efforts to promote denaturalization.¹⁴ While this is a remote possibility, the messaging around these efforts has been robustly communicated in the immigrant community and has raised fear, confusion, and concern. For this reason, we recommend that no new documentation be required in this section of the Form. Alternatively, if the requirement is to be included, we strongly

¹⁰ *The ORR and DHS Information-Sharing Agreement and Its Consequences*, *supra* note 8.

¹¹ *Id.* It is important to note that this coincides with the implementation of the Memorandum of Agreement (MOA) between DHS and HHS/ORR. While currently release time for most unaccompanied children (except for Category 4) is not this length due to the COVID-19 global pandemic, the timing of the implementation of the MOA did correspond to a length in release time.

¹² Tab C – Sponsor Assessment Form, at 5.

¹³ *Id.*

¹⁴ See e.g. Katie Benner, *Justice Dept. Establishes Office to Denaturalize Immigrants*, NEW YORK TIMES (Feb. 26, 2020), available at <https://www.nytimes.com/2020/02/26/us/politics/denaturalization-immigrants-justice-department.html> (While the number of denaturalizations is small, (only [300 naturalization cases](#) were reportedly pursued between 1990 to 2017) that number has increased during the Trump administration, from 2017-2020 DOJ attorneys have filed [94 denaturalization cases](#)) this effort has been heavily publicized in English and Spanish language media and has generated fear even for naturalized citizen immigrants).

suggest that HHS/ORR explain on the Form explicitly what the documentation will be used for, and which federal and local government agencies may also receive it.

c. Sponsor Care Plan

The Sponsor Assessment Form includes the following change under the Sponsor Care Plan section, asking: **“Is the sponsor a U.S. citizen or a lawful permanent resident? If no, list the adult caregiver identified who will assume responsibility for the child if sponsor becomes unavailable to care for the minor.”**¹⁵ Previously, the Form asked, “Does the sponsor have an immigration status?” We are concerned with the proposed change to this question. The new Form creates a more stringent standard for the sponsor, asking whether the sponsor is a U.S. citizen or Legal Permanent Resident, as opposed to the current version, which asks about immigration status generally. While we encourage alternative care planning for families, we have concerns that this information could be misused, and that such information could be discussed by caseworkers and documented in case notes. USCCB/MRS recommends reverting to the previous version of this question, or excluding it altogether given that information on the sponsor’s immigration status is requested in other sections of the Form.

d. UAC Journey and Apprehension

This section of the Sponsor Assessment Form includes a question about the unaccompanied child’s decision to travel to the U.S. at the time, asking: **“Do you know why the UAC decided to travel to the U.S. at this time? Did the potential sponsor mention any U.S. immigration policy or practice as a factor in the UAC’s decision to travel to the U.S.? Did the potential sponsor mention economic, job, or education opportunities as a factor in the UAC’s decision to travel to the U.S.?”**¹⁶ USCCB/MRS is concerned that answering these questions in the affirmative could be detrimental to the unaccompanied child’s immigration case and could lead to enforcement by government agencies if they determine that the unaccompanied child will not achieve permanent immigration status based on their answer to this question. We note that this question is particularly troubling, as many children do not automatically list their reasons for the journey in a linear or hierarchical manner. Rather, depending on their age, emotional and intellectual abilities, and the level of trauma that they have endured, children may sometimes answer questions very directly and not give the complicated or multi-faceted reasons for leaving their home country. It has been documented that children who migrate often leave for multiple, complicated factors.¹⁷ Additionally, we dispute the relevance of including this information in the Sponsor Assessment Form as it has no bearing on the sponsor’s ability to care for the child. We recommend that ORR omit this question from the Sponsor Assessment Form, as it does not provide insight into the sponsor’s ability to care for the child and could be misused between agencies to the detriment of the unaccompanied child’s legal immigration case.

¹⁵ *Id.* at 8.

¹⁶ *Id.*

¹⁷ See USCCB Migration and Refugee Services, *Unaccompanied Children in the United States*, JUSTICE FOR IMMIGRANTS, available at <https://justiceforimmigrants.org/wp-content/uploads/2019/02/UAC-Backgrounder-updated-January-2019.pdf> (last visited Sept. 14, 2020).

II. UAC Assessment (Form S-11)

In addition to our concerns over questions included in the Sponsor Assessment Form, the UAC Assessment Form in the Proposed Information Collection Activity also includes questions that makes USCCB/MRS wary of potential information sharing between government agencies and future instances of enforcement. Specifically, we are concerned with the following:

a. Journey and Apprehension

Under this section, the UAC Assessment Form includes the following line of questioning that is of concern to us: “**Why did you decide to travel to the U.S. at this time?**” This is followed by questions for the case manager, “*Did the child mention any U.S. immigration policy or practice as a factor in his/her decision to travel to the U.S.? For UAC aged 14-17 ONLY: Did the child mention economic, job, or educational opportunities as a factor in his/her decision to travel to the U.S.?*” As noted in our analysis of the Sponsor Assessment Form, *supra* I(d), USCCB/MRS is apprehensive of noting this information and fears that answering these questions in the affirmative would be detrimental to the unaccompanied child’s immigration case, as it could lead to enforcement by government agencies should they determine the child does not have a valid claim. This would undermine a child’s right to due process as the fact-finding for their reasons to travel to the U.S. and the legitimacy of their claims should be determined solely by an adjudicator. We emphasize again here that a child, especially if they have endured trauma, may not answer questions in a linear manner or effectively explain the nuance in their reasons for travel. For these reasons, we recommend that the line items for documenting whether a child mentioned U.S. policy or economic or educational opportunities as a reason for travel be omitted from the UAC Assessment Form entirely.

b. Mental Health

The UAC Assessment Form includes a section on Mental Health, which asks for the child to disclose sensitive information. The Form does not explain whether this information is strictly internal and confidential or if it is subject to being shared with other government entities. This is of utmost concern to USCCB/MRS in light of reports of ICE using a child’s confidential therapy notes obtained while in HHS/ORR custody, to undermine their immigration claims.¹⁸ We recommend HHS/ORR include specific information explaining what information regarding a child’s mental health history could be shared and with whom, in the form of the specific government entities and the exact information that will be shared.

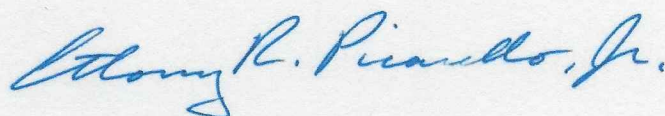
Conclusion

For the reasons set forth above, we note that the questions included in the Forms created for both sponsors and unaccompanied children fail to implement adequate safeguards against sharing among government agencies information about sponsors and unaccompanied children.

¹⁸ “*Editorial: When the U.S. Uses Migrants’ Therapy Disclosures Against Them,*” LOS ANGELES TIMES (Mar. 10, 2020), available at <https://www.latimes.com/opinion/story/2020-03-10/trump-administrationmigrant-therapy-asylum>.

We urge you to revisit this Form and change the identified language. USCCB welcomes the opportunity to work with you on this matter in the future. The care and safety of unaccompanied children is vital to our mission and to the humanitarian interests of this country.

Respectfully submitted,

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Anthony R. Picarello, Jr.
Associate General Secretary and General Counsel
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Carlos Ortiz Miranda
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