



NEW YORK  
CITY BAR

COMMITTEE ON  
IMMIGRATION & NATIONALITY LAW

---

VICTORIA F. NEILSON  
CHAIR  
vneilson@post.harvard.edu

June 6, 2018

GEOFFREY J. KAGAN-  
TRENCHARD  
SECRETARY  
Geoff.trenchard@gmail.com

Philip S. Kaplan  
Chief Privacy Officer, Privacy Office  
Department of Homeland Security  
Washington, DC 20528-0655

*Via Federal e-Rulemaking Portal: <http://www.regulations.gov>*

**RE: DHS Notice of Modified System of Records, Docket Number DHS-2018-0013**

Dear Mr. Kaplan:

The Immigration and Nationality Law Committee (the Committee) of the New York City Bar Association (“City Bar”) appreciates the opportunity to submit comments on the Notice of Modified System of Records, Docket Number DHS-2018-0013 (“Notice”) published on May 8, 2018 by the Department of Homeland Security (“DHS”). With over 24,000 members, the City Bar has a longstanding mission to equip and mobilize the legal profession to practice with excellence, promote reform of the law, and advocate for access to justice in support of a fair society. The Immigration and Nationality Law Committee represents a cross-section of the immigration legal community, and we base these comments on our expertise and experience counseling our immigrant clients who range from naturalized citizens to undocumented immigrants. New York City is home to more than three million foreign-born immigrants, more than any other city in the world;<sup>1</sup> with such a significant immigrant population, the City Bar has a particular interest in ensuring the safety and well-being of non-citizens, and we are very concerned with the likely detrimental effect these proposed regulations will have on immigrants.

Under current immigration law, particularly the Trafficking Victims Protection Reauthorization of 2008 (TVPRA) and the *Flores* Settlement Agreement, unaccompanied minor children who are apprehended at or near the border are placed into custody with the Office of Refugee Resettlement (“ORR”) which falls within the Department of Health and Human

---

<sup>1</sup> More Foreign-Born Immigrants Live in NYC Than There Are People in Chicago. Huffington Post (Dec. 6, 2017) [https://www.huffingtonpost.com/2013/12/19/new-york-city-immigrants\\_n\\_4475197.html](https://www.huffingtonpost.com/2013/12/19/new-york-city-immigrants_n_4475197.html) (all websites last visited June 6, 2018).

Services (“HSS”). Under these laws, ORR is required to release detained children to the least restrictive environment.<sup>2</sup>

The proposed regulations will dramatically increase information sharing between ORR and DHS, and thereby risk undermining ORR’s ability to meet its legal obligations under the TVPRA and the *Flores* Settlement. Under existing law, information about a proposed sponsor’s immigration status may be received by ORR, but is used in making a placement determination in accordance with the child’s best interests rather than for enforcement purposes. The new rule will increase information sharing with DHS, including providing information about immigration status for all household members, not just for the proposed caretaker.

The regulations undoubtedly will have a chilling effect on family members’ desire to come forward to ensure children’s release from ORR detention facilities to their care. Under the proposed regulations, ORR would be required to communicate with DHS regarding the immigration status of a potential caretaker and of household members.<sup>3</sup> This communication would put parents and other family members who are best situated to provide a home for a given child, yet lack lawful immigration status, at significant risk of arrest and detention by DHS.

The City Bar believes that ORR’s potential shift in focus—from ensuring the best interest of children entrusted to its care, to becoming an enforcement arm of DHS—is deeply troubling. We are particularly concerned that if family members are too afraid to come forward to care for their children, unaccompanied children may languish in detention facilities for months or even years as their cases wind their way through the immigration courts. Detained non-citizens are much less likely to find counsel in their immigration cases and accordingly less likely to succeed. Unfortunately, even for minor children, there remains no right to counsel before the immigration court.<sup>4</sup>

We also fear that these young immigrants will be placed at greater risk for human trafficking as close relatives may be too afraid to come forward and seek their children’s release. This may lead family members to put their trust in third parties with lawful immigration status

---

<sup>2</sup> 8 U.S.C. § 1232(c)(2)(A).

<sup>3</sup> “DHS is adding a purpose of the system, as ICE will now screen individuals seeking approval from HHS to sponsor an unaccompanied alien child, as well as other adult members of the potential sponsor’s household, to verify or ascertain citizenship or immigration status, immigration history, and criminal history.” 83 Fed. Reg. 20845 (May 8, 2018).

<sup>4</sup> The City Bar has consistently supported providing appointed legal counsel to unaccompanied minors facing immigration court removal proceedings, arguing that children cannot meaningfully evaluate, support or present their claims for protection and that court proceedings where counsel is present run more smoothly, and achieve more accurate results; see i.e. Statement from President Debra L. Raskin in Support of the Fair Day in Court for Kids Act of 2016, April 13, 2016, <https://www2.nycbar.org/pdf/report/uploads/20073085-FairDayInCourtStatementforCityBarreviewPRESIDENT4.14.16.pdf>; Statement Regarding US Policy on Removal/Deportation of Immigrant Women and Children, Jan. 29, 2016, <https://www2.nycbar.org/pdf/report/uploads/20073034-DHSHomeRaidsImmigrantWomenChildrenImmigrationReportFINAL12816.pdf>; Written Testimony, NYS Assembly Committees on Social Services and Children and Families Hearing “New York State’s Role in Addressing the Influx of Unaccompanied Migrant Youth from Central American Countries,” Sept. 16, 2014, <https://www2.nycbar.org/pdf/report/uploads/FundingUnaccompaniedMinorsImmigrationAssemblyTestimonyFINA L9.16.14.pdf>.

whose true motivation is to exploit the children once released rather than look after their best interests.

In addition to sharing information directly about the proposed caregiver, the new regulation would require ORR to share information with DHS about all members of a potential caregiver's household. Thus, even if the family member who would care for the child has lawful immigration status or an approvable application on file, he or she may fear coming forward if there are other household members (including other children) who would be placed at risk. This would force those caretakers into choosing the welfare of one child over the other, due to government regulation, creating an untenable position. ORR should continue its role overseeing the care and housing of unaccompanied children, and not focus on issues around deportation.

The City Bar urges DHS to rescind its proposed regulations. As the ORR website states, "ORR promptly places an 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. ORR takes into consideration the unique nature of each child's situation and incorporates child welfare principles when making placement, clinical, case management, and release decisions that are in the best interest of the child."<sup>5</sup> For most children, being released to a loving, responsible family member is in the child's best interest. Sharing information about the family members' and household members' immigration status with DHS will lead to many more children remaining in a confined setting and is clearly not in the best interest of the child.

Respectfully,



Victoria Neilson, Chair  
Immigration & Nationality Law Committee

---

<sup>5</sup> "Unaccompanied Alien Children," ORR website, <https://www.acf.hhs.gov/orr/programs/ucs>.