

No. 25-2808

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

COMMUNITY LEGAL SERVICES IN EAST PALO ALTO, et al.,
Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, et
al.,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California
(Hon. Araceli Martinez-Olguin)
No. 3:25-cv-02847-AMO

**BRIEF OF AMICUS CURIAE THE YOUNG CENTER FOR IMMIGRANT
CHILDREN'S RIGHTS IN OPPOSITION TO DEFENDANTS-
APPELLANTS' PETITION FOR REHEARING EN BANC
FROM THE PANEL'S ORDER OF MAY 14, 2025**

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IDENTITY AND INTEREST OF AMICUS CURIAE¹

The Young Center for Immigrant Children’s Rights (Young Center) is a national non-profit organization whose mission is to protect and advance the rights and best interests of immigrant children. Since 2004, the Young Center has been appointed by the Office of Refugee Resettlement (ORR) to serve as the independent Child Advocate, akin to a best interests guardian *ad litem*, for unaccompanied immigrant children. The Young Center is appointed as Child Advocate pursuant to the Trafficking Victims Protection Reauthorization Act (TVPRA), which authorizes ORR to appoint Child Advocates to “child trafficking victims and other vulnerable unaccompanied [immigrant] children.” 8 U.S.C. § 1232(c)(6)(A). The Young Center is the only organization appointed by ORR to serve in this capacity.

In accordance with the TVPRA, Young Center Child Advocates “advocate for the best interest” of each child to whom they are appointed. *Id.* Because it is in children’s best interests to have legal representation in immigration proceedings, the Young Center has a vested interest in ensuring that unaccompanied children have access to legal representation.

¹ No party’s counsel authored this brief in whole or in part, and no person other than amicus or its counsel made a monetary contribution to the preparation or submission of this brief. All parties consented to the filing of this amicus brief.

INTRODUCTION

For over two decades, Young Center Child Advocates have worked with thousands of unaccompanied children, most of whom are seeking some form of legal protection in the United States. The role of the Child Advocate is to determine and represent the best interests of children on matters related to a child's custody, placement, release, access to services, immigration case, and repatriation, where appropriate. In that capacity, the Young Center provides recommendations on the best interests of each child—referred to as “best interests determinations” (BIDs)—to various federal agencies that engage in decision-making affecting unaccompanied children.

Child Advocates and attorneys play different but interconnected roles in the complex system in which children seek release from government custody and permanent protection. Child Advocates identify and advocate for the *best interests* of children on all issues impacting the child. A child's best interests are determined by considering the child's expressed wishes, but also the child's safety and rights to family integrity, liberty, development, and identity. In contrast, a child's attorney is obligated to pursue the child's *expressed interests*. Because a child's immigration case directly impacts their best interests, Young Center Child Advocates have worked closely and regularly with ORR-funded attorneys and have observed

firsthand the vital role that these attorneys play in promoting children’s safety, well-being, and rights.

In this brief, the Young Center seeks to inform the Court of the impact of ORR’s termination of legal representation services on children; specifically, that the loss of these services is detrimental to children’s best interests. Legal representation is essential to ensuring that children have a fair opportunity to be heard in immigration proceedings. Furthermore, children’s attorneys protect children from harm through their advocacy in contexts other than immigration proceedings, such as issues related to release from government custody; conditions and treatment while in custody; and issues that arise after the child’s release. Denying children access to government-funded legal representation, when the vast majority of children cannot afford to retain counsel, and when demand far exceeds pro bono representation capacity, causes significant harm to children. Indeed, Young Center Child Advocates have witnessed the harmful effects it has already had on children.

I. ACCESS TO LEGAL REPRESENTATION IS IN CHILDREN’S BEST INTERESTS

A. The Best Interests of the Child Standard

The “best interests of the child” is a foundational principle of child protection in state and federal law. All 50 states and the District of Columbia require courts to consider a child’s best interests in decisions about the child’s custody, placement, or

other critical life issues.² Over the past several decades, Congress has incorporated this universal standard into multiple aspects of immigration law, notably through Special Immigrant Juvenile Status (SIJS), which is granted by U.S. Citizenship and Immigration Services (USCIS) only after a state court finding that return to the country of origin is not in a child’s best interests. 8 U.S.C. § 1101(a)(27)(J)(ii). Under the TVPRA, federal agencies that take unaccompanied children into custody must place them in the least restrictive setting that is in their best interests. 8 U.S.C. § 1232(c)(2). The ORR Foundational Rule, a set of regulations regarding the care and custody of unaccompanied children, defines “best interest” as “the standard ORR applies in determining the types of decisions and actions it makes in relation to the care of an unaccompanied child.” 45 C.F.R. § 410.1001. As discussed above, Congress, through the TVPRA, has authorized the appointment of Child Advocates to advocate for the best interests of vulnerable unaccompanied children.

While the “best interests of the child” principle has no single definition, widely-accepted elements include: a child’s safety and well-being, expressed interests, and health, and their rights to family integrity, liberty, development, and identity.³ In defining the best interest standard, the ORR Foundational Rule provides

² See CHILD WELFARE INFORMATION GATEWAY, U.S. DEP’T OF HEALTH AND HUMAN SERVICES, DETERMINING THE BEST INTERESTS OF THE CHILD 2 (2024), https://www.childwelfare.gov/pubPDFs/best_interest.pdf.

³ See DETERMINING THE BEST INTERESTS OF THE CHILD, *supra* note 2, at 3-4. See also Subcomm. on Best Interests, Interagency Working Grp. on Unaccompanied and

a “non-exhaustive list of factors” that includes many of these elements. *See* 45 C.F.R. § 410.1001. Considering these best interests factors in the context of unaccompanied children, access to government-funded legal representation serves children’s best interests. Legal representation is vital to ensuring that children have the information and assistance they need to understand their rights, express their interests, and have their voices heard in immigration proceedings. Without legal representation, children can have no fair opportunity to pursue immigration relief, which is critical to their permanency, safety, and health.

B. Children’s Unique Needs and Vulnerabilities Require Legal Representation in Immigration Proceedings

Children facing removal are confronted with largely the same complex immigration court system as adults. The overarching structure is an adversarial, courtroom-based proceeding. The child faces opposition from a government attorney and appears before an immigration judge in the same courtroom as adults, with largely the same procedures and evidentiary standards as applied to adults. A child may seek protection from removal in that courtroom. However, the child may—and sometimes must—also apply for protection from other, entirely separate

Separated Children, *Framework for Considering the Best Interests of Unaccompanied Children* 5 (2016), <https://www.law.georgetown.edu/human-rights-institute/wp-content/uploads/sites/7/2017/07/Best-Interests-Framework.pdf>.

agencies with their own processes and own adjudicators. In short, children confront a complex maze of options that can confuse even experienced attorneys.

At the same time, children have unique needs and vulnerabilities that demand special procedural safeguards and legal assistance in order to have a fair opportunity to be heard. Children are developmentally distinct from adults, as research shows that children’s brains continue to develop well into their twenties.⁴ Children face capacity limitations inherent in their ongoing development and are dependent upon others to facilitate their participation in legal processes that are not designed for them. Indeed, Executive Office of Immigration Review Guidance recognizes that “[i]mmigration cases involving children are complicated and implicate sensitive issues beyond those encountered in adult cases” and requires immigration judges to “employ age-appropriate procedures” whenever a child respondent is in the courtroom.⁵

The impact of trauma on children’s ability to seek and obtain relief heightens the need for legal representation. Many unaccompanied children have suffered

⁴ Sara B. Johnson et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. Adolescent Health 216 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2892678/>.

⁵ Executive Office of Immigration Review, Operating Policies and Procedures Memorandum (OPPM) 17-03, Guidelines for the Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children 2-3 (December 20, 2017), available at <https://www.justice.gov/eoir/file/oppm17-03/dl>. These guidelines were rescinded on December 21, 2023, but were reinstated on January 29, 2025.

trafficking, abuse, or other violence, and the resulting trauma histories exacerbate the gap that a child must bridge to prepare a legal defense to removal. Trauma history may “interfere with a child’s ability or willingness to report information about violent incidents.”⁶ Children who have experienced trauma may have piecemeal or nonlinear memories of the harm they suffered and may struggle to tell their stories in a formal adversarial proceeding.⁷ Legal representation by an attorney with whom the child can build rapport and trust over time, and who is able to identify and address the impact of trauma on a child’s oral account of their experience, is critical to ensuring that their story and expressed wishes are heard during their immigration proceedings.

II. ORR-FUNDED LEGAL REPRESENTATION HAS HELPED TO ENSURE THAT CHILDREN HAVE A FAIR OPPORTUNITY TO SEEK PROTECTION IN THE UNITED STATES

Over the years, Young Center Child Advocates have observed firsthand the immeasurable benefit of legal representation to unaccompanied children. For children’s immigration cases, ORR-funded legal representation has meant that children have an attorney with expertise and experience in children’s immigration cases to stand with them in court, advise and advocate for them, and ensure their

⁶ Chris Newlin et al., *Child Forensic Interviewing: Best Practices* 5, in JUVENILE JUSTICE BULLETIN, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEP’T OF JUSTICE (Sept. 2015), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248749.pdf>.

⁷ *Id.*

voices are heard. And in those cases where children have been granted immigration relief, legal representation has meant the difference between living in safety in the United States or being returned to a country where they may face danger and harm.

The following accounts reflect just a few examples among the countless Young Center cases where ORR-funded legal representation was essential to keeping the child safe and healthy:

The Young Center worked with **Daniel**, a teenage boy who was the victim of trafficking.⁸ Daniel struggled while in ORR custody from symptoms arising from Post Traumatic Stress Disorder. Fortunately, Daniel developed a close bond with his attorney and trusted them. The Child Advocate and Daniel's attorney worked together to advocate for the youth's needs in custody, including outpatient mental health services and proper medical care. The attorney arranged for Daniel to receive a mental health evaluation by an outpatient provider to support his legal case. The attorney then applied for a T-visa on Daniel's behalf, which was supported by a BID from the Child Advocate. The Child Advocate also advocated over many months for the child to be placed in the Unaccompanied Refugee Minor (URM) program, a foster care program that provides specialized services and benefits and is available only to children who meet certain criteria. After two years in ORR custody, Daniel was released to a URM placement. Daniel later obtained a T-visa.

⁸ *Amicus* uses pseudonyms for some of the children in this brief.

The Young Center worked with **Angel**, a teenager who had been sexually abused by a staff member at the ORR facility where they were held. In discussing the abuse with their attorney, Angel disclosed that they had previously been the victim of sex trafficking and had fled to the United States to escape the traffickers. Angel's attorney and Child Advocate worked together to advocate for Angel's needs. The Child Advocate focused on ensuring that Angel received proper care and services within the facility and advocating for their release to a foster care placement, while Angel's attorney accompanied Angel to report the abuse to the police. The attorney also contacted Homeland Security Investigations to report the trafficking that Angel had suffered. After nearly 10 months in ORR custody, Angel was released to a URM placement, and their attorney filed an asylum application on their behalf.

The Young Center was appointed to **Marco**, a teenage boy with significant medical and mental health diagnoses that impacted his cognitive functioning and emotional regulation. Marco spent years in ORR custody. During that time, his attorney and his Child Advocate collaborated closely to advocate for his needs. In partnership with his attorney, the Child Advocate arranged for an in-depth psychological evaluation of Marco in order to understand his diagnoses and his ability to meaningfully participate in court proceedings. When the evaluation results indicated Marco lacked capacity to participate in court, the attorney sought a hearing

in immigration court to evaluate his competency. The court, relying on the psychological evaluation and his Child Advocate's BID, found Marco incompetent and issued an order requiring a number of procedural protections for future proceedings. With that court order, the attorney sought procedural protections when Marco was called for his asylum interview before USCIS. USCIS applied those protections during Marco's interview and eventually granted him asylum.

III. CHILDREN'S ATTORNEYS PROTECT THE SAFETY AND WELL-BEING OF CHILDREN OUTSIDE OF THE CONTEXT OF IMMIGRATION PROCEEDINGS

A. Children's Attorneys Assist in Identifying Vulnerable Children in Need of Child Advocate Services That May Not Otherwise be Identified

Aside from providing legal representation in immigration proceedings, ORR-funded attorneys advance children's best interests in myriad other ways. For instance, Child Advocates depend upon attorneys to identify and refer some of the most vulnerable children for best interests advocacy. Child Advocates are not made aware of every child in custody; rather, they are appointed to children's cases after other actors—federal officials, ORR facility staff, or attorneys—identify a child as vulnerable and submit a referral for appointment of a Child Advocate. Some particularly vulnerable children, such as young children and youth who are pregnant or parenting, are easily identified by many stakeholders. However, there are certain children that only attorneys are likely to identify. For instance, an attorney is

sometimes the only stakeholder to refer a child who has been harmed in government custody, as some children are wary of disclosing abuse to staff at the facilities where they are harmed.

Similarly, attorneys may be the only stakeholder to refer cases where the government has improperly denied a child's release to family or prevented the child's "step-down" to a less restrictive setting. In those cases, other stakeholders may have little incentive to draw attention to decisions that would likely be challenged by a Child Advocate. Finally, attorneys representing children after their release from custody may be the only stakeholder to learn that a child has experienced trafficking or other harm upon release. In those cases, attorneys may refer the child for a Child Advocate who, if appointed, can advocate for services that are in the child's best interests.

B. Children's Attorneys Help to Protect Children in Government Custody from Harm and Mistreatment

Children's attorneys also advocate for children's safety and well-being in other contexts, such as issues related to family reunification or conditions and treatment while in government custody. In cases where the child is also appointed a Child Advocate, the Child Advocate and attorney often work together to advocate for the child. This advocacy benefits not only the individual child, but also all unaccompanied children, by providing critical oversight over the government's treatment and custody of all children.

For instance, Young Center Child Advocates have worked closely with ORR-funded children's attorneys on cases where ORR has improperly "stepped-up" a child to a more restrictive placement. In those cases, the Child Advocate will collaborate closely with the attorney to advocate against "step-up" or advocate for the child to be "stepped-down" promptly to a less restrictive placement that is in the child's best interests. This joint advocacy is critical to preventing children's improper or prolonged detention in restrictive facilities, which can significantly harm their mental and physical health.

The Young Center has also worked with ORR-funded attorneys to address issues related to conditions, treatment, and services that children have experienced while in ORR custody, such as mistreatment of children by facility staff, denial of language access to children whose preferred language is not Spanish or English, and failure to accommodate a child's disability. For instance, when an ORR facility was improperly subjecting children to segregation in violation of ORR policy and regulations,⁹ Young Center Child Advocates collaborated with the children's attorneys, who advocated with the facility to cease the unlawful practice. The

⁹ See, e.g., 45 C.F.R. § 410.1304; Off. of Refugee Resettlement, U.S. Dep't of Health & Human Serv., *ORR Guide: Children Entering the United States Unaccompanied* [hereinafter *ORR Policy Guide*] § 3.3.15 (updated February 27, 2025), <https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3#3.3.15>.

children's attorneys also advocated with the state child welfare agency to investigate the issue.

ORR-funded legal service providers have also advocated to address abuse suffered by children while in government custody, including U.S. Customs and Border Protection (CBP) detention. In the past few years, legal service providers have filed numerous complaints with the U.S. Department of Homeland Security's Office of Civil Rights and Civil Liberties, documenting hundreds of children's reports of verbal and physical abuse and inhumane conditions while in CBP detention and demanding investigation and reforms.¹⁰

IV. WITHOUT LEGAL REPRESENTATION, CHILDREN ARE AT RISK OF IMMEDIATE AND SIGNIFICANT HARM

A. ORR's Termination of Legal Representation Services Has Already Harmed Children

Young Center Child Advocates have already observed harm to children caused by ORR's termination of funding for legal representation. The sudden and abrupt termination of services, without any advance notice to children, their

¹⁰ See, e.g., Florence Immigrant & Refugee Rights Project, *Handcuffed, Pushed, and Afraid: immigrant children share terrifying experiences while in Border Patrol custody* (September 2024), https://firrp.org/wp-content/uploads/2024/09/September-2024_Handcuffed-Pushed-and-Afraid-Immigrant-children-share-terrifying-experiences-while-in-Border-Patrol-custody.pdf.

attorneys, Child Advocates, and immigration judges and court personnel, created chaos and confusion in immigration courts.

During the days immediately following the termination of funding, Child Advocates observed immigration judges learning for the first time at court hearings that funding for legal representation services for unaccompanied children had been terminated. Upon arriving at court, children also learned for the first time that they would not have an attorney to represent them. In one court, Young Center Child Advocates observed a 14-year-old girl break down in tears in the court's lobby when she was told that she would not have a lawyer and would need to stand up in court all alone. Child Advocates observed children as young as five years old sitting at tables by themselves in front of judges. Older teenagers without counsel were required to proceed in court with pleadings, in which they were required to admit or deny the charges and factual allegations regarding removal made by the government against them. In cases where children were in ORR custody, immigration judges sometimes directed questions regarding children and their immigration cases towards ORR facility staff who are not trained on the consequences of discussing a child's case in immigration court. At one hearing, the immigration judge failed to request an interpreter to interpret the proceedings, even though many non-English-speaking children were present, and instead directed questions only to ORR facility staff in English.

At another hearing, the immigration judge advised children of their rights through a Spanish interpreter and asked each child if they wanted to have additional time on their case. One teenage girl responded in Spanish, “No.” When the judge asked if the youth wished to represent herself, the youth responded in Spanish, “No.” The judge then asked the youth why she did not want more time. The youth then became confused and responded, “No entiendo nada,” indicating that she did not understand anything being said. The Child Advocate explained to the judge that the youth could not understand the proceeding. The judge then instructed the interpreter to explain to the youth that the Young Center would work with the ORR facility and might be appointed to the youth’s case to help. However, the interpreter misinterpreted, telling the youth in Spanish that the judge would come to the shelter and meet the child there. The Child Advocate asked the judge to instruct the interpreter to correct the interpretation.

In another case, **Nicolas**, a youth to whom the Young Center is appointed, had a court hearing in early April. He was transferred to another program right before his court hearing. At the time of the hearing, Nicolas was on a flight traveling to his new placement. Typically, a legal service provider would have filed a Change of Venue form with the immigration court to notify the court and the government attorney and to have the child’s case transferred to the nearest court. However, due to the interruptions and confusion caused by the loss of funding for representation,

a Change of Venue form had not been filed and a legal service provider did not initially appear on the case. Fortunately, an attorney with a legal service provider eventually appeared at the hearing as an unfunded friend of court and explained Nicolas's inability to appear in court due to his transfer. If the attorney had not done so, and if no Child Advocate had been present to make a recommendation regarding a continuance, the court could have issued an order of removal *in absentia*.

Some immigration judges decided not to proceed with hearings and continued cases for 45 to 60 days, because the children were unrepresented. In one child's case, a Child Advocate requested a 90-day continuance to assist the child in locating a pro bono attorney. The Child Advocate requested ninety days knowing how difficult it would be to secure the services of pro bono counsel when so many children were suddenly in need of representation. However, the government attorney requested a continuance of just 30 days; the judge ultimately granted a 60-day continuance. In another court, the government attorney objected to all requests on behalf of children for continuances, regardless of the amount of time. One judge granted continuances but indicated that they were inclined to proceed with pleadings if the children were still unrepresented at the next hearing.

B. Without ORR-Funded Legal Representation, Most Children Will Likely be Unrepresented

These experiences show clearly the risk of significant harm to children by Defendants' actions: if ORR does not provide funding for legal representation, the

vast majority of unaccompanied children will have to proceed with their immigration cases alone and will have no fair opportunity to seek immigration relief. This will mean that children who have been identified as eligible for legal relief during legal screenings will likely have no attorney to file applications for humanitarian relief on their behalf. For children who are facing prolonged stays in ORR custody because they do not have available sponsors or because potential sponsors do not meet heightened requirements that ORR has recently imposed on sponsors,¹¹ the prospect of prolonged detention without any legal representation to be able to meaningfully seek permanency in the United States has caused them to feel even more anxious, frustrated, and fearful about their situations. Some children have expressed feelings of despair and hopelessness to their Child Advocates and are considering voluntary departure despite having protection claims.

C. Pro Bono Representation is Unlikely to Fill the Gap

The prospect of pro bono legal representation meeting the enormous gap in services created by ORR's termination of funding is also highly unlikely. As a

¹¹ See, e.g., ORR Policy Guide, *supra* note 18, § 2.2.4 (updated March 7, 2025), <https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2#2.2.4> (no longer accepting “foreign passport that contains a photograph” as acceptable form of identification for sponsorship application); Off. of Refugee Resettlement, *ORR Field Guidance* #27, (March 14, 2025), https://acf.gov/sites/default/files/documents/orr/FG-27_-_DNA_Testing_Expansion.pdf (requiring any potential sponsor who indicates biological relationship with child to submit to DNA testing).

preliminary matter, it is extremely difficult for a child in ORR custody to find a pro bono attorney on their own. Even if ORR provides children with a list of pro bono providers, children are generally not permitted telephone access except in limited circumstances. It is also our understanding that ORR facility staff do not take any affirmative steps to help children find pro bono counsel. Therefore, a child in ORR custody would likely require the assistance of their Child Advocate, if they are appointed one, or a legal service provider to locate pro bono counsel.

Moreover, in the Young Center's experience, it is very difficult and time-consuming for anyone to locate pro bono counsel to represent children in immigration proceedings. In recent years, in rare cases where ORR-funded attorneys lacked capacity or were unable to represent a child due to a conflict, Child Advocates have attempted to find pro bono representation in the private bar with limited success. In the weeks after ORR terminated funding for legal representation, Child Advocates made significant, but largely unsuccessful, efforts to find pro bono representation for children. Thus, the system that currently exists has no capacity to ensure that children will be able to find pro bono counsel on their own, or that pro bono counsel in the private bar are even available in numbers that could start to address the demand for services for thousands of children.

CONCLUSION

As the Child Advocate appointed by ORR pursuant to the TVPRA to advocate for the best interests of unaccompanied children, the Young Center is deeply concerned by the harm that the termination of funding for legal representation has caused children. No child should have to navigate complex immigration proceedings alone. Denying children a meaningful opportunity to pursue permanency in the United States is not in children's best interests. The Court should deny Defendants' request for *en banc* rehearing.

Respectfully submitted,

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Dated: June 20, 2025

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Fed. R. App. P. 32(a)(5) and (6) because it was prepared in 14-point Times New Roman, a proportionally spaced font. I further certify that this brief complies with the type-volume limitation of Ninth Circuit Rule 29-2(c)(2) because it contains 4,177 words.

/s/ Hanni Fakhoury

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