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United States Department of Health and  
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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

10  
11 COMMUNITY LEGAL SERVICES IN EAST  
PALO ALTO, et al.,

12 Plaintiffs,

13 v.

14 UNITED STATES DEPARTMENT OF  
15 HEALTH AND HUMAN SERVICES, et al.,

16 Defendants.

Case No. 25-cv-2847-AMO

**AMICUS CURIAE BRIEF OF  
FORMER OFFICIALS OF THE  
UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES IN  
SUPPORT OF PLAINTIFFS’ MOTION  
FOR PRELIMINARY INJUNCTION**

Judge: Araceli Martínez-Olguín



1 navigate a complex immigration system to seek asylum or other relief for which they may  
2 be eligible. Establishing the required elements for these legal claims is difficult and  
3 complex even for an unrepresented adult, let alone a child. Without a lawyer,  
4 unaccompanied children are unlikely to be able to fairly present their case for immigration  
5 relief, and risk being returned to the very trafficking, persecution, or abuse and neglect that  
6 they fled.

7 To meet unaccompanied children’s acute need for legal representation in the  
8 immigration system, Congress enacted, as part of the William Wilberforce Trafficking  
9 Victims Protection Reauthorization Act of 2008 (“TVPRA”), the requirement that HHS  
10 “ensure, to the greatest extent practicable . . . , that all unaccompanied alien children . . .  
11 have counsel to represent them in legal proceedings or matters and protect them from  
12 mistreatment, exploitation, and trafficking.” 8 U.S.C. § 1232(c)(5) (emphasis added). In  
13 2024, HHS’s Office of Refugee Resettlement (“ORR”) issued a Foundational Rule  
14 requiring ORR to “fund legal service providers to provide direct immigration legal  
15 representation for certain unaccompanied children,” to the extent that “appropriations are  
16 available, and insofar as it is not practicable for ORR to secure pro bono counsel . . . .” 45  
17 C.F.R. § 410.1309(a)(4).

18 Defendants’ sudden termination of funding for direct legal representation for  
19 unaccompanied children will significantly increase the number of children who are forced  
20 to navigate the immigration system without an attorney, reducing their stability, increasing  
21 their vulnerability to human trafficking and exploitation, and subjecting them to the very  
22 real likelihood of unjust removal from the United States. While Defendants say pro bono  
23 representation is a “viable alternative[.]” to direct legal representation funding, ECF No. 24  
24 at 12,<sup>2</sup> the reality is that ORR has been unable to ensure legal representation for more than  
25 40% of unaccompanied children in immigration proceedings even through its longstanding  
26 approach of both promoting access to pro bono counsel and funding direct legal  
27

28 <sup>2</sup> Citations to filings in this matter are to ECF pagination.

[4680343.4]

1 representation. It will be impossible to secure pro bono representation for the majority of  
 2 the 26,000 unaccompanied children currently receiving direct legal representation funded  
 3 by ORR. Due to the limited availability of volunteer attorneys, unaccompanied children  
 4 encounter backlogs and waitlists when trying to obtain pro bono representation. A study  
 5 by Syracuse University’s Transactional Records Access Clearinghouse Immigration  
 6 Project found that, as of the end of April 2023, only 0.8% of those ordered removed from  
 7 the United States in immigration court could find a volunteer lawyer to represent them.  
 8 TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE (“TRAC”), DESPITE EFFORTS TO  
 9 PROVIDE PRO BONO REPRESENTATION, GROWTH IS FAILING TO MEET EXPLODING  
 10 DEMANDS (May 12, 2023), <https://tracreports.org/reports/716/>. And pro bono attorneys  
 11 who do not otherwise practice immigration law will often need training and support to  
 12 provide adequate representation.

13 The Trump Administration is now targeting unaccompanied children for  
 14 immigration enforcement, making legal representation in children’s immigration cases  
 15 even more critical. Marisa Taylor, Ted Hesson & Kristina Cooke, *Trump Officials Launch*  
 16 *ICE Effort to Deport Unaccompanied Migrant Children*, REUTERS (Feb. 23, 2025 at  
 17 5:00am PST), [https://www.reuters.com/world/us/trump-administration-directs-ice-agents-](https://www.reuters.com/world/us/trump-administration-directs-ice-agents-find-deport-unaccompanied-migrant-2025-02-23/)  
 18 [find-deport-unaccompanied-migrant-2025-02-23/](https://www.reuters.com/world/us/trump-administration-directs-ice-agents-find-deport-unaccompanied-migrant-2025-02-23/). The consequences of mistakenly or  
 19 wrongfully deporting someone are grave. They are heightened for children, given their  
 20 many vulnerabilities, especially children who are without a parent or legal guardian to help  
 21 and protect them. *Amici* thus respectfully request that the Court enjoin the actions taken by  
 22 Defendants to abruptly cancel appropriated funding for the legal representation of  
 23 unaccompanied children.

## 24 ARGUMENT

### 25 I. UNACCOMPANIED CHILDREN SUFFER HARM WHEN THEY MUST 26 NAVIGATE THE IMMIGRATION SYSTEM WITHOUT A LAWYER

27 Legal representation in immigration proceedings is critical to support the well-being  
 28 and stability of unaccompanied children. This includes helping children understand what

1 options, if any, they may have to remain in the United States. Without a lawyer,  
2 unaccompanied children will often be unable to achieve a basic understanding of their  
3 rights, let alone make a case for asylum or other immigration relief. This can increase a  
4 child’s anxiety and make them feel alone in a very complex legal system that has major  
5 life-altering consequences.

6 If a child is eligible for immigration relief that can assist them in remaining in the  
7 United States, it is essential for the child’s well-being that this is pursued. Collectively,  
8 *amici* are familiar with many cases of children who were referred by ORR to be provided  
9 legal representation due to their vulnerabilities and potential eligibility for immigration  
10 relief, including children who have been victimized by crime and human trafficking, who  
11 are victims of abuse and neglect, and who are potentially eligible for asylum due to an  
12 individualized fear of persecution.

13 Although “ORR strives for 100% legal representation of unaccompanied children,”  
14 Unaccompanied Children Program Foundational Rule, 88 Fed. Reg. 68948 (Oct. 4, 2023),  
15 nearly half still appear in immigration court without a lawyer. *Executive Office for*  
16 *Immigration Review Adjudication Statistics: Current Representation Rates*, U.S. DEP’T OF  
17 JUSTICE (Oct. 12, 2023), <https://www.justice.gov/eoir/page/file/1062991/dl?inline=> (in  
18 2023, only 56% of unaccompanied children with pending immigration cases had an  
19 attorney). The differences in outcomes for children without legal representation is stark.  
20 From 2005 through 2017, 7.2% of children with legal representation received asylum,  
21 special immigrant juvenile status for abused, neglected, or abandoned children, or some  
22 other form of immigration relief, compared to only 0.3% without an attorney.  
23 CONGRESSIONAL RESEARCH SERVICE, R43599, UNACCOMPANIED CHILDREN: AN  
24 OVERVIEW (2024) at 39-40 & Table 2, <https://sgp.fas.org/crs/homesec/R43599.pdf>. By  
25 contrast, 84% of unaccompanied children without lawyers received removal orders from  
26 immigration courts, compared to only 21% of represented children. *Id.* Without legal  
27 representation, unaccompanied children are far less likely to be able to adequately present  
28 a case for immigration relief to which they may be entitled, and are more likely to be

1 deported back into potentially dangerous circumstances in their home countries, at great  
2 risk to their personal safety.

3 Children’s stability in the United States is also impacted by whether or not they  
4 have legal representation. First, children’s access to legal representation supports their  
5 legal case, which may provide them with permanency and stability in the United States.  
6 Expanding and increasing legal representation gives children the chance to receive legal  
7 status for which they are eligible, and, subsequently, the services that will provide them  
8 with stability and well-being. Legal counsel also supports vulnerable children by  
9 connecting them with other services in the community. In 2021, the Migration Policy  
10 Institute issued a report highlighting the importance of the services provided to  
11 unaccompanied children after they are released from ORR custody, including legal  
12 services. MARK GREENBERG, KYLIE GROW, STEPHANIE HEREDIA, KIRA MONIN & ESSEY  
13 WORKIE, STRENGTHENING SERVICES FOR UNACCOMPANIED CHILDREN IN U.S.  
14 COMMUNITIES, MIGRATION POLICY INSTITUTE (2021), [https://www.migrationpolicy.org/  
15 sites/default/files/publications/mpi-unaccompanied-children-services\\_final.pdf](https://www.migrationpolicy.org/sites/default/files/publications/mpi-unaccompanied-children-services_final.pdf). One of the  
16 report’s findings was that legal services are “particularly crucial for children in light of  
17 their unique vulnerabilities,” and that in addition to providing legal support, legal service  
18 providers “often connect children with services such as school enrollment, health care,  
19 mental-health services, food, and housing.” *Id.* at 2. Attorneys also serve a unique  
20 function due to the attorney-client privilege, as the lawyer may be the only person to whom  
21 the child can safely reveal that they are being exploited, trafficked, or abused. *Id.* at 23.

22 Without these services, it has been *amici*’s experience that unaccompanied  
23 children’s risk of exploitation increases. For many unaccompanied children, their lack of  
24 immigration status makes them more vulnerable to unscrupulous employers seeking to  
25 exploit them with dangerous and underpaid work. Traffickers similarly seek out  
26 vulnerable children. Not only does legal representation increase children’s ability to gain  
27 legal status and gainful employment, thus removing a vulnerability to exploitation, legal  
28 counsel can also help children understand their rights (including labor rights), and support

1 them with access to legal relief or benefits that they may be eligible for based on their  
2 previous trafficking or exploitation experiences.

3 **II. ORR HAS CONSISTENTLY RECOGNIZED ITS CONGRESSIONALLY-**  
4 **MANDATED OBLIGATION TO ENSURE THE PROVISION OF LEGAL**  
5 **REPRESENTATION FOR UNACCOMPANIED CHILDREN TO THE**  
6 **GREATEST EXTENT PRACTICABLE**

6 ORR has consistently interpreted the TVPRA to mandate that it “ensure” the  
7 provision of legal services to unaccompanied children “to the greatest extent practicable,”  
8 and that this necessarily means that ORR should provide funding for direct legal services  
9 when appropriated funds are available to do so, and when pro bono provision of legal  
10 services is not sufficient to meet the need. 8 U.S.C. § 1232(c)(5). Indeed, in 2024 the  
11 ORR issued a Foundational Rule requiring itself to “fund legal service providers to provide  
12 direct immigration legal representation for certain unaccompanied children,” to the extent  
13 that “appropriations are available, and insofar as it is not practicable for ORR to secure pro  
14 bono counsel ....” 45 C.F.R. § 410.1309(a)(4). As discussed further below, the  
15 availability of pro bono counsel has never been sufficient to meet the need for legal  
16 representation, and as such, ORR has also provided funding for direct legal representation  
17 for unaccompanied children appropriated by Congress for that purpose through a legal  
18 services contract.

19 Congress regularly appropriates funding for direct legal representation, and directs  
20 ORR to spend additional funds for legal services for unaccompanied children.  
21 Congressional appropriators have consistently and repeatedly expressed interest and  
22 support for legal services for children, including on regular calls with one of the *amici*  
23 prior to their departure from ORR, and have enacted report language directing ORR to use  
24 appropriated funding “for the significant expansion of direct representation for children ...  
25 consistent with the goals of the Trafficking Victims Protection Reauthorization Act of  
26 2008 for all children to have access to counsel.” *Explanatory Statement for Departments*  
27 *of Labor, Health and Human Services, and Education, and Related Agencies*  
28 *Appropriations Bill, 2023: Summary of Budget Estimates and Committee*

1 *Recommendations*, U.S. SENATE COMMITTEE ON APPROPRIATIONS, at 194,  
 2 <https://www.appropriations.senate.gov/imo/media/doc/LHHSFY23REPT.pdf>.

3 **III. PRO BONO LEGAL SERVICES ARE NOT A VIABLE ALTERNATIVE TO**  
 4 **REPLACE THE DIRECT LEGAL REPRESENTATION FUNDED BY ORR**

5 Based on *amici*'s collective experience, it is not feasible for Defendants to rely on  
 6 pro bono legal services to replace the federally funded direct legal representation for  
 7 unaccompanied children. ORR has been unable to ensure legal representation for a large  
 8 percentage of unaccompanied children even through its longstanding approach of both  
 9 promoting access to pro bono counsel and funding direct legal representation. Indeed,  
 10 ORR relies on its legal services contract for promotion of and support for pro bono  
 11 representation. There are no ORR staff whose responsibilities are to promote or support  
 12 pro bono legal services for unaccompanied children. It is unclear what other mechanism  
 13 (if any) ORR has to facilitate access to pro bono representation if the cancellation of the  
 14 legal services funding is not enjoined.

15 Due to the limited availability of volunteer attorneys, many unaccompanied  
 16 children encounter backlogs and waitlists when trying to obtain pro bono representation.  
 17 GREENBERG, ET AL., *supra*, at 24, [https://www.migrationpolicy.org/sites/default/files/](https://www.migrationpolicy.org/sites/default/files/publications/mpi-unaccompanied-children-services_final.pdf)  
 18 [publications/mpi-unaccompanied-children-services\\_final.pdf](https://www.migrationpolicy.org/sites/default/files/publications/mpi-unaccompanied-children-services_final.pdf). As discussed above, less  
 19 than 1% of persons who were ordered removed in immigration court were able to find a  
 20 volunteer lawyer to represent them. TRAC, *supra*, <https://tracreports.org/reports/716/>.

21 Compounding the existing shortage of pro bono representation, *amici* are concerned  
 22 that the Trump Administration's recent Presidential Memorandum targeting and  
 23 threatening immigration lawyers based on unsupported accusations of misconduct is likely  
 24 to discourage some attorneys from practicing immigration law, and will thus make pro  
 25 bono representation availability even more scarce. *See Presidential Memorandum for the*  
 26 *Attorney General and Secretary of Homeland Security: Preventing Abuses of the Legal*  
 27 *System and the Federal Court*, THE WHITE HOUSE (Mar. 22, 2025), [https://www.](https://www.whitehouse.gov/presidential-actions/2025/03/preventing-abuses-of-the-legal-system-and-)  
 28 [whitehouse.gov/presidential-actions/2025/03/preventing-abuses-of-the-legal-system-and-](https://www.whitehouse.gov/presidential-actions/2025/03/preventing-abuses-of-the-legal-system-and-)



1 [the-federal-court/](#) (falsely accusing “the immigration bar, and powerful Big Law pro bono  
2 practices” of “frequently coach[ing] clients to conceal their past or lie about their  
3 circumstances when asserting their asylum claims ... in an attempt to ... deceive the  
4 immigration authorities and courts into granting them undeserved relief”).

5 Other actions by the Trump Administration—including executive orders imposing  
6 sanctions on certain law firms that engage in pro bono work in opposition to the federal  
7 government, and agreements reached with other large law firms to provide hundreds of  
8 millions of dollars in pro bono legal services for causes supported by the President—are  
9 likely to have the dual effect of taking limited pro bono resources away from causes not  
10 supported by the Trump Administration (such as the representation of unaccompanied  
11 children in immigration court), and discouraging large law firms from engaging in any pro  
12 bono work in opposition to the federal government, for fear of reprisal.

13 Another limitation on the availability of adequate pro bono representation is the  
14 complexity of immigration law. Immigration law is a specialized field, and some cases  
15 require expertise—for instance, on human trafficking, state child welfare systems, and  
16 highly specialized immigration visas—which not all immigration attorneys have, much  
17 less volunteer lawyers without significant immigration experience: As explained in the  
18 2021 Migration Policy Institute report, “[w]hile pro bono attorneys play a crucial role in  
19 expanding available representation, they may not be trained or have experience in  
20 immigration law, nor in trauma-informed or culturally responsible service delivery.”

21 GREENBERG, ET AL., *supra*, at 24, [https://www.migrationpolicy.org/sites/default/files/  
22 publications/mpi-unaccompanied-children-services\\_final.pdf](https://www.migrationpolicy.org/sites/default/files/publications/mpi-unaccompanied-children-services_final.pdf).

23 Finding pro bono legal representation is also particularly difficult in some parts of  
24 the United States, including rural areas where many children are discharged from ORR  
25 custody. These areas are sometimes referred to as “legal deserts,” in that there is little to  
26 no access to immigration attorneys. Recognizing this limitation, ORR provided funds to  
27 provide direct legal representation for unaccompanied children in these areas. If  
28 Defendants’ cancellation of this funding is not enjoined, it is unclear how ORR would be

1 able to locate pro bono attorneys for children who need legal representation in these  
2 locations.

3 The geographic spread of both ORR facilities and the locations where children are  
4 discharged is another limitation on finding pro bono representation. A nationwide network  
5 of attorneys is essential to ensure continuity in a child's legal representation, and to  
6 prevent representation from ending because their lawyer can only practice in certain  
7 jurisdictions. ORR transfers children between facilities and discharges them to sponsors in  
8 hundreds of counties in all fifty states, and attorneys have no say in that process. Many  
9 volunteer attorneys may not or cannot provide representation when they know that a  
10 child's jurisdiction will likely change during the course of their case. This makes it all the  
11 more difficult to recruit pro bono attorneys for the cases of unaccompanied children.

12 ORR currently relies on legal service providers that receive federal funding to  
13 promote and support pro bono representation of unaccompanied children, including by  
14 providing mentoring and guidance for volunteer attorneys. The nationwide network of  
15 immigration legal professionals who receive funding from ORR can recruit pro bono  
16 attorneys in needed geographical areas and with particular expertise, as well as provide  
17 training and support for such attorneys. Such a structure is in the best interest of children,  
18 as well as the government, to ensure that ORR fulfills its mandate to provide access to  
19 legal services. It does not appear that ORR has any viable alternative means to provide  
20 access to pro bono representation for unaccompanied children, let alone to expand pro  
21 bono legal services in the wake of the sudden cancellation of the legal services funding.  
22 Pro bono legal services is not a feasible alternative to funding direct legal representation.

### 23 CONCLUSION

24 For the foregoing reasons, *amici* respectfully request that this Court enjoin the  
25 actions taken by Defendants to abruptly cancel appropriated funding for the legal  
26 representation of unaccompanied children without a plan to ensure that these services can  
27 continue at the rate and quality with which they have been functioning. Notably, these

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1 services have been in place under multiple past administrations, including the prior Trump  
2 Administration.

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DATED: April 10, 2025

Respectfully submitted,  
  
ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/ Benjamin Bien-Kahn  
Benjamin Bien-Kahn

Attorneys for Amici Former Officials of the United  
States Department of Health and Human Services

# **Appendix A**

**APPENDIX A**

**List of *Amici* Former Officials of the U.S. Department of Health and Human Services**

**Mari Dorn-Lopez** served as Senior Advisor in the Office of Refugee Resettlement and in the Office of the Assistant Secretary within the U.S. Department of Health and Human Services from August 13, 2023 to January 20, 2025. She previously had over ten years of experience representing children and advocating for best practices to serve unaccompanied and immigrant children.

**Mark Greenberg** served as Deputy Assistant Secretary for Policy at the Administration for Children and Families within the U.S. Department of Health and Human Services from 2009 through 2013, and as the Administration for Children and Families Acting Assistant Secretary from 2013 until January 20, 2017. Subsequently, he served as Deputy General Counsel at the U.S. Department of Health and Human Services' Office of the General Counsel from December 2021 until January 20, 2025.

**Larry Handerhan** served as Chief of Staff and Deputy Assistant Secretary for Management at the Administration for Children and Families within the U.S. Department of Health and Human Services from January 25, 2021 to January 20, 2025, working closely with the Office of Refugee Resettlement. He has over 15 years of experience working on housing and human services issues that impact children and families.

**Jeffrey Hild** served as the Principal Deputy Assistant Secretary for the Administration for Children and Families within the U.S. Department of Health and Human Services from May 2022 through November 2024, and as the Acting Assistant Secretary at the Administration for Children and Families from August 2023 through November 2024. He previously served as the Deputy Assistant Secretary for Legislation at U.S. Department of Health and Human Services from March 2021 through May 2022 and the Chief of Staff at the Administration for Children and Families from July 2014 through January 2017. He previously worked in Congress for eight years and at the George Washington University School of Public Health, where his work focused on policies and research related to child health and well being.

1 **Miriam Maigadi** served as Senior Advisor in the Office of Refugee Resettlement  
2 within the U.S. Department of Health and Human Services from June 20, 2023 to  
3 January 20, 2025. She has eight years experience regarding best practices to serve  
4 unaccompanied and immigrant children.

5 **Angel Padilla** served as Senior Policy Advisor at the Office of Refugee  
6 Resettlement and at the Administration for Children and Families within the U.S.  
7 Department of Health and Human Services between May 2021 and November 2022,  
8 working primarily on the unaccompanied children’s program. Prior to that, he worked in  
9 legislative and administrative advocacy, including as a health policy analyst focused on  
10 immigrant access to health care services.

11 **Jenifer Smyers** served as the Chief of Staff and Deputy Director of the Office of  
12 Refugee Resettlement within the U.S. Department of Health and Human Services from  
13 February 1, 2021 until January 20, 2025. Prior to that, she had 15 years of experience in  
14 immigration advocacy focused on vulnerable populations.

15 **Kate Wolff** served as Counselor to the Secretary of Health and Human Services  
16 covering the immigration portfolio from September 1, 2021 to March 1, 2023. Prior to  
17 that, she had 15 years of public service at the state and federal level, including as the Chief  
18 of Staff of the Office of Refugee Resettlement within the U.S. Department of Health and  
19 Human Services from 2014 to 2016.

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