

August 24, 2026

Re: Comment on ACF-2026-0199 / RIN 0970-AD26: Unaccompanied Children Program Proposed Foundational Rule; Sponsor Assessment Update



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The American Civil Liberties Union (ACLU) submits this comment on the ACF-2026-0199 / RIN 0970-AD26: Unaccompanied Children Program Proposed Foundational Rule; Sponsor Assessment Update.¹ The ACLU is a nonpartisan public interest organization with 4 million members and supporters, and 53 affiliates nationwide—all dedicated to protecting the principles of freedom and equality set forth in the Constitution. The ACLU has a long history of defending civil liberties, including immigrants' rights. The ACLU vigorously defends the constitutional right of due process for all Americans—both citizens and noncitizens—and advocates for policies that protect these rights.

The ACLU represents families that were forcibly separated at the southern U.S. border through the *Ms. L* case² and continues to work to ensure that the federal government identifies and reunifies thousands of migrant families. We have participated in other litigation over the years concerning the civil liberties of immigrants, and we routinely advocate in Congress and state legislatures for policies that promote due process and protections for immigrants.

We have serious concerns that the proposed rule could lead to significant harm to children by exposing them to traumatic, invasive, and unnecessary physical searches and by leaving them in prolonged detention. We urge the Office of Refugee Resettlement to withdraw or substantially revise this proposed rule.

1. Invasive Physical Examinations of Young Children Threaten Children's Due Process Rights and Their Safety

The proposed rule would amend § 410.1103, to permit Office of Refugee Resettlement (ORR) staff to examine children in its custody for gang or gang-affiliated tattoos in order to determine whether the child "poses a danger to self or

¹ Children and Families Administration, Unaccompanied Children Program Foundational Rule; Sponsor Assessment Update to Include Proof of Identity, Background Check, Placement, and Income Verification Standards, June 6, 2026, <https://www.federalregister.gov/documents/2026/06/26/2026-12946/unaccompanied-children-program-foundational-rule-sponsor-assessment-update-to-include-proof-of>.

² *Ms. L v. ICE* is a case brought by the ACLU on behalf of thousands of traumatized children and parents who were forcibly torn from each other under the Trump administration's illegal zero-tolerance practice of separating families at the border. Under the settlement, reached in 2023, the federal government is required to continue to identify separated families and provide them with legal and other necessary services. *Ms. L v. US Immigration and Customs Enforcement*, Case No. 3:18-cv-00428-DMS-AHG (S.D.Cal. Dec. 11, 2023), <https://www.aclu.org/press-releases/aclu-announces-major-settlement-in-family-separation-lawsuit>.

a danger to the community.”³ This provision is a dangerous reversal of ORR’s duty of care to young children, who are alone, in its custody. Permitting staff to conduct invasive bodily searches of unaccompanied children, alone and without their guardians, in order to look for tattoos allegedly showing gang affiliation will predictably result in psychological harm and trauma to these young children.

ORR staff are supposed to look out for the best interest of the children in ORR custody; indeed, the agency states that the “best interests of the child” is the standard it applies “in determining the types of decisions and actions it makes in relation to the care of an unaccompanied alien child.”⁴ This duty of care for children should prevent the agency from acting in ways that harm unaccompanied children in its care. Engaging in suspicionless searches of children and investigating them for “evidence” to justify their detention or support their prosecution and deportation is a conflict of interest that could violate children’s due process rights and is also clearly not in their best interest. Currently, many children are going forward in immigration court without lawyers. Allowing ORR staff, including facility contractors, to search these children’s bodies in potentially invasive ways, and while these children are alone and without a trusted adult.

As courts, legal experts, and child welfare experts have found, strip-searches of children amount to state-imposed abuse.⁵ In *Safford v. Redding*, for example, the U.S. Supreme Court found that a child’s Fourth Amendment rights were violated when school officials searched her underwear for medicine based on a tip.⁶ Justice Stevens, concurring in part and dissenting in part, wrote “I have long believed that[i]t does not require a constitutional scholar to conclude that a nude search of a 13-year-old child is an invasion of constitutional rights of some magnitude.” (internal quotations omitted). Under the proposed rule, ORR staff would not be conducting searches on children in their care based on probable cause or even reasonable suspicion; they would be searching children, without their families or lawyers present, in order to identify potential evidence to be used against them.

We are also concerned with relying on ORR staff to attempt to identify gang membership based on tattoos, something they are not qualified to do, and which has been recklessly done by ICE in other contexts. For example, we have seen how reckless and expansive this administration has been in misidentifying “gang tattoos” that honor family or celebrate soccer teams to send innocent people to be

³ § 410.1103 Considerations generally applicable to the placement of an unaccompanied alien child

⁴ “ORR Unaccompanied Alien Children Bureau Policy Guide: Guide to Terms,” Administration for Children & Families Office of Refugee Resettlement, Aug. 8, 2025, <https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-guide-terms>.

⁵ Riya Saha Shah & Jessica Rachel Feerman, *Strip-Searching Children Is State-Imposed Trauma*, Oct. 2021, <https://www.americanbar.org/groups/crsj/resources/human-rights/archive/strip-searching-children-state-imposed-trauma/>.

⁶ *Safford v. Redding*, 557 U.S. 367 (2009).

tortured in CECOT in El Salvador.⁷ These individuals, misidentified as members of Tren de Aragua based on flimsy evidence of their tattoos, have since been subject to torture at the CECOT facilities.⁸ Police misidentification of gang tattoos and affiliation is a well-documented problem well beyond this context, and to give this investigatory role to ORR staff who are not appropriately trained will only increase the danger of misidentification.⁹ To now use tattoos to justify the detention, prosecution, or deportation of vulnerable children is extremely dangerous and may lead to erroneous determinations and harmful deportations.

2. Creating Unnecessary Obstacles To Release Will Subject Children to Dangerous Prolonged Detention.

If implemented, this rule would further delay and deny release of children to vetted sponsors, leaving them in unnecessary and harmful custodial settings. The Flores Settlement Agreement and the implementing federal Unaccompanied Children Foundational Rule require the government to “promptly place[s] the

⁷ Cecilia Vega, “U.S. sent 238 migrants to Salvadoran mega-prison; documents indicate most have no apparent criminal records,” CBS News, Apr. 6, 2025, <https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-prison-60-minutes-transcript/>; Melissa Sanchez, “He Was Asked About His Tattoos and a TikTok Video in Court. Five Days Later, He Was in a Salvadoran Prison,” ProPublica, July 29, 2025, <https://www.propublica.org/article/venezuelan-immigrant-cecot-release-story>.

⁸ Sergio Martinez-Beltra, *NPR*, “Advocates say flawed ‘checklist’ targets Venezuelans for deportation under archaic wartime act,” Mar. 31, 2025, <https://www.npr.org/2025/03/31/nx-s1-5345832/advocates-say-flawed-checklist-dhs-venezuelans-for-deportation-under-alien-enemies-act>; Melissa Sanchez, *ProPublica*, “He Was Asked About His Tattoos and a TikTok Video in Court. Five Days Later, He Was in a Salvadoran Prison.” Ju. 29, 2025, <https://www.propublica.org/article/venezuelan-immigrant-cecot-release-story>; Armando Garcia, *ACLU News*, “‘Am I dreaming?’: Soccer coach who says he was deported over his tattoo celebrates his release from CECOT,” <https://abcnews.com/US/dreaming-soccer-coach-deported-tattoo-celebrates-release-cecot/story?id=124075548>; Noah Lanard & Isabela Dias, *Mother Jones*, “‘You’re Here Because of Your Tattoos,’” Jul. 2025,

<https://www.motherjones.com/politics/2025/03/trump-el-salvador-venezuela-deportation-prison-cecot-bukele/>; Keenan Willard, *NBC News*, “Family says Venezuelan migrant in Lewisville sent to El Salvador mega prison over autism awareness tattoo,” Apr. 14, 2025, <https://www.nbcdfw.com/news/local/fvenezuelan-migrant-lewisville-el-salvador-mega-prison-autism-awareness-tattoo/3817064/>; Veronica Brito, *Miami Herald*, “‘Crime of tattooing’: Why experts say body ink is no way to ID Venezuelan gang members,” Apr. 10, 2025, <https://www.miamiherald.com/news/local/immigration/article303190786.html>; Justin Martin, *KERA news*, “No charges. Just tattoos. ICE nearly sent two Dallas-area men to notorious El Salvador prison,” May 2, 2025, <https://www.keranews.org/immigration/2025-05-02/no-charges-just-tattoos-ice-nearly-sent-two-dallas-area-men-to-notorious-el-salvador-prison>.

⁹ See NYCLU, *How the NYPD’s Gang Database Targets Black and Latino Children, and Why It Should Be Shut Down*, May 2026, <https://www.nyclu.org/commentary/how-the-nypds-gang-database-targets-black-and-latino-children-and-why-it-should-be-shut-down>; Heather Murphy, *The New York Times*, “Los Angeles Officers Suspended After Boy Is Wrongly Labeled a Gang Member,” Jan. 8, 2020, <https://www.nytimes.com/2020/01/08/us/lapd-gang-database.html>; *Bay State Banner*, “Advocates say innocent teens are stamped with ‘gang’ label,” May 1, 2018, <https://baystatebanner.com/2018/05/01/advocates-say-innocent-teens-are-stamped-with-gang-label/>.

unaccompanied child in the least restrictive setting that is in the best interests of the child, taking into consideration danger to self, danger to the community, and risk of flight.”¹⁰ As ORR policy guide notes, “ORR must place each child in the least restrictive setting that is in the best interests of the child.”¹¹

To ensure that children are released to safe homes, it is appropriate for ORR to have standards and procedures in place, and indeed, ORR already has many vetting procedures in place. Over the last year and a half, however, additional sponsor requirements and vetting procedures have forced unaccompanied children to remain in detention for long periods of time, unnecessarily and despite the harm to their physical and psychological health. As the National Center on Youth Law found in its report, “and other new policies have made it nearly impossible for unaccompanied children to be released from government custody – undermining ORR’s core mandate under federal law.”¹² A related report from Acacia Justice Center found that children are spending increasingly long periods in detention as a result of these policies to limit safe release to sponsors.¹³ Between January and September 2025, Acacia data found a “nearly a six-fold increase in children’s lengths of custody, and nearly an 80% decline in ORR’s discharge rate,”¹⁴ which not only conflicts with ORR’s mandate of releasing children to the least-restrictive environment but also can cause long-term harm for the children trapped in prolonged detention.

Even short periods of time in detention can have a devastating impact on children, as numerous medical experts have repeatedly found.¹⁵ According to the recent

¹⁰ Children and Families Administration, Unaccompanied Children Program Foundational Rule, Apr. 30, 2024, <https://www.federalregister.gov/documents/2024/04/30/2024-08329/unaccompanied-children-program-foundational-rule>.

¹¹ “ORR Unaccompanied Alien Children Bureau Policy Guide: Section 1,” Administration for Children and Families Office of Refugee Resettlement, Feb. 20, 2026, <https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1>.

¹² National Center on Youth Law, *The Unraveling of ORR: A Quick and Calculated Undoing of a System Intended to Protect Children*, (2025).

¹³ Acacia Center for Justice report, “*Dismantling Protections: How ORR Policy Changes Trap Children in Extended Detention*” (2025), <https://acaciajustice.org/wp-content/uploads/2025/09/Acacia-Dismantling-Protections-2025-09.pdf>.

¹⁴ *Id.* At 3.

¹⁵ “Press Release: New Report Documents the Mental and Physical Harm Experienced by Children in Immigration Detention,” FXB Center for Health & Human Rights at Harvard University, January 11, 2024, <https://fxb.harvard.edu/blog/2024/01/11/press-release-new-report-documents-the-mental-and-physical-harm-experienced-by-children-in-immigration-detention/>; Myriam Vidal Valero, “U. S. Immigration policy: Mental health impacts of increased detentions and deportations,” *Monitor on Psychology* 56, no. 6 (2025), <https://www.apa.org/monitor/2025/09/mental-health-immigration-enforcement>; Lisa Fortuna et al., “Special Report: U.S. Immigration Policy and the Mental Health of Children and Families,” *Psychiatry Online* 60, no. 8 (2025), <https://psychiatryonline.org/doi/10.1176/appi.pn.2025.08.8.19>; Isabella Priestley et al., “The impact of immigration detention on children’s mental health: systematic review,” *The British Journal of Psychiatry* 227, no. 6 (2025), <https://www.cambridge.org/core/journals/the-british-journal-of-psychiatry/article/impact-of-immigration-detention-on-childrens-mental-health-systematic-review/5999502392197C4867B779D38A3FBF36>.

filings in the Flores Settlement Agreement, children detained *with* their parents were regressing developmentally in detention in Texas; for kids alone in these facilities, the impact will be predictably worse.¹⁶ Adding unnecessary screening and vetting policies that delay release to loved ones and keep kids in detention will create avoidable harm. For example, this proposed rule includes an income verification provision. A similar provision was enjoined last year by a federal court, which found that ORR “acted arbitrarily and capriciously by not providing adequate justification for its new sponsor documentation requirements,” while also admitting that many sponsors would not be able to comply.¹⁷

Many loving families who cannot meet the identification or income requirements due to the undocumented immigration status could be unable to sponsor children, under these rules, which would leave children in detention instead of in their communities, going to school, and with trusted adults. The blanket nature of these restrictions does not accommodate the reality of these families' lives nor does it comply with the overarching goal of releasing children from custody to be cared for in the best environment possible.

While we appreciate the need to continuously improve oversight so that children will be safe with their sponsors, we urge this agency to withdraw this rule and instead, consult with organizations expert in serving unaccompanied children to identify narrower solutions that comply with the Trafficking Victims Protection Reauthorization Act (TVPRA) and the Foundational Rule and serve the primary goal of releasing children safely and expeditiously to appropriate sponsors.

Thank you for your attention to our comment. If you have further questions, please contact Sarah Mehta, Deputy Director of Policy and Government Affairs on immigration, at smehta1@aclu.org.

Sincerely,



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¹⁶ Jenny L. Flores, et al. v. Pamela Bondi, et al., Case No. 2:85-cv-04544-DMG-AGR, 5 (C.D. Cal December 8, 2025), <https://youthlaw.org/wp-content/uploads/plaintiffs-response-to-supplemental-ice-report.pdf>; Id. at 222.

¹⁷ *Angelica S. v. HHS*, Case 1:25-cv-01405-DLF (D.D.C. Jun. 9, 2025), Order Partially Granting Plaintiffs’ Preliminary Injunction & Granting Plaintiffs’ Motion for Class Certification, <https://litigationtracker.justiceactioncenter.org/cases/angelica-s-v-hhs-uac-detention-district-court/order-partially-granting-plaintiffs-preliminary>.