



Office of the General Counsel

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June 15, 2020

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

Re: “Expedited OMB Review and Public Comment; Proposed Information Collection Activity; Administration and Oversight of the Unaccompanied Alien Children Program” Docket No. FR 2020-07995

Dear ACF Reports Clearance Officer,

The United States Conference of Catholic Bishops Migration and Refugee Services (“USCCB/MRS”) appreciates the opportunity to provide public comment and share our concerns with the Department of Health and Human Services, Office of Refugee Resettlement (“HHS/ORR”) regarding the above referenced Proposed Information Collection Activities within the Unaccompanied Alien Children Program, published in the Federal Register on April 16, 2020 (85 Fed. Reg. 21,240).¹

USCCB is a nonprofit organization whose members are the active Catholic Bishops of the United States. MRS, a USCCB Department, advocates and promotes the pastoral teachings of the U.S. Catholic Bishops in diverse areas of the nation’s life. USCCB/MRS has operated programs, working in collaboration with the U.S. government to help protect unaccompanied children from all over the world for nearly 40 years. Since 1994, USCCB/MRS has operated the “Safe Passages” program, serving undocumented children apprehended by the Department of Homeland Security (“DHS”) and placed in the custody of the HHS/ORR. Through cooperative agreements with HHS/ORR and in collaboration with primarily Catholic community-based social service agencies, the Safe Passages program provides residential care (i.e., foster care and small-scale shelter placements) to unaccompanied children in HHS/ORR custody, as well as family reunification services (i.e. pre-release placement screening (“home studies”) and post-release social services for families (“post-release services” or “PRS”). In fiscal year 2019, the USCCB/MRS Safe Passages program served 1,982 youth who arrived as unaccompanied children—1,520 through the family reunification program and 462 through residential care programs.

Additionally, the U.S. Catholic Church has long worked to support families who have experienced some aspect of immigrant detention, through the provision of legal assistance, visitation, and pastoral accompaniment to those in immigrant detention facilities, as well as

¹ Expedited OMB Review and Public Comment; Proposed Information Collection Activity; Administration and Oversight of the Unaccompanied Alien Children Program, 85 Fed. Reg. 21,240 (Apr. 16, 2020).

social services assistance to those released. USCCB/MRS has also operated several alternatives to detention programs to assist families and other vulnerable populations and is currently working with DHS in the administration of its alternative to detention programs which utilize case management.² Through all of this work, the vital necessity and importance of the protections set forth in the Flores Settlement Agreement³ have been made apparent. In furtherance of these protections, the U.S. Catholic Church has worked in a bipartisan manner to help implement and ensure government compliance with these requirements. We are heartened to learn that HHS/ORR is working to further ensure the protection of unaccompanied children by setting forth a mechanism in the Form A-5 Authorization for Release of Records (ARR) that creates written requirements for the release of records, which include unaccompanied child's biographical information, placement documents, legal information, medical records, educational services, case management records, clinical/mental health services, incident reports, discharge/release information, and post-release service records.⁴ While the proposed ARR form is a step in the right direction, USCCB/MRS is concerned with some aspects of the ARR for the following reasons:

I. New Proposed Changes to the Authorization for Release of Records May Facilitate Information-Sharing Between Agencies and/or Grant Access to Government Agencies Who Should Not Be Privy to an Unaccompanied Child's Confidential Information

The proposed changes to the ARR form may authorize a government agency to access to a child's records which the agency should not have in its possession. Under *Section G: Authorization*,⁵ the proposed form states that HHS/ORR will release an unaccompanied child's information, placement documents, legal information, educational services, case management records, discharge, and release information to a government agency *without an authorizing signature* from the unaccompanied child, their caregiver or legal guardian or a witness. Due to the confidential information contained within the child's case file, an authorizing signature should be required even when released to another government agency. USCCB/MRS is particularly concerned with this new proposed provision as it could facilitate information sharing with DHS and other non-social service government entities and enable the use of these records for enforcement purposes. The sharing of a child's information for these purposes runs contrary to the confidential nature of the information and the trust that a child has that such information will remain confidential.

² See e.g., U.S. Conference of Catholic Bishops/Migration and refugee Serv., *et al.*, *The Real Alternatives to Detention*, JUSTICE FOR IMMIGRANTS, available at <https://justiceforimmigrants.org/wp-content/uploads/2019/06/The-Real-Alternatives-to-Detention-June-2019-FINAL-v.2.pdf> (last visited May 18, 2020).

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

⁴ Expedited OMB Review and Public Comment; Proposed Information Collection Activity; Administration and Oversight of the Unaccompanied Alien Children Program, 85 Fed. Reg. 21,240 (Apr. 16, 2020), Authorization for Release of Records at 5-6.

⁵ *Id.* at 7.

Further, while HHS/ORR will generally only release information from the above categories to a government agency in the absence of an authorizing signature, *Section G* explains that in cases where the unaccompanied child is still in HHS/ORR custody and is under the age of 14 or is 14 years or older and has been diagnosed with a developmental disability, HHS/ORR normally presumes consent and, without requiring a signature, will additionally release clinical and mental health records necessary for the provision of services in accordance with HHS/ORR Policy Guide Section 3.3.⁶ Where the information is requested for reasons other than the provision of services, HHS/ORR requires the consent of the child's parent or legal guardian, but does not explicitly state that a signature is required, nor does the new form state ways in which consent will be considered granted in the absence of signature.⁷ This lack of clarity as to what would constitute consent is confusing for parents and guardians of unaccompanied children as well for caseworkers who may be asked about this issue. For children in ORR care, the proposed changes in the ARR form could potentially create broad categories of sensitive information that government agencies may access with little to no consent from children or their parents or legal guardians. This is of utmost concern in the case of mental health records, which include progress notes from individual counseling sessions, group counseling notes or records, mental health services progress notes, mental health assessments, records of mental health office visits or hospitalizations and more,⁸ in light of reports of Immigration and Customs Enforcement ("ICE") using a child's confidential therapy notes obtained while in HHS/ORR custody, to undermine their immigration claims.⁹

We recommend that any proposed change to the ARR form include specific information covering what type of information would be shared and with whom, in the form of the specific government entities and the exact information that will be shared. We also advise that this language be clearly included in simple and non-legal terms to help ensure that children, parents and guardians are able to understand what they may be assenting to in terms of sharing sensitive information with government entities.

II. The Proposed Form for Authorization for Release of Records Fails to Implement Acceptable Standards for Consent

As mentioned, under *Section G: Authorization*, HHS/ORR presumes consent for children in their custody under the age of 14 as well as children 14 years old or older with a diagnosed developmental disability and will release records in its discretion in the best interest of the child.¹⁰ This presumption grants HHS/ORR far-reaching discretion in its determination of which records will be released, as well as to which individuals or entities it will release records to

⁶ *Id.* See also Office of Refugee Resettlement, Children Entering the United States Unaccompanied, Policy Guide, Section 3.3, available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied>.

⁷ Authorization for Release of Records, *supra* note 4 at 7.

⁸ Authorization for Release of Records, *supra* note 4 at 6.

⁹ "Editorial: When the U.S. Uses Migrants' Therapy Disclosures Against Them," LOS ANGELES TIMES (Mar. 10, 2020), available at <https://www.latimes.com/opinion/story/2020-03-10/trump-administration-migrant-therapy-asylum>.

¹⁰ Authorization for Release of Records, *supra* note 4 at 7.

regarding a child's personal information. The proposed change could potentially lead to discrepancies in HHS/ORR's application of its discretion, creating scenarios in which one child's records are released and another's withheld, with no oversight or meaningful insight into the reasons for the decision-making, and no tangible guidance for standards in future such instances. This breadth of discretion by HHS/ORR could lead to abuses of power that are consequential for the children in its care. Additionally, disparate outcomes on release of information could create obstacles for service providers in terms of explaining the process to adults and legal guardians.

III. The Proposed Authorization for Release of Records Needs to Be Accessible in Multiple Languages

As stated above, for children in and outside of HHS/ORR custody, HHS/ORR requires the signature of children age 14 or older for the release of records. The proposed ARR form is only available in English. Ideally, a child's case manager will translate and explain the process to the child; however, the proposed form does not indicate the manner or the extent to which children required to sign for release of records are informed of their rights, or given details as to what it is they are consenting to, which in this case may include release of clinical/mental health services and medical records. In recent years, requiring immigrant parents to sign forms they did not understand after having been separated from their children was considered to be a coercive tactic used by DHS.¹¹ This is a particularly worrisome notion in the cases of children age 14 or older who remain in ORR custody and may fear they will not be reunited with a parent or legal guardian but for the signing of this document. Without any meaningful way to determine whether a child 14 years old or older understands the ARR form, the signature requirement is not an acceptable standard for informed consent.

We urge that all pertinent forms, including the proposed ARR form be translated into Spanish, and the top three other languages of origin of unaccompanied children, including indigenous languages such as Mam, K'iche', and Q'anjob'al. Further, in order to ensure accuracy and consistency in the way in which this information is shared with unaccompanied children and their caregivers, ORR care provider staff should receive thorough training on the requirements of the new ARR form. Additionally, as certain parents or guardians may not be literate, we recommend that HHS/ORR consider a guide to be included for explaining the forms and significance of them to those who cannot read as well as special need parents who may encounter obstacles to reading the text on the forms as well.

Conclusion

For the reasons set forth above, we note that the proposed changes to the ARR fail to implement adequate safeguards against information sharing of an unaccompanied child's records between government agencies and is not adequately accessible to the variety of literacy levels and languages represented among unaccompanied children, their parents, or guardians. We

¹¹ *"The Illegal and Systematic Practice of Coercing Separated Families Must Be Investigated,"* AMERICAN IMMIGRATION COUNCIL (Aug. 23, 2018), available at <https://www.americanimmigrationcouncil.org/advocacy/illegal-and-systematic-practice-coercing-separated-families-must-be-investigated>.

welcome the opportunity to work with you on this matter in the future. The care and safety of unaccompanied children is vital to our mission and the humanitarian interests of this country.

Respectfully submitted,

A handwritten signature in blue ink, reading "Anthony R. Picarello, Jr." in a cursive script.

Anthony R. Picarello, Jr.
General Counsel & Assc. General Secretary