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Submitted via: <https://www.regulations.gov>

Immigrant Defenders Law Center’s Public Comment Regarding Unaccompanied Refugee Minors (URM) Program Application and the Withdrawal of Application or Declination of Placement Form. (88 FR 31507)

Immigrant Defenders Law Center (ImmDef) submits this public comment in response to the proposed revisions to the Unaccompanied Refugee Minors (URM) Program Application and the Withdrawal of Application or Declination of Placement Form. ImmDef has concerns about the use of Significant Incident Reports (SIRs) and their use to deny unaccompanied children placement in the Unaccompanied Refugee Minor Program. We recommend that certain proposed questions from the URM application be changed, and others be added to address our concerns about how SIRs impact unaccompanied children.

ImmDef is a social justice law firm that defends immigrant communities within the immigration system. We have offices in Los Angeles, Santa Ana, Riverside, and San Diego. Our largest department, the Children’s Representation Project, is one of the largest programs of its kind in the United States and currently provides full scale representation to unaccompanied children in the Greater Los Angeles Area, as well as legal screenings, Know Your Rights presentations, and referrals to children in short-term Office of Refugee Resettlement (ORR) custody. Many of the children we serve have no viable sponsor and seek to enter the Unaccompanied Refugee Minor (“URM”) program based on receipt of an Office of Trafficking in Persons (“OTIP”) eligibility letter, because they are Unaccompanied Afghan Minors

(“UAMs”) or because they have obtained legal status in the United States. We also represent all children in the only locally-operated URM program—Florence Crittenton Services of Orange County, Inc.

In our experience, unaccompanied children without a family or a viable sponsor to care for them in the United States often suffer from detention fatigue because they remain in ORR care for long periods of time. Detention fatigue is known to cause behavioral issues in youth, especially when compounded by trauma, which often results in unaccompanied minors receiving Significant Incident Reports. Those SIRs have in turn been used to deny unaccompanied children placement in the Unaccompanied Refugee Minor Program.

The use of SIRs is problematic for several reasons. Most relevant here is that it contravenes the whole purpose of the URM program, which is to provide foster care services and benefits to unaccompanied children without family or sponsors in the United States. These are children who have experienced trauma, and eligible populations for URM include refugees, trafficking victims, and children who have received humanitarian protection in the United States due to persecution, trafficking, child abuse, abandonment, or neglect, or because they were victims of serious crimes.

Below is a case example that illustrates the challenges SIRs present to our clients with no sponsors in the United States:

Case Example 1: Jane¹

Jane has been detained in four different ORR facilities since 2021. In Honduras, she suffered from abuse and neglect by her parents. In addition, she was subjected to years of physical and sexual abuse by family members. Jane has suffered from a traumatic childhood and is working towards healing from the extensive trauma she experienced.

Jane's I-360 was recently approved and ImmDef informed her ORR facility of this shortly thereafter. However, her URM petition was not submitted by the ORR facility until about one month later. During this month-long period, Jane received an SIR. A facility staff member issued Jane an SIR for allegedly using a laptop in an inappropriate manner and for viewing inappropriate content on YouTube. Jane does not know what her ORR facility meant by her looking up inappropriate content as she denies having accessed any such content. Her ImmDef attorney submitted an ORR Authorization of Release of Records to see what the SIR report stated since the Case Manager did not respond to the attorney's requests asking for the SIR report. Jane

¹ Names have been changed to protect the identity of children whose cases are described herein.

also noted that staff use YouTube in the classroom, and her therapist also uses YouTube during their sessions; however, her facility has prohibited minors from using YouTube on their own following an incident where minors were looking up inappropriate content on YouTube.

Prior to this SIR, Jane was also reprimanded by ORR facility staff for listening to music—a gospel song—in her foster home and was told that she had to stop listening to the music. Jane informed her ImmDef attorney that she had the urge to self-harm following this incident. It is important to note that Jane has a history of self-harming, which resulted in a previous hospitalization. Her ORR facility’s harsh approach during this incident negatively impacted her mental health. ORR facilities often do not or cannot provide tailored, supportive services to children with diverse needs and backgrounds to optimally support their mental health and avoid behavioral SIRs. Access to culturally familiar music is one such support.

By limiting minors’ ability to listen to music and reprimanding them for attempting to listen to music, ORR is failing to provide culturally responsive support to minors who use music to heal and connect with their culture, religion, and backgrounds. Minors become overwhelmed and may engage in conduct that can result in an SIR, such as Jane who decided to go on YouTube to listen to a gospel song. These SIRs negatively impact URM applications. In Jane’s case, she has been detained for over one year, resulting in extensive detention fatigue, so she enjoys listening to music to de-stress. Her ORR facility’s restrictions on her ability to listen to music, along with their delay on submitting her URM application in a prompt manner, resulted in her obtaining an SIR report. That SIR report will likely jeopardize her ability to be allowed into the URM program. Without the URM placement, Jane will become homeless on her 18th birthday.

Further, the populations ORR serves are becoming much more culturally, linguistically, and racially diverse. ORR has a long history of providing services primarily to Central American and Mexican youth and has developed culturally responsive practices for those children. ORR has struggled, however, to respond to the needs of children from other diverse backgrounds, such as Afghan youth, causing those minoritized (within the system) youth to be more likely to experience trauma-related behavioral issues because they feel unsupported in ORR care. Below is a case example from our organization that illustrates the challenges our Afghan clients have faced in ORR:

Case Example 2: John

John is one of many ImmDef Afghan clients who has been at an ORR facility for over a year. He arrived in the United States shortly after the Taliban took control of Afghanistan. John was a victim of the Taliban’s brutality, forcing him to leave his family and flee to the United States. He

has suffered severe trauma from witnessing firsthand the violence inflicted by the Taliban upon those fleeing the country and from being separated from his family.

When John arrived at his current ORR facility, he did not have the appropriate support he required to process the trauma he experienced and to help him acclimate to the United States. As John struggled to cope with being separated from his family, he found solace in his religion. He wanted to practice his faith in a mosque and be surrounded by a community he was familiar with, but the ORR facility did not accommodate his request.

John's mental health suffered as his request was repeatedly denied. Feeling isolated in a place where he did not have support, he finally decided to go to the mosque on his own. He continued to go to the mosque without the facility's permission to better his wellbeing.

John also struggled to find motivation to participate in the ORR facility's school activities. John could not focus on school because he felt overwhelming stress about his family's situation. He felt frustrated that no one at the shelter was able to provide him with information regarding his family's future.

The behavior John exhibited led to several SIRs being filed. The SIRs prevented him from entering a URM program that may have been able to provide him with the resources and support he needed. The ORR facility did not provide him with sufficiently culturally responsive, trauma informed services to lower the risk of obtaining SIRs.

URM programs too must adapt to ensure that they are prepared to provide adequate support to youth who have, by definition, experienced significant trauma. The bases to enter URM require a youth to have been the victim of trafficking, to be a refugee, asylee, or a T- or U-visa recipient. Preventing children who have experienced abuse or persecution from entering the program due to behavioral or substance use issues derived from their trauma is a disservice to this population. The URM Program Application and acceptance process should thus be more sensitive to children who receive SIRs. One way to do so is through changes to the URM Program Application. Based on our experience with unaccompanied children, ImmDef recommends the following changes be made to the application:

- The questions should be reframed to focus on the child's needs and strengths, rather than only asking yes/no questions;
- The form should ask what, if any, support ORR provided in response to the SIRs to support the child's behavioral health and whether those supports would be reasonably available in a community level of care (URM);
- The section on Section 4.4: Physical Health and Mental Health Information should be placed before Section 4.3 Behavioral Health Information because it will help contextualize any behavioral issues;

- A question asking whoever is filling out the form to answer “is the child a danger to themselves or others” calls for a person who does not necessarily have the appropriate training or experience to assess that to make that determination. The question should be reworded to ask, "Has the child ever been determined by a competent evaluator to present a danger to him/herself or others?"; and
- The form should include a comment section at the end whereby the applicant can provide additional information that he or she believes should be taken into consideration.

ImmDef has vast experience working with unaccompanied children and children with no sponsors who have sought to enter the Unaccompanied Refugee Minor program. Children who have suffered trauma are receiving SIRs and their underlying trauma is not being factored into whether SIRs should be imposed on them as opposed to working towards healing the underlying trauma causing their behavioral issues. Until changes can be made to the SIRs system whereby traumatized children are not penalized for their behaviors when in despair, unaccompanied children must be given the opportunity to explain the circumstances leading to their SIRs case. We believe the URM application must be changed to provide unaccompanied children the opportunity to have a voice when explaining the circumstances involving SIRs as it has a tremendous impact on their future and well-being.



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