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CC: UCPolicy-RegulatoryAffairs@acf.hhs.gov

Toby Biswas
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Re: Unaccompanied Children Program Foundational Rule, Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS); 88 Fed. Reg. 68908; RIN 0970-AC93; ACF-2023-0009

Dear Mr. Biswas,

We write regarding the Office of Refugee Resettlement's (ORR) Notice of Proposed Rulemaking on the Unaccompanied Children Program Foundational Rule ("Proposed Rule").[1] It is imperative that the Proposed Rule not only includes all the basic protections guaranteed by the *Flores* Settlement Agreement,[2] but also expands on them, raising standards for the care and custody of unaccompanied children to reflect best practices in the fields of child health, welfare, and development. Nothing in federal law or policy precludes the agency from issuing a rule with stronger and better standards than those proposed more than two decades ago. As noted below, the proposed rule should be strengthened in the areas of: legal and child advocate services; restrictive settings and criminalization; children with disabilities; reproductive health; protecting and affirming LGBTQI+ youth; conditions of custody in emergency placements; reunification and release; home studies and post-release services; and oversight and data. **While we commend ORR for proposing such a comprehensive rule, we also urge the agency to make the following, necessary changes before issuing a final rule.**

I. Conditions of Custody in Standard and Emergency Influx Facility (EIF) Placements

State licensing must remain a core requirement for ORR facilities (§ 410.1302)
In an attempt to manage the delicensing of program facilities by states like Texas and Florida, ORR has changed the definition of licensed facilities to "standard programs" which should be "licensed by an appropriate State or Federal agency or meet the requirements specified by ORR if licensure is unavailable to programs providing services to unaccompanied children in their State…" (§ 410.1302). A core protection of *Flores* is the requirement that children are placed in licensed programs, which is essential because state licensing agencies have the independence, administrative infrastructure, and specialized expertise to independently monitor facilities housing children and ensure they meet state child welfare standards. State licensing is such an essential protection for children that it is the only requirement that both the plaintiffs and the government agreed should survive even after the termination of the Flores Settlement. Without this protection, children could face serious risks to their safety. Any regulation that

[1] Unaccompanied Children Program Foundational Rule, 88 Fed. Reg. 68908 (Oct. 4, 2023) (to be codified at 45 C.F.R. pt. 410).
[2] Stipulated Settlement Agreement, *Flores v. Reno*, No. 85-4544 (C.D. Cal. Jan. 17, 1997), https://youthlaw.org/sites/ default/files/wp_attachments/Flores_Settlement-Final011797.pdf [hereinafter FSA].

seeks to replace Flores must ensure the preservation of state licensing as a baseline child welfare protection.

Welcome updates to the definition of an influx (§ 410.1001)
The proposed rule redefines "influx," which generally refers to a period when the numbers of unaccompanied children arriving at the border are high. During an influx, ORR can use unlicensed or emergency shelters that do not have to meet the same standards as its network of licensed facilities. The proposed rule updates the definition of influx to be a situation in which 85% or more of ORR's net standard bed capacity is occupied or held for placement for a period of seven consecutive days. This updated definition will limit the placement of children in emergency facilities. We likewise support ORR's stated commitment in proposed § 410.1800 and in the preamble to the proposed regulations (p. 68956) to regularly reevaluating and expanding regular shelter capacity as needed to minimize the need to utilize influx facilities. Together these proposed sections work toward a reduction in use of unlicensed and large congregate care facilities and promote the best interests of the children in ORR's care.

Prioritize a community-based care model centered on family-based and small-scale placements
We support ORR's consideration of a community-based care model for inclusion in the final regulation. Such a model aligns with federal and state child welfare policies, which recognize the importance of allowing young people in government custody to experience normal childhood freedoms and opportunities to the greatest extent possible.[3] In keeping with best practices, we encourage ORR to limit the number of young people permitted in any group home setting as prescribed by evidence-based research.[4] We urge ORR to ensure that community-based care placements are home-like settings, including the ability to move about freely within the home, to have input into their own schedule and participation in community and/or family activities, and to have private spaces and privacy while in the home. These placements should be free from restrictions commonly found in congregate care settings like requiring children to walk in single-file lines to move through the facility or use the restrooms in groups or shifts. Smaller placements would enable ORR placements to be less restrictive and allow greater normalcy, community engagement, participation in decision-making and age-appropriate extracurricular activities, and reduced environmental stress for children in ORR custody. ORR should prioritize developing family-based and/or community-based placements that can accommodate the needs of children with disabilities. We likewise urge ORR to publish a timeline for achieving a complete transition to a Community Based Care Model. ORR should include benchmarks for increasing proportions of UCs housed in community-based care placements until a complete transition is achieved providing home-like community-based care placements to all UCs in ORR custody unless such a placement is not in a child's best interests.

Ensure at least current minimum standards for education services, access to outside communication for children, and privacy (§ 410.1302)
We urge ORR to strengthen its standard of care to, at a minimum, meet the current standards provided to unaccompanied children in ORR care. ORR's current Policy Guide (section 3.3.5) requires a minimum of six hours of structured education, Monday through Friday. We urge ORR to codify both the days during which instruction is offered and a minimum number of hours of education each day, as it does in the current Policy Guide.

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[3] *See, e.g.*, 42 U.S.C. § 671(a)(1); Ca. Welf. & Inst. Code § 16001.9; Cal. Code Regs. tit. 22 § 84067(b)(5); Col. Rev. Statutes § 19-7-101; Fl. Statutes § 409.145 (3)(b)(e); Tx. Admin Code § 748.1101(b)(3)(D).

[4] *See* Children's Bureau, U.S. Dep't of Health & Hum. Serv., A National Look at the Use of Congregate Care in Child Welfare (May 2015), https://www.acf.hhs.gov/sites/default/files/cb/cbcongregatecare_ brief.pdf; Mary Dozier et al., *Institutional Care for Young Children: Review of Literature and Policy Implications*, 6 Soc. Issues & Pol'y Rev. 1, https://doi.org/10.1111/j.1751-2409.2011.01033.x.

Similarly, the limited phone/video calls guaranteed in proposed § 410.1302(c)(10) are a step backwards from the recent improvements that ORR has made to the phone call policy in the Policy Guide. As of June 26, 2023, Policy Guide § 3.3.10 requires *daily minimum* 10-minute calls from M-F (or 50 minutes of phone time throughout the weekdays), as well as 45-minute calls on weekends, holidays, and the child's birthday, and additional calls as needed in exceptional circumstances. In stark contrast, proposed § 410.1302(c)(10) only provides for "at least 15 minutes of phone or video contact three times a week with parents and legal guardians, family members, and caregivers located in the United States and abroad." Contact with family and maintaining important relationships is essential to children's wellbeing while in ORR care,[5] and the proposed regulations should reflect ORR's commitment to ensuring children are able to enjoy the support of their loved ones and maintain important relationships through phone and video contact while in custody.

Finally, ORR indicates in the preamble to the proposed regulation that care providers should encourage and enable in-person visitation with family and sponsors. We urge ORR to consider codifying these same protections in cases where a child's parent or caregiver is in the custody of the federal government (e.g., ICE or U.S. Marshal Service).

Strengthen minimum standards for health services and activities and clarify physical space standards beyond "suitable living accommodations" (§410.1302)

We suggest ORR adopt minimum physical space requirements to ensure children's right to have access to outdoor spaces and indoor spaces for gross motor activities, in addition to sufficient space in their other living spaces to move freely, socialize, and maintain comfortable and safe distances from other children and/or staff when necessary. This should be incorporated into regulations addressing minimum standards applicable to standard programs.

Finally, ORR must strengthen and clarify its healthcare service provisions. It should specify that it will use pediatric specialists and will address health needs that arise outside of the envisioned care time frames. ORR should bring mental health interventions in line with Medicaid Early and Periodic Screening, Diagnostic, and Treatment benefit coverage when medically necessary. Finally, to the extent possible, ORR should help coordinate medical record keeping in such a way as to promote continued accurate health records following release.

Improve language identification practices and language access for children (§ 410.1306)

We welcome the proposed regulation's broad guarantees of language access to unaccompanied children. However, we are concerned because it lacks provision and guidance instructing shelter staff on how to correctly identify children's primary and preferred languages, and then consistently provide them with high-quality language access in that language. We recommend that ORR include language access in its internal monitoring system and provide a point person and dedicated email for language access complaints. To ensure correct language identification, staff must proactively approach children, who may feel intimidated by the process or unaware of their language rights and options to seek language services, such as having qualified interpreters without delay and written translations of vital information. This should be done at the earliest point of contact and evaluated throughout the duration of the child's care and time in the ORR funded shelter.

Limit transfers based on considerations outside of ORR's child welfare mandate (§ 410.1601)

While we support the mandate for continuous reassessment of children's placement in the least restrictive setting in the best interests of the child, the proposed rule goes beyond the TVPRA by making this

[5] *See generally* Young Ctr. for Immigrant Child. Rights, *Preserving Family Ties: Ensuring Children's Contact with Family While in Government Custody* (2023), https://static1.squarespace.com/static/597ab5f3bebafb0a625aaf45/t/639d0488ec01c36f79d75f1c/1671234696414/Phone_Calls_Final_Report.pdf.

determination "**subject to** considerations regarding danger to self or the community or runaway risk."[6] The TVPRA does not place this condition on the placement determinations; on the contrary, the TVPRA says that the HHS "Secretary **may consider** danger to self, danger to community, and risk of flight."[7] ORR should affirmatively reject any opportunity to take on a law enforcement role, and must limit such law enforcement-based considerations, particularly when they result in more restrictive placement.

Eliminate or reduce the use of medical age determinations to prevent wrongful age determinations (§§ 410.1001; 410.1700 et seq.)

The consequences of an erroneous age determination are great. A mistaken age determination means that a child will be sent to an adult detention facility with almost no recourse for the mistake, losing access to the range of services and protections to which children are entitled. Given these severe consequences, it is critical that ORR ensures that its age determination processes are fair, reliable, consistent, and ensure due process. To prevent further harm from wrongful age determinations, the proposed regulations should eliminate or drastically reduce ORR's use of medical or dental examinations as part of its age determination procedures. Over the last 20 years, the scientific community has made clear that radiographs of bones to assess age are not sufficiently precise to provide valuable insight intoa person's age because children grow at wildly different rates. At best, radiographs can only provide an "age range" of the person in question.[8] Given the practice's limitations and unreliability, ORR should not include them in the age determination process at all.

Dental examinations to determine age are equally unreliable. Age assessments of adolescents based on wisdom teeth growth have an accuracy of only ±2 to 4 years.[9] Furthermore, the timing of eruption of the third molar depends on ethnicity,[10] gender,[11] socio-economic status, and even birth weight.[12] Given that many experts in the medical community have concluded that age assessments based on bone and dental radiographs are unreliable and imprecise, all forensic examination results should be deemed debatable and resolved in favor of finding that the individual is a child.

Replace the "reasonable suspicion" standard required to initiate an age determination with the higher "probable cause" standard

ORR notes that its current policy and practice only allow it to conduct an age determination if there is a "reasonable suspicion" that the person is over 18 years of age. We recommend that ORR require staff to provide probable cause that the child is an adult given the potential impact of an adverse finding on children.

II. Restrictive Settings and Criminalization

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[6] Proposed Rule § 410.1601(a).

[7] 8 U.S.C. § 1232(c)(2)(A) (emphasis added).

[8] *See* B.S. Manjunatha & Nishit K. Soni, Review Article, *Estimation of age from development and eruption of teeth*, 6 J. OF FORENSIC DENTAL SCI. 73 (2014).

[9] *See* Ines Willershausen et al., Review Article, *Possibilities of Dental Age Assessment in Permanent Teeth: A Review*, S1 DENTISTRY 1, 3 (2012) (citations omitted).

[10] *See* Andreas Schmeling et al., *Review Article, Forensic Age Estimation*, 113 Deutsches Ärzteblatt Int'l 47 (2016); *see also* Ines Willershausen et al., Review Article, *Possibilities of Dental Age Assessment in Permanent Teeth: A Review*, S1 DENTISTRY 2 (2012).

[11] *See* A.S. Panchbhai, Review, *Dental Radiographic Indicators, A Key to Age Estimation*, 40 DENTOMAXILLOFACIAL RADIOLOGY 199, 211 (2011) (citing Ana C. Solari & Kenneth Abramovitch, *The Accuracy and Precision of Third Molar Development as an Indicator of Chronological Age in Hispanics*, 47 J. FORENSIC SCI. 531 (2002)).

[12] *See* B.S. Manjunatha & Nishit K. Soni, Review Article, *Estimation of age from development and eruption of teeth*, 6 J. OF FORENSIC DENTAL SCI. 73 (2014).

Remove secure facilities from the ORR network (§ 410.1105(a)(1))

There is no requirement, or justification, for ORR to continue to use secure facilities in caring for unaccompanied children. We maintain that no child should be placed in a secure facility, which are juvenile jails (labeled "secure" settings) where children face disparate treatment and lasting harm. ORR is under no statutory or judicial obligation to create a regulatory scheme that continues to send some children to juvenile detention centers while most are kept in non-punitive settings.

ORR frequently overreports threats or actions by young people as more serious than they are, which can trap children in restrictive settings. Too often, kids placed in secure settings have unaddressed disabilities or unmet trauma needs. Rather than receive the care they need, children can face indefinite detention and abusive treatment in these facilities. While the domestic sphere has moved away from jailing children, ORR has engaged in the practice of holding some unaccompanied children subject in juvenile jails and now proposes to codify the use of these facilities in the proposed rule. We urge ORR not to codify the use of juvenile jails for decades to come and maximize protection for children considered for restrictive placements--increasing due process safeguards, eliminating practices that criminalize children in favor of ones that build on children's strengths and support their needs, and treat all children as children first and foremost.

Within ORR's network, secure placements have consistently facilitated and invited abusive, punitive, and traumatizing treatment of children, including: months or years of prolonged detention with no end in sight;[13] indefinite restriction, with no tangible horizon for "step-down" to a more child-friendly environment;[14] prolonged delays in family reunification;[15,16]mislabeling and racial profiling of children[17]; criminalization of developmentally appropriate behavior;[18,19]disparate harm to children with mental health

[13] *Flores v. Sessions*, 862 F.3d 863, 873 at n.11 (9th Cir. 2017) (describing children held in Yolo).

[14] *Lucas R. v. Becerra*, 2022 WL 2177454, at *22 (C.D. Cal. Mar. 11, 2022) (describing placement review panel).

[15] *Lucas R. v. Becerra*, 2022 WL 2177454, at *7 (C.D. Cal. Mar. 11, 2022) (children in secure custody spend on average 185.9 days in ORR detention while children in shelter placements spend on average 52.6 days according to data from November 2017 to March 2020).

[16] *Santos v. Smith*, 260 F.Supp.3d 598 (W.D. Va. 2017).

[17] Kelsey R. Wong, *Written Statement*, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, United States Senate (April 26, 2018), https://www.hsgac.senate.gov/subcommittees/investigations/library/files/wong-testimony/ (testimony from former SVJC program director).

[18] Aura Bogado & Laura C. Morel, "*'I'm going to tase this kid': Government shelters are turning refugee children over to police*," Reveal, June 8, 2021, https://revealnews.org/article/im-going-to-tase-this-kid-government-shelters-are-turning-refugee-children-over-to-police/ (tasing and detaining child who did not want to go to classes).

[19] Dep't of Justice, *United States' Investigation of Maine's Behavioral Health System for Children Under Title II of the Americans with Disabilities Act* (June 22, 2022), at 13, https://www.justice.gov/opa/press-release/file/1514326/download ("Law enforcement responses to mental health crises are not only ineffective, they increase the likelihood that children whose needs could be met with behavioral health services will instead enter the juvenile justice system. In the worst situations, children end up incarcerated at [juvenile detention facility].").

disabilities[20]; physical and verbal abuse from adults tasked with their care;[21] the violation of children's rights to privacy[22;] and lasting impact on children's self-worth and psychological well-being[23]. Against this backdrop, ORR has substantial justification not to continue placing any child in secure placements, and to instead ensure that concerns of dangerousness or flight risk are mitigated with heightened supervision in less restrictive facilities.

Ensure that basic requirements of care do not deviate by placement levels (§§ 410.1001 and 410.1302). If ORR decides to keep secure placements within its network, then it must ensure that these placements are held to the same standards of care as all other ORR placements. The proposed regulations exempt secure facilities from the "minimum standards of care and services" required of lower security shelters (proposed § 410.1302). Under proposed § 410.1001, ORR states in the NPRM that secure facilities "*do[] not need to meet the requirements of § 410.1302 and [are] not defined as a standard program or shelter*."[24] Requirements under § 410.1302 include state licensing;[25] adequate food, drinking water, hygiene items and access to toilets and sinks, adequate temperature control; individualized needs assessments, including on language access and other special needs children may face; appropriate educational services, tailored to children's development and disabilities, where applicable; individual and group counseling sessions, which are often the only outlet children have to process traumatic histories and symptoms; recreation and leisure activities; admission and orientation, including trafficking screenings; access to religious services; visitation; information about access to legal services and rights under labor rights; among other services. No child should be placed in a secure facility because children in those settings already experience disparate treatment that inflicts lasting harm on their health and wellbeing. With this proposed language, ORR would codify the disparity rather than remedy it by exempting secure facilities from "minimum standards of care and services" required of lower security shelters.[26] At a

[20] The Department of Justice has investigated parallel concerns in the domestic sphere under the Americans with Disability Act. *See* Dep't of Justice, *Investigation of the State of Alaska's Behavioral Health System for Children* (Dec. 15, 2022), at 16, https://www.justice.gov/opa/press-release/file/1558151/download ("Prolonged institutional stays often cause children to regress in their behaviors because they become frustrated about being unable to leave, delaying their discharge even further."); Dep't of Justice, *Investigation of Nevada's Use of Institutions to Serve Children with Behavioral Health Disabilities* (Oct. 4, 2022), at 14, https://www.justice.gov/opa/press-release/file/1540616/download ("Institutional and restrictive placements can exacerbate the children's behavioral health disabilities, place them at increased risk of further institutional placements in residential treatment facilities and psychiatric hospitals, and separate them from their homes, families, and communities for long periods of their childhoods.").

[21] Xavier Becerra et al., *The California Department of Justice's Review of Immigration Detention in California* (Feb. 2019), p.52-53, https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf (describing take-downs of youth and use of force, including pepper spray in Yolo).

[22] Hannah Dreier, *To stay or to go? Amid coronavirus outbreaks, migrants face the starkest of choices: Risking their lives in U.S. detention or returning home to the dangers they fled*, Wash. Post, Dec. 26, 2020, https://www.washingtonpost.com/nation/2020/12/26/immigration-detention-covid-deportation/?arc404=true.

[23] American Academy of Pediatrics, *Detention of Immigrant Children* (May 2017), Vol. 139 / Issue 5, p. 6, https://pediatrics.aappublications.org/content/pediatrics/139/5/e20170483.full.pdf ("Qualitative reports about detained unaccompanied immigrant children in the United States found high rates of posttraumatic stress disorder, anxiety, depression, suicidal ideation, and other behavioral problems. Additionally, expert consensus has concluded that even brief detention can cause psychological trauma and induce long-term mental health risks for children.").

[24] 88 Fed. Reg. 68981.

[25] Many of our organizations have commented separately on the importance of state licensing ahead of the proposed regulations.

[26] 88 Fed. Reg. 68936.

minimum, secure facilities should be compelled to meet the minimum standards required of other facilities in the ORR network.

Reconsider placement factors that criminalize children (§ 410.1103(b))

In determining an appropriate placement for an unaccompanied child, ORR lists an array of factors to consider. We comment on two of those factors here, both of which risk criminalizing children and straying from ORR's role under the TVPRA. First, the inclusion of "criminal history" (§ 410.1103(b)(10)) as a factor should be removed or strictly limited, because it is overbroad and permits the consideration of unsupported allegations, unsubstantiated statements, and criminal charges that have not resulted in convictions. Neither should ORR consider juvenile delinquency adjudications when determining an appropriate placement. Criminal laws do not treat children the same as adults, and juvenile delinquency adjudications are not considered criminal convictions.[27] As a child welfare agency with the mandate to care for children, ORR should ensure that juvenile records remain confidential and are not used against children, particularly to place children in restrictive, punitive settings. At most, ORR should only consider confirmed or verified criminal convictions for children charged as adults and only when it is necessary to appropriately care for the child or others.

The proposed regulations should also remove the inclusion of "behavior" (§ 410.1103(b)(12)) as a factor in placement determinations, because "behavior" is vague and overbroad. Many behavioral issues exhibited by children are manifestations of disabilities, stress, detention fatigue, and trauma, and typically indicate a child's need for additional support and services. To the extent that ORR would want to consider a child's need for behavioral supports, this is already captured under 410.1103(b)(9), which includes "[a]ny specialized services or treatment required or requested by the unaccompanied child" as a factor for consideration in placement. As such, "behavior" should be deleted as a factor as part of an effort to move the ORR system of care away from a punishment and behavioral management mindset towards a comprehensive system of trauma-informed care.

If a child with a disability is considered for step up to a more restrictive facility based on their behavior, the proposed regulations should require a manifestation determination to determine whether the child's behavior is linked to their disability and/or is the result of a failure to provide the child with the reasonable modifications and services the child needs. This could be similar to the manifestation determination required under the IDEA.[28] If a child's behavior is a manifestation of their disability, ORR must conduct a functional behavioral assessment and develop (or review) a behavior intervention plan for the child instead of changing their placement. This framework developed in the educational sphere is appropriate given that a transfer to a more restrictive placement will necessarily involve a change in the child's educational placement.

Refuse to leave a child in DHS custody beyond 72 hours, given the dangers to children's health and safety (§ 410.1101)

Under proposed § 410.1101(d)(6)(i-ii), ORR authorizes a delay in identifying a timely placement for and accepting transfer of an unaccompanied child if the referring federal agency indicates the child "has been charged with or has been convicted of a crime, or is the subject of delinquency proceedings, delinquency charge, or has been adjudicated delinquent, and additional information is essential in order to determine an appropriate ORR placement." However, this marks a weakening of protections from existing ORR policy, where ORR strictly adheres to this 72-hour timeline as a rule. Conditions in both ICE and CBP custody make clear that it is imperative not to extend children's stay in those facilities beyond 72 hours.

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[27] Nat'l Conference of State Legislatures, "Adolescent Brain Development and Youth Justice," updated Apr. 7, 2023, https://www.ncsl.org/civil-and-criminal-justice/adolescent-brain-development-and-youth-justice.

[28] *See, e.g.,* 20 U.S.C. 1415(k)(1)(E); *see also* 34 C.F.R. § 104.35(a).

Leave law enforcement obligations to other agencies (§ 410.1103)
Under proposed § 410.1103(a), ORR states that "ORR shall place each unaccompanied child in the least restrictive setting that is in the best interest of the child and appropriate to the unaccompanied child's age and individualized needs, *provided that such setting is consistent with the interest in ensuring the unaccompanied child's timely appearance before DHS and the immigration courts* and in protecting the unaccompanied child's well-being and that of others" (italics added). The italicized language should be removed because it is inconsistent with ORR's child welfare mandate.

Consideration of "risk of flight" as it relates to immigration proceedings (as opposed to flight from a custodial setting), lies squarely with the Department of Homeland Security.[29] For this reason, it is inappropriate (and illogical) for ORR to consider compliance with immigration enforcement obligations in making placement decisions. Instead, placement decisions should be guided by a determination that the placement is in the least restrictive setting in the best interest of the child.

Reduce the timeframe for review of restrictive placements (§ 410.1103(d))
Under proposed § 410.1103(d), ORR states that "ORR shall review, at least every 30 days, the placement of an unaccompanied child in a restrictive placement to determine whether a new level of care is appropriate." The TVPRA requires that ORR review the placement of children in secure facilities — the most restrictive level of placements — on a monthly basis "at a minimum." Proposed § 410.1103(d) appears to extend the baseline review period for secure placements to all children in restrictive care. This extension is not warranted. By applying the TVPRA's 30-day minimum standard from secure settings to all restrictive settings, the proposed language sets an unacceptably low expectation for ORR's mandate. We recommend that ORR shorten the length of time to "at least every 14 days" to ensure compliance with its legal obligation under the TVPRA to place children in the least restrictive setting in their best interest.

Procedural limits on placement denials are welcome and long overdue (proposed § 410.1103(f-g))
We support the codification of Policy 1.3.3 and ORR's restrictions on the reasons providers may deny placements to children. The issue of providers improperly denying placements to children — effectively "cherry-picking" children — has been a longstanding problem. In our experience, children have often remained in unnecessarily restrictive placements even after ORR and provider staff have determined that they should be stepped down to a less restrictive placement because ORR is unable to find a less restrictive facility that is willing to accept the child's referral for placement. Permitting care providers in ORR's network to deny children placement solely based on their SIRs or disabilities not only violates ORR Policy, but it directly contravenes the TVPRA's mandate to keep children in the least restrictive setting and also violates the integration mandate of Section 504 of the Rehabilitation Act, which requires ORR to place children "in the most integrated setting appropriate" to their needs.[30]

Care provider facilities must submit a written request to ORR for authorization to deny placement of unaccompanied children, providing the individualized reasons for the denial. Any such request must be approved by ORR before the care provider facility may deny a placement. ORR may follow up with a care provider facility about a placement denial to find a solution to the reason for the denial. Importantly, both ORR *and* the care provider facility have an obligation to determine whether a facility can meet a child's disability-related needs. If a care provider does deny placement to a child with a disability under this policy, ORR retains an independent obligation to place the child in the most integrated setting

[29] We further note that, while paragraph 22 of the *Flores* Settlement Agreement precedes the HSA, it also defines "escape-risk" in relation to escape from custody, not ensuring appearance in immigration proceedings.
[30] 29 U.S.C. § 794; 45 C.F.R. § 84.4(b)(2).

appropriate to their needs.[31] The proposed regulations should explicitly state that if a care provider denies placement to a child with a disability under any of the subsections of 410.1103(f), ORR will promptly find the child another placement in the most integrated setting appropriate.

Prohibit the use of mechanical restraints and seclusion in secure facilities (§ 410.1304(d-f)
We recommend deleting the proposed language in § 410.1304 (e) and (f) allowing for the use of mechanical restraints and seclusion in secure facilities, as these are not interventions permitted in other levels of placement. In our experience, children in secure facilities have the greatest need for support and services, and for that reason, subjecting them to more severe restraints is particularly inappropriate. ORR should not trust secure facilities to continue using these methods that have significantly harmed children even in "emergency safety situations." The regulations should be revised to preclude all facilities, including secure facilities, from using mechanical restraints and seclusion. We also recommend amending § 410.1304(d) to ensure that personal restraints are used only when absolutely necessary to ensure the safety of the child or others: "(d) Standard All programs, and including RTCs, may use personal restraints only in emergency safety situations. An emergency safety situation occurs when the child presents an imminent risk of physical harm to self or others."

III. Unaccompanied children with disabilities and the use of psychotropic medications

Remove the term "special needs" for unaccompanied children with disabilities
We agree with ORR's analysis that the term "special needs unaccompanied child" should be removed from the proposed regulations. "Special needs" is a disfavored term in the disability community and is seen as degrading. We also support replacing "special needs" with "individualized needs" in other sections of the proposed regulations.

Ensure meaningful and accurate needs assessments
We applaud ORR's statement in Section 410.1106 that the purpose of assessments is "to determine whether the unaccompanied child requires particular services and treatment by staff to address their individual needs while in the care of the UC Program." We agree that the goal of the assessments described by ORR in Sections 410.1106 and 410.1302(c)(2) should generally not be a diagnosis, but rather, an identification of the services and support which would be most helpful to the specific unaccompanied child to increase their well-being and reduce any disruptive behavior, including and anticipating post-release by recommending support and services for the child in the community.[32] Needs assessments and integrated placement determinations for children with disabilities should be just as timely as assessments and integrated placement determinations for children without disabilities. These assessments should not delay a child's release.

Furthermore, ORR must comply with its specific obligations to children with disabilities under Section 504 of the Rehabilitation Act. In some situations, a more formal evaluation for disability is required to ensure children's Section 504 rights are protected. We recommend therefore that Section 410.1106 specify that if a child (or the child's attorney or Child Advocate) requests an evaluation, if the child is psychiatrically hospitalized or evaluated for psychiatric hospitalization, or if the child is being considered for transfer to a restrictive setting based on danger to self or others, the child will receive a prompt evaluation/individualized assessment of the child's needs due to disability conducted by a qualified professional; such evaluation will consider the child's need for reasonable modifications and auxiliary aids and services. Children or their lawyers or Child Advocates should also have the right to request an independent evaluation of the child's individualized needs due to disability by a provider of their choice

[31] *See* 45 CFR 85.21(d).

[32] *See, e.g.*, Lisa Conradi et al., U.S. Dep't of Health & Human Serv., Admin. for Children & Families, Children's Bureau, *Screening, Assessing, Monitoring and Using Evidence-Based Interventions to Improve Well-Being of Children in Child Welfare* (2014).

and at no cost to the child. The proposed regulations should further specify that a pending evaluation of a child due to suspected or identified disability shall not delay the release of a child.

Strengthen service plans for children with disabilities

We welcome the proposed regulation's requirement that programs develop an individual service plan (ISP) for each child with the input of the child (Section 410.1302(e)), and that a child's services, supports, and program modifications be documented in the child's case file (Section 310.1311(d)).

We recommend that the proposed regulations should set out more specific requirements for unaccompanied children with disabilities. In particular, if a child is determined to have one or more disabilities, the child's ISP should identify a child's disability-related needs, including any specific triggers of a child's disability-related behaviors, if any, and individualized responses which staff should attempt to de-escalate a situation. If a child exhibits persistent behaviors that threaten their safety or that of others, this should trigger a reevaluation of their ISP by the same group of knowledgeable persons that developed the plan. The ISP should likewise set out the services, supports, and reasonable modifications the child will receive, including a plan for prompt release. For children with serious mental health conditions, these services will include care coordination, crisis intervention services, and a range of intensive community services to promote and support the child's living with a family and the child's well-being. Most importantly, we recommend that the proposed regulations should further specify that a pending service plan shall not delay the release of a child.

Ensure educational services meet the needs of children with disabilities

We welcome the proposed regulation's reference to adapting educational services to a child's disability in Section 410.1302(c)(3). For clarity, the proposed regulations should incorporate language from the Preamble that ORR will ensure children with disabilities receive needed "program modifications (such as specialized instruction), reasonable modifications, or auxiliary aids and services" and that care provider facilities must ensure that their communication with children with disabilities is as effective as their communication with children without disabilities in terms of affording an equal opportunity to engage in the UC Program.[33] A child's need for educational accommodations should be developed and documented as part of their ISP.

Limit calls to law enforcement and focus on de-escalation strategies

We agree with ORR's proposed language in Section 410.1304(b) that law enforcement should only be called as a "last resort" in response to an unaccompanied child's behavior. For a child with a disability, a call to law enforcement should trigger a mandatory evaluation of the staff involved, including whether the child's ISP was appropriately followed, whether reasonable modifications should have been provided prior to, in lieu of, or during the law enforcement involvement, and whether reasonable modifications could have eliminated the need for law enforcement involvement.[34] A call to law enforcement should also trigger a reevaluation of the child's ISP and need for additional services or modifications.

We appreciate that the evaluation described in Section 410.1304 includes a review of staff qualifications and training in de-escalation techniques. We recommend that the rule specify that an effective and evidence-based de-escalation strategy would encompass three principles: (1) a mental health response must be presumed for a mental health crisis; ORR should invest in crisis services, including mobile crisis services that do not involve law enforcement and children's Assertive Community Treatment (ACT)

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[33] 88 Fed. Reg. 68937.

[34] As the Department of Justice has recognized, "[l]aw enforcement responses to mental health crises are not only ineffective, they increase the likelihood that children whose needs could be met with behavioral health services will instead enter the juvenile justice system." Letter from Kristen Clarke, Assistant Attorney General, Civil Rights Division, U.S. Dep't of Justice, *United States' Investigation of Maine's Behavioral Health System for Children Under Title II of the Americans with Disabilities Act* 1, 13 (June 22, 2022), https://www.justice.gov/crt/case-document/file/1514441/download.

services,[35] so that trained mental health professionals treat the child, in place of a law enforcement response, which typically exacerbates the situation; (2) law enforcement should not be called if reasonable modifications or other services could be provided to the child to de-escalate the behavior in question and remediate concerns; and (3) law enforcement should only be called if that child poses an imminent threat of serious physical injury to others based on objective evidence. Factors that should be considered include: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk without the involvement of law enforcement.

Prioritize placements in the most integrated setting

We welcome the proposed regulation's recognition of ORR's legal obligation to administer the UC program in the most integrated setting appropriate to the needs of unaccompanied children. ORR is subject to Section 504 of the Rehabilitation Act's integration mandate and the U.S. Supreme Court's holding in *Olmstead v. L.C.* (Lois Curtis), which require that individuals with disabilities be served in the most integrated setting appropriate to their needs and not be unnecessarily segregated or held in institutional settings.[36]

We recommend that the rule recognize that for unaccompanied children with disabilities, the most integrated setting appropriate to their needs will always be in a community setting, and almost always be living with a family.[37] HHS has recognized that long-term placement in congregate settings should never be considered the most integrated setting.[38] Children should live and receive services in a family setting unless that setting presents a significant risk to the health or safety of the child that cannot be mitigated through the provision of reasonable modifications including services. ORR should release unaccompanied children with mental health or other disabilities to sponsors in the community as expediently as possible.

Require reasonable modifications and auxiliary aids and services to meet children's needs in less restrictive settings

We welcome the proposed regulation's recognition in the Preamble that "[i]n determining whether there is a less restrictive placement available to meet the individualized needs of an unaccompanied child with a disability, consistent with Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), ORR must consider whether there are any reasonable modifications to the policies, practices, or procedures of an available less restrictive placement or any provision of auxiliary aids and services that would allow the unaccompanied child with a disability to be placed in that less restrictive facility."[39]

The proposed regulation itself, however, does not mention any mandatory analysis of reasonable modifications and auxiliary aids and services to permit a child to be placed in a less restrictive facility. If these considerations are not included in the regulatory text, it will not be clear to regulated parties that they are required to undertake this analysis. To adequately protect children's rights, we recommend that

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[35] United States' Investigation of Maine's Behavioral System for Children Under Title II of the Americans with Disabilities Act at 16 (June 22, 2022), https://www.justice.gov/crt/case-document/file/1514441/download.

[36] *See Olmstead v. L.C.*, 527 U.S. 581 (1999); 45 C.F.R. § 84.4(b)(2); 45 C.F.R. § 85.21(d).

[37] Brief of American Academy of Pediatrics et. al. as Amici Curiae Supporting Appellee and Affirmance, *United States v. Florida*, No. 0:12-cv-60460-DMM (11th. Cir. Nov. 15, 2023) (amicus brief from pediatric medical experts, professional medical associations, and public health, family, and disability advocacy organizations supporting principle that it is almost always more appropriate and more effective for children with complex medical needs to be cared for at home than in an institution); Sandra L. Friedman et al., *Out-Of-Home Placement for Children and Adolescents with Disabilities—Addendum: Care Options for Children and Adolescents with Disabilities and Medical Complexity*, 138 Pediatrics 1, 3 (Dec. 2016), https://bit.ly/3QsJzvq (family placements are in the best interest of the child).

[38] Discrimination on the Basis of Disability in Health and Human Service Programs, 88 Fed. Reg. 12345 (Sept. 14, 2023).

[39] 88 Fed. Reg. 68923-24.

ORR explicitly incorporate the consideration of reasonable modifications and auxiliary aids and services to facilitate less restrictive placement into the proposed regulations and apply both to an initial transfer decision and to a child's 30-day restrictive placement case review (Sections 410.1105, 410.1601, & 410.1901). The "clear and convincing evidence" standard for restrictive placement (Section 410.1901) must include a determination by clear and convincing evidence that a child cannot safely be placed in a less restrictive facility with additional accommodations or services.

In addition, dangerousness determinations should comply with Section 504. As such, placement criteria for a secure facility should not include the assessment that a child is a danger *to themselves*.[40] In addition, the proposed regulation should make explicit that a child with a disability will not be deemed to pose a danger *to others* unless they pose a "direct threat," which by regulation means a "significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services."[41] The direct threat standard under the ADA and Section 504 does not consider *a threat to self* as an adequate reason to deny reasonable modifications for a child to receive care in a more integrated setting. Reasonable modifications for these children should include delivery of crisis intervention and stabilization services in a non-secure setting.

Strengthen requirements around consent to the use of psychotropic medications (§ 410.1310(a))
Proposed Section 410.1310(a) does not define who would qualify as "authorized individuals" and would permit the agency unlimited discretion to decide who is authorized to provide consent for a child. We recommend that the proposed regulations specify that the term "authorized individuals" means a child's parent or legal guardian, whenever reasonably available, followed by a close relative sponsor, and then the unaccompanied child themselves (if the child is of sufficient age and permitted to consent under state law). Care provider staff must never be considered authorized individuals for the purpose of informed consent to psychotropic medication.

Outside the context of a psychiatric emergency, ORR must ensure that an authorized individual provides informed consent. In the case of true psychiatric emergencies, the proposed regulations should require that any emergency administration of psychotropic medication be documented, that the child's authorized consenter be notified as soon as possible, and that the care provider and ORR review the incident to ensure compliance with ORR policies and avoid future emergency administrations of medication.

We also recommend adding language to proposed regulation Section 410.1310 stating that refusal to consent to the use of psychotropic medication shall not lead to punishment or retaliation. Nor should refusal to consent be used to step up youth to more restrictive placements; youth are not to be coerced into taking medication as a condition of placement.

IV. Protecting and Affirming LGBTQ+ Youth

Despite the challenges that LGBTQ+ youth experience in ORR custody, the proposed rule includes few if any needed references to their safety in custody. While we appreciate the proposed rule's requirement that LGBTQ+ identity be a consideration when making decisions on placement and Post-Release Services (PRS), we emphasize that additional safeguards are needed to ensure affirming, safe, and healthy environments for these young people.

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[40] Although the TVPRA permits placement in a secure facility based on danger to self, 8 U.S.C. 1232(c)(2)(A), it does not require ORR to use this criteria.

[41] *See* HHS Proposed Rule, Discrimination on the Basis of Disability in Health and Human Service Programs or Activities, 88 Fed. Reg. 63392, 63499, 63507 (Sept. 14, 2023); 28 CFR §§ 35.139, 35.104. *See also Hargrave v. Vermont*, 340 F.3d, 27 (2d Cir. 2003) ("whereas the 'direct threat' defense requires the person to pose a risk of harm to others…"); *Schl. Bd. Of Nassau Cnty. v. Arline*, 480 U.S. 273 (1987); *Bay Area Addiction Research and Treatment v. City of Antioch*, 179 F.3d 725, 735 (9th Cir. 1999).

LGBTQ+ youth deserve to be in environments that positively affirm their identity. When LGBTQI+ youth are discriminated against, mistreated, or placed in non-affirming environments, their mental and physical health suffers. To advance the safety and wellbeing of LGBTQ+ youth in federal custody, ORR should work towards creating an accepting and affirming environment where LGBTQ+ youth receive the support they need.

Protect LGBTQ+ youth from discrimination
ORR has an obligation to protect LGBTQ+ youth from discriminatory treatment and abuse. This obligation is reflected in ORR Policy Guide Section 3.5.1 but should be explicitly incorporated into the proposed regulations. Incorporating this language is especially important in light of a number of states adopting anti-LGBTQ+ legislation.

Expand the definition of LGBTQ+ youth (§ 410.1001)
Under Proposed § 410.1001, the term "LGBTQ+" is defined as "lesbian, gay, bisexual, transgender, queer or questioning, and intersex." We recommend expanding this definition to include an explanation of the "+" symbol. This expanded definition would make the definition more complete and would better encompass the many other identities that make up the LGBTQ+ community, such as those who identify asexual, two-spirit, or pansexual.

Expand staff training to include gender identity and sexual orientation (§ 410.1305(a))
Many ORR facility staff are not adequately trained in how to work with and support LGBTQ+ youth. It is crucial that care provider staff receive adequate training and tools to create an environment where youth can safely ask questions, explore expression of gender identities through personal care products, and have access to resources to help them understand who they are. Adequate training should also provide staff with the tools to create an environment free from bullying.

Ensure Post-Release Services (PRS) include gender-affirming healthcare resources and LGBTQ+ services (§ 410.1210(b)(12))
ORR must also ensure that these services and supports are provided in a manner that protects LGBTQ+ youth's right to privacy and requires a youth's consent before disclosure to their sponsor.

Require care providers to report data on LGBTQ+ youth to ORR (§ 410.1501 (a))
It is important for ORR to track how many children in custody identify as LGBTQ+ to better meet the needs and placement preferences of LGBTQ+ youth. By tracking this type of data, ORR will better understand where LGBTQ+ youth are being placed and assess if those programs are adequately providing affirming and supportive care to youth. It is also important for ORR to identify which states LGBTQ+ youth are being placed in, as placement in states with restrictions on LGBTQ+ rights may cause issues for youth who request LGBTQ+ specific resources while in custody or as part of post-release services.

Refer all LGBTQ+ youth for appointment of a Child Advocate
Given the vulnerability of LGBTQ+ unaccompanied youth, ORR should refer all youth who identify as LGBTQ+ for the appointment of a Child Advocate.

Provide comprehensive sex education (CSE) for youth with specific LGBTQ+ learning modules
ORR should implement CSE across its various programs and ensure that all CSE provided by ORR to youth includes LGBTQ+ learning modules.

Create a working group focused on improving care for LGBTQ+ youth in custody
To better inform ORR's policies and practices to affirm and support LGBTQ+ youth, ORR should convene a working group focused on better meeting the needs of LGBTQ+ youth in custody.

V. Reproductive Health

Preserve abortion access as an essential family planning service (410.1001)

We applaud ORR's decision to include protections for abortion access in the Proposed Rule. Access to abortion is critically important for unaccompanied children. ORR is required to ensure that they have access to abortion consistent with the settlement in *J.D. v. Azar*, and ORR's Field Guidance to effectuate the terms of that settlement.[42] We support the Proposed Rule's codification of ORR's requirement to transfer a minor seeking an abortion within three business days if abortion is unavailable in their area. This is an incredibly important requirement given that sixteen states have total or early abortion bans in effect.[43] It is incumbent upon ORR to provide access to abortion regardless of where the minor is located; indeed, ORR must ensure that a minor's geographic location does not restrict their access to health care, including abortion. Unaccompanied immigrant youth must be permitted to make their own decisions about their medical care, their bodies, and their future.

We have two concerns, however. First, abortion should not be treated separately from other health care. The proposed regulation incorrectly categorizes abortion as distinct from "routine medical … [and] family planning services." To the contrary, abortion should be included in the definition of medical care and family planning services to avoid stigmatizing abortion care. We recommend ORR amend the definition of "Family planning services" in § 410.1001 Definitions to include abortion in the proposed regulations. We also urge ORR to establish guardrails to ensure that a future presidential administration does not use the heightened involvement requirement to create obstacles or prevent minors from accessing abortion.

Ensure appropriate placements for pregnant and parenting youth (410.1103) We are encouraged by ORR's recognition in the Preamble that pregnant and parenting youth are best served in family settings.[44] This important principle must be integrated into the text of the proposed regulations. ORR should codify its commitment to place pregnant and parenting youth in environments that are most supportive of their health and well-being in its proposed regulations. We recommend a new subsection (h) in § 410.1103, that explains pregnant and parenting unaccompanied children "shall be given priority to community-based care placements" or "transitional and long-term home care," depending on the terminology for care provider types that ORR adopts.

Preserve family unity for parenting youth and their children (410.1108)
We appreciate regulations aimed at limiting the circumstances under which the government can separate a parenting youth in ORR custody from their children. However, we are concerned that the language in proposed § 410.1108(a) and (a)(3) is vague and fails to provide sufficient procedures to protect the rights of unaccompanied, parenting youth. Moreover, the regulations do not explain who will make determinations that lead to separation or how such determinations will be made. This may lead to improper family separations. Unaccompanied, parenting youth are also not offered any mechanism to challenge a separation under § 410.1108(a) or § 410.1108(a)(3). Finally, there is no language within the Proposed Rule regarding reunification of an unaccompanied, parenting youth separated from their children. We recommend ORR amend the Proposed Rule to conform with legal protections and standards under state child welfare law and that ORR add protections to the proposed regulations to prevent the unnecessary separation of unaccompanied, parenting youth from their children while in ORR custody.

We also recommend that ORR amend § 410.1108(a)(3) to include critical language from the UC Program Policy Guide. First, Section 1.2.7 states: "[t]he separation of an [unaccompanied child] from his or her

[42] 88 Fed. Reg. 68946 n.112.

[43] Guttmacher Institute, *Interactive Map: US Abortion Policies and Access After Roe*, https://states.guttmacher.org/policies/ (last updated Nov. 7, 2023).

[44] *See* 88 Fed. Reg. 68920.

siblings or from his or her child requires prior authorization of ORR."[45] This prior authorization requirement serves a critical accountability and oversight mechanism and ensures that a provider cannot unilaterally decide to separate an unaccompanied youth from their children without ORR approval. The proposed regulations should include this requirement, and also require immediate notification of the parenting youth's attorney and their Child Advocate, if one has been appointed.

Protect youth's privacy in health care decisions (410.1307)

Numerous health professional organizations, including the American Academy of Pediatrics, agree that access to confidential reproductive health care is critical to improving the health of young people.[46] Youth in ORR custody must be able to decide for themselves whether or not to share their health care information with others, such as their parent, guardian, or sponsor. Numerous health professional organizations, including the American Academy of Pediatrics, agree that access to confidential reproductive health care is critical to improving the health of young people.[47] Youth in ORR custody must be able to decide for themselves whether or not to share their health care information with others, such as their parent, guardian, or sponsor.

VI. Legal Services and Child Advocates

Concerns about ORR's commitment to legal representation for unaccompanied children

We applaud ORR's stated commitment to achieving universal representation for unaccompanied children. However, the proposed rule appears to weaken access to counsel provisions in the TVPRA (proposed § 410.1309(a)(4)). It conditions ORR's compliance with this obligation on the availability of appropriations, discretion, and practicability of securing *pro bono* counsel. The proposed rule should interpret the TVPRA's directive to make use of pro bono counsel as a directive to maximize and leverage resources, and not as a precondition or replacement to ORR funding of legal services for unaccompanied children. ORR must commit to making its best effort to provide legal representation for every child, which must include seeking sufficient discretionary appropriations from Congress to meet this mandate.

Share all information with the unaccompanied child's representative (410.1309(c)(2))

Documents and other information regarding contact with law enforcement or allegations of abuse and harassment should be turned over without delay, and not more than 30 days after the incident, or in the case of investigations or reports, 30 days after the creation of the document. All interactions with law enforcement or allegations of abuse and harassment should be shared with counsel for the child because they will likely be relevant to the child's immigration relief, potentially making a child eligible or ineligible for relief or impacting their ability to be released from custody or placed in a less restrictive setting. Additionally, section 410.1309(c)(2) provides for ORR's sharing of a child's complete case file (except legally required redactions), on request and receipt of proof of representation and a signed authorization for release of records. This section should be harmonized with current ORR policy permitting care providers to share certain information directly with the child's attorneys if the child permits and it relates to the child's legal case.

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[45] U.S. Dep't of Health & Hum. Servs., Admin. of Child. & Fams., Office of Refugee Resettlement, *Unaccompanied Children Program Policy Guide: Section 1.2.7 Placing Family Members*, https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.2.7 (last updated Nov. 14, 2023).

[46] AAP Committee on Adolescence, *The Adolescent's Right to Confidential Care When Considering Abortion*, PEDIATRICS 139(2) (Feb. 2017), http://publications.aap.org/pediatrics/article-pdf/139/2/e20163861/1061444/peds_20163861.pdf.

[47] AAP Committee on Adolescence, *The Adolescent's Right to Confidential Care When Considering Abortion*, PEDIATRICS 139(2) (Feb. 2017), http://publications.aap.org/pediatrics/article-pdf/139/2/e20163861/1061444/peds_20163861.pdf.

Ensure the independence of Child Advocates (§ 410.1308 (a))
As set forth in the Trafficking Victims Protection Reauthorization Act of 2008, at 8 U.S.C. 1232(c)(6), the role of the Child Advocate is to identify and advocate for the best interests of particularly vulnerable unaccompanied children. Their independence from other service providers and stakeholders is so critical that it was included in the statute authorizing their appointment. Independence allows Child Advocates to make determinations based on the best interests of the child alone.

Allow Child Advocates to submit best interests determinations (BIDs) to any government official making decisions about a child (§ 410.1308 (c))
Consistent with nearly 20 years of work by Child Advocates and as set forth in both the ABA Standards and the Interagency Best Interests Framework, Child Advocates have an obligation to submit BIDs to any official or agency that has the power to make decisions about a child.

Ensure Child Advocates are uninhibited in their best interests advocacy. (§ 410.1308 (e))
Consistent with the statute authorizing the appointment of Child Advocates and with practices carefully negotiated with ORR over the last two decades, Child Advocates must have prompt access to all information in a child's case. Timeliness is particularly critical; this includes advance notice—with time to advocate—before a child is transferred over their objection or transferred ("stepped up") to a more restrictive facility, including to residential treatment centers (RTCs).

Significantly, the proposed regulations incorrectly assume that the federal government owns and controls all information about the child and improperly limits the Child Advocate's ability to disclose information from the child's file with either the child's consent or when it is in the child's best interests. In permitting children to request copies of their ORR files after their release, the government has implicitly acknowledged that children have a right to the information in their case files, to use as they need. This right does not hinge on whether the child is detained or released. Rather, the information in a child's file can and should be used to advance the child's rights and best interests with the child's consent, or when a Child Advocate has conducted a BID and determined that disclosure of information is in a child's best interests.

VII. Reunifications and Release

Strengthen regulations providing for children's involvement in release decisions (§ 410.1003(d))
We are encouraged to see that ORR has explicitly included youth participation in decision-making as a foundational principal that applies to the care and placement of unaccompanied children in §410.1003(d). This principle must also apply to reunification placements, which is perhaps the most important decision that ORR makes for any individual child.

Strengthen the definition of "Best interests of the child" (§ 410.1001)
The definition of the "best interest" standard in § 410.1001 includes many positive components, and it should be strengthened and clarified to be consistent with the "best interests of the child" standard established in the Convention on the Rights of the Child[48] and the Subcommittee on Best Interests of the Interagency Working Group on Unaccompanied and Separated Children's Framework for Considering the Best Interests of Unaccompanied Children ("Best Interests Framework")[49], a document created with

[48] Convention on the Rights of the Child, art. 3, Nov. 20, 1989, 1577 U.N.T.S. 3; Comm. on the Rights of the Child, General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1), ¶ 76, U.N. Doc. CRC/C/GC/14 (May 29, 2013).

[49] Subcomm. on Best Interests, Interagency Working Grp. on Unaccompanied and Separated Children, Framework for Considering the Best Interests of Unaccompanied Children 5 (2016) (confirming that "the most widely accepted elements of best interests include: safety and well-being; the child's expressed interests, in accordance with the child's age and maturity; health; family integrity; liberty; development (including education); and identity) (internal citations omitted).

input from ORR officials. As contained in these frameworks, the best interests of the child standard generally includes the following elements: the child's expressed wishes, their safety, and their rights to family integrity, liberty, development, and identity. Any best interests of the child determination must also include consideration of the impact of ongoing or continued federal custody on the child's wellbeing.

Explicitly consider a child's best interests in making reunification decisions

As part of ORR's ongoing obligation to act in the child's best interests, ORR must consider the harm to the child's wellbeing of continued federal custody and the benefits of release to a community placement as factors relevant to the child's best interests and the sponsor's ability to provide for the child's welfare. ORR recognizes that prolonged custody is harmful to children[50], and therefore must consider the impact of prolonging a child's custody throughout the reunification process and in making any reunification decision. Explicitly referencing this obligation will ensure that the impact of continued custody on each child's wellbeing is properly considered and balanced in the reunification analysis.

Keep families together by expediting the release of unaccompanied children to relatives with whom they are traveling who qualify as Category 2 sponsors

We recommend that the proposed regulations include a provision codifying ORR's ability to quickly verify family relationships and release unaccompanied children with their adult relatives, approved as Category 2 sponsors. Protecting the safety and best interests of children should not begin when a child arrives at an ORR facility, but from the moment they reach the border. Many children arrive at the border with relatives who already care for them but are not their parent or legal guardian. Typically, unaccompanied children are immediately separated from their family members and transferred to ORR custody. ORR then looks for a family member to sponsor the child out of custody – sometimes the same family member from whom the child was initially separated. Instead of separating families and causing additional trauma, ORR staff can meet with children and relatives at the border and begin the process of qualifying the adult family member as a Category 2 sponsor. ORR staff verify family relationships and ensure that the adult relative does not pose a risk of trafficking or other immediate danger to the child. If approved as a Category 2 sponsor, CBP must release the adult and ORR releases the child into the custody of the family member (with the child designated as unaccompanied, which provides critical protections to children during their immigration case).

Expand due process protections to all children with potential sponsors (§ 410.1203)

The proposed regulations should provide an appeal procedure for all children and their sponsors. A child has constitutional and statutory rights to freedom from confinement; and both the child and sponsor have a constitutional right to family unity. Because children themselves hold each of these protections,[51] ORR

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[50] *See, e.g.*, Office of Inspector General, U.S. Dep't of Health & Human Serv., *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody* (Sept. 3, 2019), https://oig.hhs.gov/oei/reports/oei-09-18-00431.asp. *See also, J.E.C.M. v. Lloyd*, Dkt. Nos. 240, Ex. 12 at 3 ("The best practice in child welfare would be to discharge the UAC within 30 days of admission. In ordinary cases, ORR generally does not recommend keeping UAC in care for longer than 60 days") (ORR Operational Directive issued Dec. 18, 2018, under seal for different reasons); 242-8 (Deposition of ORR Deputy Director Jallyn Sualog, stating "the literature shows that children should not be in car probably longer than 60 days in congregate care, and then they start to have adverse effects . . . I do understand those impacts to be long lasting.").

[51] *J.E.C.M. by & through Saravia v. Marcos*, No. 118-903, 2023 WL 5767321, at *10 (E.D. Va. Aug. 29, 2023). The *J.E.C.M.* court held "The defendants do not dispute that minors, just like adults, have a constitutional interest in being free from institutional restraints, *Schall v. Martin*, 467 U.S. 253, 265, 104 S.Ct. 2403, 81 L.Ed.2d 207 (1984) ("[A] juvenile's ... interest in freedom from institutional restraints ... is undoubtedly substantial"); *see also Application of Gault*, 387 U.S. 1, 27, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967); however, this "interest must be qualified by the recognition that juveniles, unlike adults, are always in some form of custody." *Schall*, 467 U.S. 253, 265, 104 S.Ct. 2403, 81 L.Ed.2d 207 (1984). This qualification does not negate a minor's interest in being free from restraints, but, instead, relates to the balancing of the factors cited in *Mathews v. Eldridge*. . . Additionally, both UC and sponsor class members have a cognizable constitutional interest in family unity. . . Category 2 sponsors and the

must not limit the right to appeal a reunification denial to children with Category 1 sponsors – that essential procedural protection must be available to all children in the reunification process, with the assistance of their sponsors if desired.

Provide a more detailed explanation of sponsor suitability criteria (§ 410.1202)
We urge ORR to clarify how the sponsor suitability considerations in proposed § 410.1202 will be used, because as written many are overly vague and unclear. For example, consideration of the "physical environment of the sponsor's home" does not explain what about the physical environment is relevant. Additionally, it is unclear what ORR is investigating when evaluating the sponsor's motivation for sponsorship. The sponsor suitability considerations should provide clear and predictable criteria through which to assess reunification applications and lead to clear and predictable decisions. We provide suggested language in the recommendation below.

Of the criteria ORR describes assessing, some raise deep equity and cultural competency concerns. First, ORR should make clear that a sponsor's poverty cannot be a disqualification for a child to be released to a sponsor unless it is so severe as to raise concerns about the sponsor's ability to meet the child's basic needs. Second, ORR must recognize the ways in which the criminal justice system in the United States is racially discriminatory and disproportionately impacts people of color[52] like most adults trying to sponsor children in ORR custody. ORR must incorporate training for all staff about the ways in which systemic racism impacts sponsor communities and skews histories of criminal justice system involvement, making that information both less reliable and less informative for use in reunification decisions.

Additionally, a child expressing a need to work or earn money does not and should not, without more, raise a risk of trafficking. Considering a child to be at risk for trafficking based solely on a child's expressed need or desire to work or earn money disregards the widely documented and understood reasons for children's migration and lived experiences in many American communities (immigrant and not) where children work legally and safely. Including that factor here creates an overly broad (and therefore useless) risk assessment that is culturally incompetent and ignorant of the way many families live and survive across vast swaths of the country. Instead, we urge ORR to identify and adopt a verified assessment tool to determine whether a child is at risk for trafficking, especially if such a determination would result in prolonged reunification decision-making processes leading to prolonged federal custody.

Several provisions (§§ 410.1202(f), 410.1202(h)) require consideration of a child's disability as part of ORR's evaluation of a potential sponsor. Without more context and explanation of what it means to consider a child's disability, these provisions could lead care providers to discriminate against children with disabilities by adding obstacles to release not faced by children without disabilities. ORR has a legal obligation to ensure children with disabilities have an equal opportunity to obtain the benefit of prompt

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minor children seeking to be released to them have an interest in family unity because "[o]urs is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family. The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition." *Moore v. City of East Cleveland*, 431 U.S. 494, 504, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977)." *Id.* The court further held, "The Court agrees with the reasoning of *Santos*, *Beltran*, and *Lucas*, and finds that the interest of family unity is implicated by ORR's reunification process as it applies to Category 1 and 2 sponsors, and finds that UCs and their proposed Category 1 and 2 sponsors share a constitutionally cognizable interest in family unity." *J.E.C.M.* at *11.

[52] *See, e.g.*, National Conference of State Legislatures, *Racial and Ethnic Disparities in the Criminal Justice System*, (May 4, 2022), https://documents.ncsl.org/wwwncsl/Criminal-Justice/Racial-and-Ethnic-Disparities-in-the-Justice-System_v03.pdf.

release and may not use methods of administration that have the effect of impairing the release of children with disabilities.[53]

The proposed regulations should specify that ORR's consideration of the impact of a child's disability or disabilities must also include explicit consideration of the potential benefit to the child of release to a community placement with a sponsor and the potential harm of continued ORR custody on the child.[54] The proposed regulations should further make clear that a child's disability is not a reason to delay or deny release to a sponsor unless the sponsor is determined to be incapable of providing for the child's physical and mental well-being despite documented efforts by ORR to educate the sponsor about the child's needs and to assist the sponsor in accessing and coordinating post-release services and supports. If the sponsor needs support or training to meet the disability-related needs of the child being placed, such support and training should be provided as a reasonable modification for the child and to enable the child to live in the most integrated setting.

Welcome provisions protecting sponsors' immigration information (§ 410.1201 (b))
Advocates strongly appreciate ORR's clear statement that it will not share "any immigration status information relating to potential sponsors with any law enforcement or immigration enforcement related entity at any time." (§410.1201(b)). We urge ORR to strengthen this important protection by clarifying that it will not share *any* sponsor information with law enforcement or immigration enforcement entities except as needed to complete background checks or by judicial order. In addition, ORR should make clear that both UC and sponsor's personal information and ORR case files will be maintained separately from the child or sponsor's immigration files ("A-files") and will be provided to law enforcement or immigration enforcement only at the request of the principal individual (child or sponsor) or by judicial order. This protection must include counseling and case management notes and records. Without this important protection, children and their sponsor's vulnerability and openness to engage with ORR in the reunification process can easily be weaponized and/or could be used to undermine sponsor placements that would otherwise be safe and stable. Such protections codify ORR's clear mandate as a child welfare entity rather than as an arm or extension of law or immigration enforcement entities.

Include a provision for release planning for 17-year-olds at risk of aging out
The proposed regulation does not require age-out planning for unaccompanied children nearing the age of 18. The need for prompt and timely age-out planning is important because children in ORR custody who age out face the possibility of being transferred to adult detention in an Immigration and Customs Enforcement (ICE) facility. Abrupt transitions out of a child welfare setting without sufficient planning and support can further traumatize children and leave them vulnerable to homelessness, exploitation, and trafficking. The regulations must therefore include a provision specifically requiring that ORR and providers engage in planning for youth who will "age out" of ORR custody at age 18 beginning on their 17th birthday or if they enter custody after that time, as soon as they enter custody.

Appoint counsel to represent unaccompanied children at the risk determination hearings (§ 410.1903)
The proposed regulations (§ 410.1903) establish a risk determination hearing process for unaccompanied children in restrictive placements to determine whether the child would present a risk of danger to the community. We urge ORR to guarantee appointment of counsel to represent the child in risk determination hearings as the outcome of that hearing directly impacts the child's liberty.

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[53] *See* 29 U.S.C. § 794(a); 45 C.F.R. § 85.21(b)(1), (3).

[54] *See Olmstead v. L.C.*, 527 U.S. 581, 600 (1999) ("[U]njustified institutional isolation of persons with disabilities is a form of discrimination. . . [C]onfinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.").

Clarify that the government or facility bears the burden to prove dangerousness (§ 410.1903 (b))
The proposed regulations should further clarify that ORR bears the burden under a proof beyond a reasonable doubt standard to issue a finding of dangerousness. As currently written, the proposed regulations fail to understand the impact that a finding of dangerousness will have on a child and, potentially, on the child's immigration case. Such a finding is not part of or the result of a criminal proceeding in which a child is ultimately sentenced to a certain amount of time in custody and is then released. Instead, a finding of dangerousness allows the government to detain a child indefinitely for the duration of their childhood. In addition, such a finding is likely to impact a child's eligibility for relief from removal and may result in a child electing to be removed from the United States rather than apply for relief for which they are eligible, in order to be released from custody. In light of these severe consequences of a dangerousness finding, the proposed regulations should establish a presumption that the child is not dangerous, and a parallel presumption in favor of release.

VIII. Home Studies and Post-Release Services

Limit use of home studies to the most serious circumstances (§ 410.1204)
While home studies can be valuable in certain limited circumstances, they should be used relatively rarely due to their intrusive nature and the risk of causing unnecessary delays to release and reunification. The proposed regulations should leave space for ORR to make common sense decisions and exceptions in home studies that are not mandatory under the TVPRA.

We recommend that the proposed regulations include an explicit requirement that decision-making around home studies take into consideration the effect that prolonged custody and separation from family will have on the well-being of the child. Particularly when mental health or behavioral health issues are the identified trigger for the home study, it is often actually the traumatizing effects of detention, and detention fatigue, that are causing those health issues. Requiring a home study, and thereby prolonging the child's detention, may only make things worse.

Likewise, we strongly urge ORR to include time limits on the home study process in the final regulations to mitigate the tendency of home studies to prolong the reunification process and the child's time in federal custody. At a minimum, ORR should codify the current version of the Policy Guide, which requires the home study report to be completed within 10 days. In addition, we recommend that the regulations include an explicit provision stating that a delay in completing a home study will not delay the release of a child to a sponsor.

Ensure Post-Release Services are voluntary; work with sponsors and children to remove barriers to access (§ 410.1210)
Most supportive services work best when individuals and families choose to participate. This is true of post-release services (PRS) and should be reflected in the final rule. Ensuring that PRS are voluntary is essential. PRS must also be accessible and valuable such that already burdened families will choose to take advantage of them. In some instances, a child may be unable or unwilling to obtain consent from their sponsor or guardian to receive PRS (e.g., LGBTQ+ youth over 14 requesting mental health care or other community-based services). In such instances, it is important for PRS care providers to honor the child's privacy in order to allow the child to voluntarily access the services they need.

Offer PRS to all unaccompanied children upon release
ORR should set and make public a plan for achieving universal voluntary PRS by 2025. This plan should include guidelines to ensure that a child can make meaningful decisions about receiving PRS even when the sponsor has decided not to participate.

Ensure PRS begin promptly (§ 410.1210) (g)(1))
For released unaccompanied children who are required under the TVPRA to receive PRS, having PRS start no later than 30 days after release is too long of a wait. Based on consultation with PRS providers, services should start no later than 14 days after release is manageable and appropriate.

Strengthen PRS privacy protections for children and their sponsors (§ 410.1210) (i)(3))
Insufficient privacy protections for children and their sponsors are likely to be a significant barrier to engagement in PRS. As in other sections relating to privacy throughout the proposed regulations, the PRS sections should specify that neither children nor sponsor's information or data will be shared with any third parties, including law and immigration enforcement entities, without the written request or consent of the child and/or sponsor who is the subject of the information or by judicial order. This must be understood to include case management and counseling notes and records.

IX. Oversight and Data

Clarify ORR's monitoring activities (§ 410.1303)
Consistent, comprehensive monitoring of every ORR facility is necessary to protect the safety and well-being of all children in ORR custody. The proposed regulations do not indicate the frequency, duration, or scope of ORR's monitoring. ORR must monitor all care provider facilities and out-of-network placements (OON). Desk monitoring should include monthly check-ins by ORR Federal staff with the care provider or OON facility, regular record and report reviews, financial/budget statements analysis, ongoing reviews of staff background checks and vetting of employees, subcontractors, and grantees, and communications review. Routine site visits should include every facility on a once or twice monthly basis, both unannounced and announced, to review compliance with policies, procedures, practices,and guidelines. Monitoring visits that are weeklong visits should occur not less than every two (2) years as part of comprehensive reviews of all care provider facilities.

Ensure that Secure placements receive additional monitoring visits (§ 410.1303 (c))
Within ORR's network, secure placements have consistently facilitated and invited abusive, punitive, and traumatizing treatment of children. These facilities have been magnets for lawsuits and condemnation due to their failure to uphold basic standards. As such, ORR must increase its monitoring requirements for secure facilities, ensuring that routine site visits occur at a minimum of once per month and that weeklong monitoring visits are conducted yearly. We also recommend that ORR review children's case files at least every 14 days to determine if the child is ready for a less restrictive placement, instead of at 30-day intervals, which is in closer compliance with ORR's statutory and child welfare mandate.

Explicitly name the limitations of Significant Incident Reports when reporting to ORR (§ 410.1303 (f))
In our experience, ORR facilities often engage in over-reporting of incidents. Many SIRs frequently document minor rule infractions or developmentally appropriate child or adolescent behavior such as when children fail to follow facility rules, test boundaries, appropriately express frustration, or engage in horseplay or recreational activities. SIRs frequently fail to contextualize children's behavior within the stressful circumstances they are navigating, conditions and length of time in government custody, or the trauma they have experienced.[55] ORR's own policy guide states that "an incident report is not intended to provide a complete context (such as trauma, other incidents) of the incident described or of the child's experience in home country, journey, or time in care," and that "information may not be fully verified"

[55] Young Center for Immigrant Children's Rights and National Immigrant Justice Center, *Punishing Trauma, Incident Reporting and Immigrant Children in Government Custody*, Sept. 2022, https://www.theyoungcenter.org/overhaulsirreports.

(Section. 5.8).[56] As such, the regulatory language surrounding staff's reliance on Significant Incident Reports must clearly state that not only is a report not sufficient to step up a child to a more restrictive placement, but also that even as an example of past behavior, ORR and care provider staff must consider that reports may not be complete or verified, lack context regarding the incident and the children's experiences and background, and do not include the child's perspective on the incident.

Strengthen safeguards to preserve the confidentiality of unaccompanied child case file records and information § 410.1303(g)(1)

The proposed rule should not only prohibit the mishandling of unaccompanied children's information but also require organizations to implement policies and procedures to reduce the risk of mishandling. This must include proactively ensuring the privacy, security, and confidentiality of program data, including unaccompanied child case file records and information, from unauthorized use or disclosure, in accordance with federal laws requiring national standards for protecting sensitive and restricted data.

Require care provider facilities to record any separations from parents, legal guardians and other family members

We recommend that ORR require care provider facilities to keep detailed records of any circumstance in which they believe an unaccompanied child to have been apprehended with, but separated from, a parent, legal guardian or other family member at the time of apprehension into federal custody. Even if the separation cannot be substantiated, care provider facilities must collect all available information relating to the biographical information of the separated parent, legal guardian, or family member, the specific facts of the separation, documentation of notification to the child of the child's rights, and documentation of a referral for a Child Advocate.

Establish a strong Unaccompanied Children Office of the Ombuds (§410.2000)

The proposed regulations create a new Office of the Ombuds to provide oversight, report on concerns, and provide recommendations to improve ORR custody. Since the proposed regulations may lead to the end of oversight of HHS facilities by *Flores* counsel, the Office of the Ombuds will provide another form of oversight for the treatment of children in custody. The Office lacks some independence and authority, however, and as currently written, is not required to report to Congress.

Strengthen the transparency of the Ombuds, including by making information publicly available on a regular basis (§ 410.2001 (b))

Transparency of the Ombuds' activities is essential to holding the Office accountable. To strengthen this section, we recommend that the rule require annual reporting on the types of cases it receives, case outcomes, and demographics. This information is critical to understanding trends, including identifying gaps in services. It also allows stakeholders to have meaningful conversations with ORR and facilities about steps taken at a macro level to address recurring problems. For example, if the Ombuds report indicates an increase in reports of sexual abuse in a certain region, the legal service providers and Child Advocates for that region can provide targeted services, including revising how they provide information to unaccompanied children about their rights and addressing systemic problems in collaboration with

[56] Section 5.8 also states that incident reports "are primarily meant as internal records whose purpose is to document and communicate incidents for ORR's immediate awareness (and not, for example, as legal documents, medical or clinical records, or as dispositive decision documents regarding aspects of a child's case management needs)." ORR Policy Guide Section 5.8, updated August 2, 2023, https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-5#5.8.

ORR and the facilities. The Ombuds should also have a process for unaccompanied children to report retaliation after filing a complaint with the Ombuds office.

Strengthen the scope and responsibilities of the Ombuds, improving its authority and independence (§ 410.2002)

We recommend deleting the words "non-binding" in § 410.2002 (a)(10) and ensuring that the Ombuds can elevate for the Secretary's consideration any recommendations that ORR has not sufficiently addressed. Furthermore, recommendations should not be limited to the evaluation of existing policies, but also include draft policies in development or under consideration by ORR to aid in identifying opportunities to better respond to the experiences and unique needs of unaccompanied children and to address any deficiencies or unintended consequences of a given policy approach before it is finalized. We also urge the inclusion of a timeline by which ORR must respond to the Ombuds' recommendations to prevent delays that unnecessarily prolong or leave unaddressed known harms and risks to children.

Clarify the Ombuds' role in receiving and analyzing data (§ 410. 2002 (a)(1))

A core function of monitoring and oversight of the unaccompanied children's system of care is the ability to receive data – including but not limited to confidential data – and to use that data to identify important trends. Such trends may include the emergence of best practices in the care of unaccompanied children, the use of such best practices, systematic safety or well-being concerns, policies or procedures that result in occasional but regular risks of harm to children, policies or procedures that correlate with risks of harm to children but which may operate indirectly, emerging subpopulations of children who are at greater risk or who have additional vulnerabilities not previously known, and risk factors associated with safety and stability post-release, among others. The Ombuds should receive and analyze data, including confidential data, in order to identify trends in the safe care and safe and stable reunification of unaccompanied children with sponsors. The Ombuds should also have access to demographic information that is pertinent to serving the population of unaccompanied children. ORR must make disaggregated information available to the Ombuds in order to enhance transparency (see § 410.1503).

Expand the Ombuds' investigative authority (§ 410.2002 (a)(2))

We recommend that the final rule expands from "receiving reports" and "in response to reports it receives" to ensure the UC Office of the Ombuds can initiate investigations based on any information it becomes aware of, including, for example, media reports, NGO reports, or any other sources made publicly available, such as HHS Office of Inspector General ("OIG") reports or DHS Office of the Immigration Detention Ombudsman ("OIDO") reports and publications from the United Nations Special Rapporteur on Human Rights Defenders.

Additionally, we recommend that the Ombuds' investigative authority expand from just "implementation of or adherence to Federal law and ORR regulations" to also include adherence to ORR policies and licensing requirements. The preamble to the proposed rule does not make clear how the ORR Policy Guide will interact with the final regulations. To the extent that the ORR Policy Guide remains in place and is a source of policies that facilities are required to follow, the UC Office of the Ombuds should maintain investigative authority to ensure ORR care provider facilities are adhering to those requirements.

X. Conclusion

We thank ORR for the opportunity to comment on the proposed regulations. We urge ORR to adopt our recommendations and improve protections for youth in the proposed regulations.

Sincerely,

Al Otro Lado

Alianza Americas

American Immigration Council

Americans for Immigrant Justice

Asian Pacific Institute on Gender-Based Violence

Bridges Faith Initiative

Canal Alliance

Capital Area Immigrants' Rights (CAIR) Coalition

Center for Gender & Refugee Studies

Center for Law and Social Policy

Center for the Study of Social Policy

Central American Resource Center of Northern California (CARECEN SF)

CHILDREN AT RISK

Community Justice Alliance

Community Legal Services in East Palo Alto

Florence Immigrant & Refugee Rights Project

Galveston-Houston Immigrant Representation Project

Immigrant Defenders Law Center (ImmDef)

Immigrant Health Equity and Legal Partnerships (ImmHELP)

Immigrant Law Center of Minnesota

Immigrant Legal Defense

Immigration Counseling Service

International Refugee Assistance Project (IRAP)

Just Neighbors

Justice in Motion

Juvenile Law Center

Law Office of Daniela Hernandez Chong Cuy

Law Office of Miguel Mexicano PC

Lawyers for Good Government

Lawyers' Committee for Civil Rights of the San Francisco Bay Area

Legal Services for Children

National Immigrant Justice Center

National Immigration Project

OneAmerica

Physicians for Human Rights - Student Advisory Board

The Advocates for Human Rights

The National Domestic Violence Hotline

United We Dream

VECINA

Witness at the Border

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