

**UNITED STATES OF AMERICA**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Unaccompanied Children Program                    )   Docket No. ACF-2025-0003**  
**Foundational Rule    )   RIN 0970-AD16**

**Background on the Submitting Organization’s Qualifications to Comment**

The Advocates for Human Rights is a nonprofit, nongovernmental organization headquartered in Minneapolis, Minnesota. Founded in 1983, The Advocates for Human Rights' mission is to implement international human rights standards to promote civil society and reinforce the rule of law. Holding Special Consultative Status at the United Nations (UN), AHR regularly engages UN human rights mechanisms in addition to providing expert technical assistance and advocacy in the Upper Midwest of the United States.

For over forty years, The Advocates for Human Rights has been the primary provider of free legal representation to asylum seekers in the Upper Midwest. Today our practice includes representation of asylum seekers, unaccompanied children, victims of human trafficking, and people held in civil immigration detention. We have provided free immigration legal services in more than 10,000 cases and are one of the only organizations providing such services free of charge in the region. The Advocates also regularly trains and mentors pro bono lawyers, coordinates and presents on immigration law at conferences and continuing legal education programs and leads numerous efforts around legal services for migrants.

In particular, we have worked on anti-trafficking efforts for more than a decade, providing free legal services to trafficking victims, conducting baseline assessments, and serving

in an advisory capacity to state and local governments on labor trafficking protocols and legislation. Through this work, we have provided pro bono representation to hundreds of trafficking victims in immigration proceedings and worked with law enforcement on investigations of trafficking. We have further trained and worked with service providers, community groups, faith organizations, and more to identify signs of trafficking and provide appropriate support to such victims.

In addition to immigration legal services, The Advocates works in Minnesota and internationally to improve laws to end violence against women and girls. Our WATCH Project monitors domestic violence, sexual assault, and sex trafficking cases in Minnesota courts. Globally, with our on-the-ground partners, we have driven key advances in women's rights and are now leading a coalition to counter the global anti-gender movement. The Advocates also works across programs to uphold the rights of LGBTIQ+ people and others who are experiencing violence and discrimination based on sexual orientation, gender identity and expression or sex characteristics.

The Advocates monitors and documents government compliance with international obligations, advocates for human rights-based public policy responses, trains government and nongovernmental actors, represents victims, and coordinates legal services responses in large-scale cases. Working with diaspora and in-country human rights defenders, The Advocates leverages pro bono resources to document and advocate to end human rights abuses and to abolish the death penalty worldwide. The Advocates holds Special Consultative Status with the UN, where it presents oral and written statements to charter-based bodies such as the Human Rights Council, participates in UN review of compliance with human rights treaties through shadow reporting, and provides technical advice.

## **Comment of The Advocates for Human Rights**

On March 25, 2025, the Department of Health and Human Services Administration for Children and Families (hereinafter “Department” or “agency”) posted the interim final rule (IFR), “Unaccompanied Children Program Foundational Rule; Update to Accord with Statutory Requirements” and requested comments within 60 days of publication in the Federal Register. The Advocates for Human Rights is complying with this deadline but must voice its objection in the manner that the rule was published in the Federal Register.

This rule will result in more children spending longer periods in detention, separated from family, and exposed to greater risks of trauma, exploitation, and harm. The Department’s approach prioritizes surveillance and enforcement over child welfare, undermining both U.S. and international legal obligations to act in the best interests of the child.

### **I. The Department’s Justification is Based on False Narratives**

The Department’s justification for issuing this rule as an Interim Final Rule (IFR) relies heavily on misleading claims about “misplaced” children. The cited figure of over 300,000 “missing” children is not only inaccurate but also mischaracterizes the issue. In reality, the vast majority of these children are safely residing with sponsors. The real reason 300,000 children are not in contact with ICE is largely due to fear of interacting with law enforcement—an issue this rule will only exacerbate<sup>1</sup>. Moreover, many of the so-called “missing” cases are due to administrative failures, such as ICE not issuing Notices to Appear for children, which is a necessary step for them to appear in court where they *would* be identified and processed.<sup>2</sup> Similarly, these numbers could be addressed by investing adequate funding and efforts into

---

<sup>1</sup> <https://immigrationforum.org/article/unaccompanied-alien-children-ucs-or-uacs-2025-update/>

<sup>2</sup> *Id.*

providing notices and court information that ensures children can understand and access immigration processes. Numerous children miss court hearings—contributing to the number of alleged “missing” children—because they cannot understand notices that are solely provided in legal English, because they fear attending hearings because of political rhetoric, because they cannot reach distant courts or access remote hearings, or because they have not received notices because of ICE failure to follow-up.<sup>3</sup> None of these issues is discussed, acknowledged, or addressed by the IFR. Moreover, the Department has failed to demonstrate how the IFR addresses this alleged urgency or how the proposed changes would resolve the issue. Instead, the rule capitalizes on public fear and misinformation to justify sweeping surveillance and enforcement measures that will harm children and families.

## **II. The IFR Is Not in the Best Interest of Children**

The Department is proposing to fix a problem that is not the issue. The IFR proposes that gathering additional data on sponsors is necessary to protect children; however, this is not in the best interest of children as the Department has not shown how the current data will better protect children or how it will mitigate the risk that such data will result in harm to children by loss of sponsors. Currently, all sponsors *do* provide the necessary information that allows the ORR to trace each sponsor and unaccompanied alien child.<sup>4</sup> A problem arises when the ORR shares the information that could have adverse consequences if the only reason it is being collected is to vet and trace the sponsors. The Department has not provided in the IFR any information about how it will limit information sharing to what is strictly necessary for the children’s safety, rather than

---

<sup>3</sup> <https://www.theadvocatesforhumanrights.org/News/kids-in-court>

<sup>4</sup> See Preamble to ORR Foundational Rule, 89 Fed. Reg. at 34445 (ORR verifies sponsor identity and “may consult with the issuing agency (e.g., consulate or embassy) of the sponsor’s identity documentation to verify the validity of the sponsor identity document presented”)

using data as dragnets for enforcement that will result in loss of sponsors. Moreover, the Department has failed to detail any clear and transparent guidelines for how the sponsor data will be used in connection with the program and how this data will be protected in a manner that will not bring adverse consequences for the applicants.

*a. The IFR Will Result in Prolonged Detention and Trauma for Children*

By expanding sponsor vetting requirements—including biometrics, income verification, and background checks on all household members—the IFR will significantly delay the release of children from ORR custody.<sup>5</sup> These delays are not theoretical; past policies that increased information-sharing with ICE led to a sharp drop in family members coming forward as sponsors. Prolonged detention has well-documented negative effects on children’s mental health, including anxiety, depression, and post-traumatic stress.<sup>6</sup> The IFR’s failure to account for these harms or to propose safeguards against unnecessary detention demonstrates a disregard for the well-being of children in ORR care.

The IFR fails to center the best interests of the child, as required under both domestic child welfare standards and international human rights law. Rather than prioritizing family unity, safety, and well-being, the rule emphasizes enforcement and data collection. It introduces expanded vetting requirements and surveillance mechanisms without demonstrating how these changes will improve child safety. In fact, the likely outcome is the opposite: children will

---

<sup>5</sup> Previously acceptable forms of identification like a foreign passport are no longer acceptable unless they “contain[] a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa” or are accompanied by “Form I-94 or Form I-94A with Arrival-Departure Record, and containing an endorsement to work.” See Office of Refugee Resettlement, ORR Unaccompanied Alien Children Program Policy Guide: Record of Posting and Revision Dates (Apr. 15, 2025), § 2.2.4, <https://perma.cc/W92W-R4K7>.

<sup>6</sup> M. von Werthern, et al., *The impact of immigration detention on mental health: a systematic review*, 18 BMC Psychiatry no. 382, 2018, <https://perma.cc/7UK3-LQB5> (research not specific to detention in Office of Refugee Resettlement facilities); Julie M. Linton, MD, et al., *American Academy of Pediatrics Policy Statement*, Detention of Immigrant Children, 139 Pediatrics, no. 5, 2017, <https://perma.cc/KZ9T-4MQX>.

remain in custody longer, face greater psychological harm, and be separated from their families due to fear among potential sponsors. The Department has not provided any analysis of how these changes align with the best interest of the child standard, nor has it considered less harmful alternatives.

*b. The IFR Will Make Children and Parents Vulnerable to Trafficking and Exploitation*

When family members are too afraid to come forward due to fear of immigration enforcement resulting from the data dragnet in the IFR, children may be released to less suitable or even dangerous sponsors. Under this IFR, parents are no longer allowed to use secondary forms of identification (like marriage certificates or foreign national ID cards), and “[a]ny deviation from this requirement must be supported by clear justification and exceptions may be made on a case-by case basis by HHS ORR Headquarters.”<sup>7</sup> Yet, many parents will lack “acceptable” forms of ID as they may have been lost or inaccessible in flight or transit from home country. In some cases, desperate families may turn to third parties—sometimes paying individuals to pose as sponsors—placing children at risk of trafficking, abuse, or coercion. *See J.E.C.M.*, 352 F. Supp. 3d at 584 (“Indiscriminately sharing sensitive information about all adults in a sponsor’s household with DHS could result in DHS’s taking immigration enforcement action against those individuals, which could destabilize the home environments into which unaccompanied minors may be released.”). Traffickers and exploitative individuals already use desperation to target migrants, forcing them into debt bondage and servitude or other abusive relationships. Further, the IFR increases this risk by creating a chilling effect on legitimate sponsors, particularly undocumented parents and relatives. Rather than enhancing safety, the rule

---

<sup>7</sup> ORR Policy Guide § 2.2.4.

undermines ORR’s ability to ensure safe placements by driving sponsorship underground and reducing transparency.

*c. The IFR Will Separate Families*

The IFR’s expanded surveillance and data-sharing provisions will deter family members—especially undocumented parents and relatives—from stepping forward to sponsor children. This will result in prolonged family separation, even when reunification is in the child’s best interest. In *J.E.C.M. v. Hayes*, the court noted that a policy that elevated immigration enforcement and discouraged sponsors from coming forward leads to prolong child detention and is contrary to ORR’s statutory mandate under the TVPRA.<sup>8</sup> The Rule’s failure to provide protections against immigration enforcement for sponsors contradicts the Department’s stated goals and violates international norms that require family unity to be preserved wherever possible. Family separation is not a collateral consequence of this Rule—it is a foreseeable and avoidable outcome that the Department has chosen not to mitigate.

### **III. The IFR Will Violate U.S. Obligations Under International Law**

The United Nations Convention on the Rights of the Child (“CRC” or the “Convention”) is an international human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. Nearly 200 countries are party to the CRC treaty and every member of the United Nations, except the United States, has ratified the treaty.<sup>9</sup> Even though the

---

<sup>8</sup> *J.E.C.M. v. Hayes*, 18-cv-903 (E.D. Va. Sept. 16, 2019)

<sup>9</sup> United Nations Human Rights Office of the High Commissioner, Convention on the Rights of the Child (Nov. 20, 1989), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (hereinafter, the “Convention”).

United States has not ratified the treaty, it is still obliged to not act contrary to the treaty's purpose under common international law provisions and U.S. law.

**a. Non-Discrimination**

Under the CRC, the States Party shall take all appropriate measures to ensure that the child is protected against all forms of discrimination on the basis of the status of the child's parents, legal guardians or other family members.

States party shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, *national, ethnic or social origin*, property, disability, birth or other status.<sup>10</sup>

The IFR would lead to more discrimination of children on the basis of their nationality. Prior and current policy and rhetoric indicate that the Department is implementing immigration enforcement and mass deportation efforts as outlined by the Administration as a whole-of-government approach. These policies, combined with past practice, indicate that efforts in ORR will be used to target for expulsion noncitizen sponsors and children rather than protect their best interests. We further are aware that data show a disproportionate impact of such enforcement efforts on noncitizens from minority groups, such as Black and indigenous individuals. The IFR provides no information as to how the Department will guard against such use or protect against discrimination; however, there it is clear that the IFR will result in discrimination on the basis of national origin in violation of the CRC because unaccompanied minors will face family separation, prolonged detention or harm to parents solely on the basis of the IFR's new proposed sponsor verification efforts.

---

<sup>10</sup> The Convention at Art. 2. (emphasis added).



## **b. Best Interest of the Child**

Article 3 of the Convention provides that States Party shall ensure that the best interests of the child are a primary consideration in all actions concerning children. The Convention further requires that the States Party respect the right of the child and to preserve his or her identity, which includes family relations without unlawful interference.<sup>11</sup> The Convention requires that any separation be for minimal periods of time and if such separation is to occur, that the State Party ensures that any necessary information regarding such separation would not be used in a manner that would have adverse consequences for the persons concerned.<sup>12</sup> A similar requirement is set forth for cases of reunification of families:

In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.<sup>13</sup>

The ORR, under the IFR, would be creating adverse consequences for potential sponsors if they were to collect the sponsor's immigration status and share it with other agencies which would be in contravention to Article 9 and Article 10 of the Convention.

In the IFR, the primary consideration is not connected to the best interest of the child; rather, it focuses on ICE having the ability to obtain more information from the sponsor without providing information about how that would be used in the best interest of the child. Indeed, the IFR further indicates that considerations will be made as relates to the *child's* immigration status and violations rather than protecting the child. Given unification with family members is

---

<sup>11</sup> *Id.* at Art. 3.

<sup>12</sup> *Id.* at Art. 10.

<sup>13</sup> *Id.* at Art. 9.

generally agreed to be in the interest of the child, and that prolonged detention is *not* in the best interest, the Department's failure to analyze how the IFR will discourage family sponsorship or result in detention of children indicates that it has not considered the best interests of the child.

#### **IV. Issuance as an IFR in this Case is Inappropriate under the APA**

This IFR departs from established policies and procedures of Rulemaking by circumventing the Notice and Comment process. In this instance, the Department chose to publish the regulation as an interim final rule ("Interim Final Rule"). Interim Final Rules are rules adopted and immediately effective upon publication without first seeking public comment on the rule's substance. This means that the Department chose to publish the rule, without the notice, comment, and minimum 30-day post-publication waiting period generally required for the rulemaking process. Despite providing 60-days during which comments would be accepted, by issuing the rule as an IFR, the Department is ensuring that these harmful provisions take immediate effect without adequate time for consideration of public input as contemplated by the APA. An agency is permitted to issue a rule without this notice, comment and minimum Comment Period only in limited circumstances, but no such circumstances apply here.

The APA exempts notice "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."<sup>14</sup> In this instance, the Department alleges an urgency due to "misplaced" children in ORR. As we note above, this argument is not persuasive because evidence undermines these allegations of "misplaced" children. The Department also fails to show how the changes address the alleged urgency, even if it were correct. The Department cannot simply point to a concern and issue an

---

<sup>14</sup> 5 U.S.C.A. § 553(b)(B) (West).

immediately-effective regulation without both justifying the concern and showing how the rule addresses it. Additionally, given the interests involved in this Rule, far greater deliberation and care than utilizing the expediency of the Interim Final Rule is required.

## **V. Conclusion**

In sum, because this IFR violates the APA and international legal obligations by creating barriers to family reunification and increasing prolonged detention of minors without adequate protections or justification, it must be withdrawn. The IFR neither provides adequate information about how the sponsor information will be utilized and handled, nor how such collection and use balances the best interest of the child. The rule moves away from a child welfare model toward an enforcement model. The Department's approach will make children less safe. Any efforts to expand surveillance of sponsors will simply stifle willingness to sponsor children, prolonging their detention and separation from family while driving families to less safe alternatives. The ORR could simply ensure better support for basic needs and ongoing case management support; however, the IFR provides no indication that such alternatives were considered. Moreover, such IFR rings hollow of interest in protecting children when combined with the recent attempts to terminate funding for contracts that provide children with legal counsel—a key anti-trafficking mechanism identified and supported by Congress as part of such protective efforts—and arrests of non-violent sponsors throughout the country. Therefore, the Department must withdraw this interim IFR.

Respectfully submitted,

The Advocates for Human Rights

11