

United States Senate

WASHINGTON, DC 20510

December 4, 2023

VIA ELECTRONIC TRANSMISSION

Robin Dunn Marcos
Director
Office of Refugee Resettlement
Washington, DC 20201

Jeff Hild
Acting Assistant Secretary
Administration for Children and Families
Washington, DC 20201

Dear Director Dunn Marcos and Acting Assistant Secretary Hild:

In September, you approved the “Unaccompanied Children Program Foundational Rule” (“Proposed Rule”), which contains a number of alarming, dangerous, and potentially illegal provisions.¹ This Proposed Rule ignores nearly seven years of oversight conducted by Congress and the Office of Inspector General and reveals chronic foot-dragging—if not total reluctance—when it comes to protecting vulnerable children.² It provides ample protections to government bureaucrats at the expense of children. Even more concerning, “the requirements being [adopted] in this proposed rule are already enforced by [the Office of Refugee Resettlement (ORR)].”³

In FY2021, the Office on Trafficking in Persons saw a more than 140% increase from the previous year in requests for assistance on behalf of foreign national children.⁴ The majority of these requests were for unaccompanied alien children between the ages of 13 and 17.⁵ Despite the staggering number of unaccompanied children, the Proposed Rule makes most vetting for

¹ Unaccompanied Children Program Foundational Rule, 88 FR 68908, at 114 (proposed Oct. 4, 2023) (to be adopted at 45 CFR 410).

² See e.g., Senators Grassley and Wyden, Senate Finance Committee, *Exposing the Risks of Deliberate Ignorance: Years of Mismanagement and Lack of Oversight by the Office of Refugee Resettlement, Leading to Abuses and Substandard Care of Unaccompanied Children* (Oct. 28, 2021), https://www.grassley.senate.gov/imo/media/doc/finance_committee_report_-_orr_unaccompanied_children_program.pdf; Senators Portman and Carper, United States Senate Permanent Subcommittee on Investigations Committee on Homeland Security and Governmental Affairs, *Oversight of HHS Shelter Grants For Unaccompanied Alien Children* (Aug. 12, 2020), <https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/2020-12-08%20PSI%20Staff%20Report%20-%20Oversight%20of%20HHS%20Shelter%20Grants%20for%20UACs.pdf>.

³ Proposed Rule at 110.

⁴ Administration for Children and Families, *Office on Trafficking in Persons Annual Report, Fiscal Year 2021*, at 9, (Jan. 31, 2023), <https://www.acf.hhs.gov/sites/default/files/documents/otip/OTIP%20FY21%20Annual%20Report.pdf>

⁵ *Id.*

sponsors of unaccompanied minors simply optional. ORR *may* require “an investigation of the living conditions,” “verification of the identity and employment of the individuals offering support,” “interviews of members of the household,” “a home visit,” “review of [the sponsor’s] past criminal history,” “fingerprinting,” consulate checks of sponsor identification, or “a background check on the proposed sponsor.”⁶ However, these basic checks *are not necessary* to receive custody of a child.

In fact, ORR does not even consider a sponsor’s criminal record, current illegal drug use, history of abuse or neglect, or other child welfare concerns “necessarily disqualifying to potential sponsorship.”⁷ “ORR would not disqualify potential sponsors based solely on their immigration status”⁸ or “employment status,”⁹ even if the sponsor was a complete stranger to the child.

In effect, ORR accepts a sponsor’s representations almost entirely on face value. ORR then delivers the child at taxpayer expense and free-of-cost to the un-vetted sponsor, opening up the possibility that a vulnerable child could fall into the hands of a potentially criminal or drug-addicted sponsor.¹⁰ At this point, ORR considers its work largely done.¹¹

ORR assumes no role or responsibility in preventing a child’s sponsor from giving him or her away after placement. According to the Proposed Rule, “ORR is not proposing to require that the sponsor seek ORR’s permission to transfer custody of the unaccompanied [alien] child.”¹² It simply “retains an interest in knowing this information.”¹³ ORR will conduct a home study for “a child who has been a victim of physical or sexual abuse,” if the physical or sexual abuse occurred “under circumstances that indicate the child’s health or welfare has been significantly harmed or threatened.”¹⁴ However, the rule goes on to note that, if ORR checks-up on the child, it will “inform the potential sponsor whenever it plans to conduct a home study.”¹⁵ This would allow a criminal sponsor enough time to destroy evidence and intimidate the child. Worse, the Proposed Rule allows ORR to conduct certain safety and well-being check-ins virtually.¹⁶

ORR also neglects to ensure a sponsor’s legal immigration status. ORR “will not share any immigration status information relating to potential sponsors with any law enforcement or immigration related entity *at any time*.”¹⁷ ORR appears equally ambivalent to the child’s criminal conduct. Its influx facilities simply “separate ... those unaccompanied [alien] children

⁶ Proposed Rule § 410.1202 at 37-38 (Sponsor Suitability).

⁷ Proposed Rule § 410.1202 at 39 (Sponsor Suitability).

⁸ Proposed Rule § 410.1201 at 37 (Sponsors to Whom ORR Releases and Unaccompanied [Alien] Child).

⁹ Proposed Rule § 410.1202 at 38 (Sponsor Suitability).

¹⁰ Proposed Rule § 410.1400 (Subpart E-Transportation of an Unaccompanied Child – Purpose of this Subpart).

¹¹ Proposed Rule, Definition Section (“Release means discharge of an unaccompanied [alien] child to an ORR-vetted an approved sponsor. After release, ORR does not have legal custody of the unaccompanied [alien] child, and the sponsor becomes responsible for providing for the unaccompanied [alien] child’s physical and mental well-being.”)

¹² Proposed Rule § 410.1203 at 40 (Release Approval Process).

¹³ *Id.*

¹⁴ Proposed Rule § 410.1204 at 40-41 (Home Studies).

¹⁵ Proposed Rule § 410.1204 at 41 (Home Studies).

¹⁶ Proposed Rule § 410.1210 at 48 (Post-Release Services).

¹⁷ Proposed Rule § 410.1201 at 37 (emphasis added).

who ... have perpetrated sexual abuse.”¹⁸ In fact, “ORR would like to ensure law enforcement is called in response to an unaccompanied [alien] child’s behavior only as a last resort”¹⁹ and “a call by a care provider facility to law enforcement may trigger an evaluation of staff involved regarding their qualifications...”²⁰

Recognizing its conduct is objectionable, ORR’s Proposed Rule protects the organization from congressional scrutiny by forcing whistleblowers to identify themselves to ORR before going to Congress. ORR’s whistleblower retaliation is so pervasive²¹ that the Department of Health and Human Services Office of Inspector General recommended mandatory whistleblower protection training in 2022.²² The Assistant Secretary for Children and Families concurred with this recommendation and acknowledged “whistleblower protections are a key mechanisms for ensuring the safety and wellbeing of all children in ORR care.”²³ Yet in a shocking reversal, ORR now “proposes that employees, former employees, or contractors ... must not disclose unaccompanied [alien] children’s case file records or provide information about unaccompanied [alien] children, their sponsors, family or house hold members to anyone ... without first providing advanced notice to ORR.” This advanced notice requirement expressly captures protected whistleblower disclosures and appears designed to keep employees quiet in violation of the Whistleblower Protection Act and other whistleblower protection provisions.²⁴

ORR’s Proposed Rule abdicates the agency’s responsibility for protecting the vulnerable children in its custody from harmful behavior by poorly vetted, potential criminals. For these services, the taxpayer paid ORR \$5.5 billion in FY2022.²⁵ The Proposed Rule is wholly unworkable and ORR should discard it and its current practices. If not, Congress will have no choice but to introduce a resolution of disapproval under the *Congressional Review Act*.

Sincerely,


Chuck Grassley
United States Senator


Lindsey O. Graham
United States Senator

¹⁸ Proposed Rule § 410.1801 at 87 (Minimum Standards For Emergency or Influx Facilities).

¹⁹ Proposed Rule § 410.1303 at 61 (Reporting, Monitoring, Quality Control, and Recordkeeping Standards).

²⁰ *Id.* at 60.

²¹ Ted Hesson, *U.S. Whistleblowers Aiding Migrant Children Feared Retaliation, Watchdog Report says*, Reuters (Sept. 27, 2022), <https://www.reuters.com/world/us/us-whistleblowers-aiding-migrant-children-feared-retaliation-watchdog-2022-09-27/>; Hannah Drier, *As Migrant Children Were Put to Work, U.S. Ignored Warnings*, The New York Times (Apr. 17, 2023), <https://www.nytimes.com/2023/04/17/us/politics/migrant-child-labor-biden.html>

²² Inspector General, U.S. Department of Health and Human Services, *Operational Challenges Within ORR and the ORR Emergency Intake Site at Fort Bliss Hindered Case Management for Children* (Sept. 2022), [Operational Challenges Within ORR and the ORR Emergency Intake Site at Fort Bliss Hindered Case Management for Children \(hhs.gov\)](https://www.hhs.gov/operational-challenges-within-orr-and-the-orr-emergency-intake-site-at-fort-bliss-hindered-case-management-for-children/)

²³ *Id.* at Appx. D, page 42.

²⁴ Proposed Rule § 410.1303 at 59 (Reporting, Monitoring, Quality Control, and Recordkeeping Standards) (“ORR policy is to pre-approve certain limited disclosures by ORR grantees and contractors such as ... pursuant to all available whistleblower protection laws.”).

²⁵ Proposed Rule at 99 (Baseline of Current Costs).

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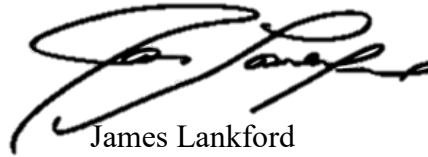
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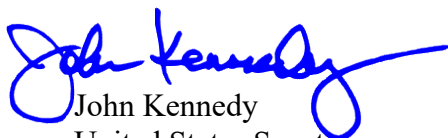
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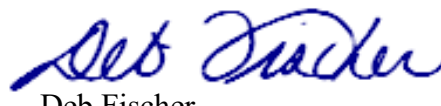
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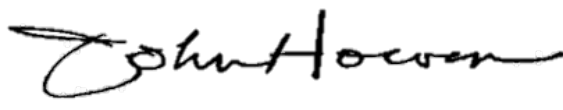
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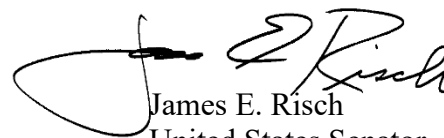
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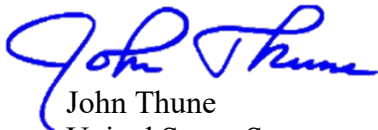
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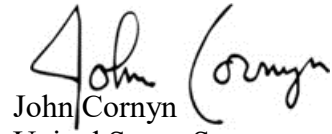



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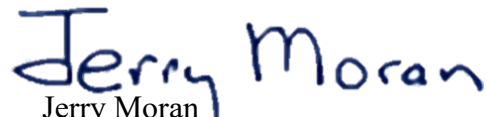

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