

No. 25-2808

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IN THE  
**United States Court of Appeals for the Ninth Circuit**

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COMMUNITY LEGAL SERVICES IN EAST PALO ALTO; SOCIAL JUSTICE COLLABORATIVE;  
AMICA CENTER FOR IMMIGRANT RIGHTS; ESTRELLA DEL PASO; FLORENCE IMMIGRANT  
AND REFUGEE RIGHTS PROJECT; GALVESTON-HOUSTON IMMIGRANT REPRESENTATION  
PROJECT; IMMIGRANT DEFENDERS LAW CENTER; NATIONAL IMMIGRANT JUSTICE  
CENTER; NORTHWEST IMMIGRANT RIGHTS PROJECT; ROCKY MOUNTAIN IMMIGRANT  
ADVOCACY NETWORK; VERMONT ASYLUM ASSISTANCE PROJECT,  
*Plaintiffs-Appellees,*

*v.*

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; UNITED STATES  
DEPARTMENT OF THE INTERIOR; OFFICE OF REFUGEE RESETTLEMENT,  
*Defendants-Appellants.*

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On Appeal from the United States District Court for the  
Northern District of California  
No. 25-cv-02847, Hon. Araceli Martinez-Olguin

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**BRIEF OF NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN  
AND CHILD WELFARE ADVOCATES AS *AMICI CURIAE* FOR APPELLEES  
IN OPPOSITION TO MOTION FOR REHEARING**

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## INTEREST OF *AMICI CURIAE*<sup>1</sup>

Lead *amicus curiae*, the National Association of Counsel for Children (“NACC”), is a non-profit advocacy and membership association founded in 1977. It advocates for the rights of children in the child welfare system, trains and supports a diverse community of legal professionals, and files *amicus curiae* briefs promoting the legal interests of children in state and federal appellate courts, including the Supreme Court of the United States. NACC advocates for the right to counsel for children in civil matters across the United States. More information about NACC can be found at [www.naccchildlaw.org](http://www.naccchildlaw.org).

NACC is joined in this brief by a broad coalition of amici who work on behalf of children’s rights. All *amici* are listed in the Addendum.

## ARGUMENT

### I. Unaccompanied Minors Need Legal Representation

Congress enacted the Trafficking Victim Protection Act (the “TVPRA”) “to ensure that unaccompanied minors in temporary Federal

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<sup>1</sup> The parties have consented to the filing of this *amicus* brief. No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than *amicus* and its counsel made a monetary contribution intended to fund the preparation or submission of the brief.

custody are treated as children and not as criminals.” 154 Cong. Rec. S10886-01, S10886 (daily ed. Dec. 10, 2008) (statement of Sen. Dianne Feinstein). To effectuate this purpose, the TVPRA requires that “to the greatest extent practicable ... all unaccompanied alien children ... have counsel to represent them in legal proceedings.” 8 U.S.C. § 1232(c)(5). As the Ninth Circuit’s order recognizes, the government’s decision to defund programs that provide counsel to unaccompanied children violates this law, and places thousands of vulnerable children at risk.

As congressional representatives recognized before passing the TVPRA, “it is through [unaccompanied children’s] resilience and indomitable spirit that they have found themselves in our country” and in the position of “need[ing] help.” 154 Cong. Rec. S10886-01, S10886. Yet “[t]he majority ... have been forced to struggle through an immigration system designed for adults.” *Id.* To remedy these dangers, the law not only requires that children be provided with counsel to the greatest extent practicable, but also authorizes the creation and funding of nationwide pro-bono networks to help provide those lawyers.

### **A. Legal Representation Is A Critical Safeguard For Children**

As the Supreme Court has recognized, a child “requires the guiding hand of counsel at every step” of a legal proceeding. *In re Gault*, 387 U.S. 1, 36 (1967).

Rendering confidential, age-appropriate legal advice is a service that no caseworker, therapist, or non-lawyer volunteer can provide. Indeed, doing so would constitute practicing law without a license – which is a *crime* in many states.<sup>2</sup> Conversely, as a result of their specialized training and experience, qualified lawyers are uniquely equipped to: (1) understand, and help a child understand, the child’s rights and options; (2) investigate facts and marshal helpful evidence; (3) draft, file, and argue motions that properly frame legal issues for decision and make proper use of legal precedent; (4) subpoena and

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<sup>2</sup> *See, e.g., In re Jay*, 446 B.R. 227 (2010) (Virginia law states that a nonlawyer giving assistance to the general public in rendering legal advice constitutes the unauthorized practice of law); *United States v. Johnson*, 327 F.3d 554 (2003) (under Illinois law, any legal advice or other legal service provided by a nonlawyer constitutes the unauthorized practice of law).

cross-examine witnesses to expose error or abuse; and (5) ensure that children have a meaningful voice in judicial proceedings.<sup>3</sup>

In the immigration context, counsel help children in numerous ways that are fundamental to due process:

*First*, attorneys facilitate children’s active participation in proceedings. They prepare children for hearings, debrief them afterward, and request that courts speak directly with their clients—steps that increase a child’s opportunity to be heard.<sup>4</sup> Put differently,

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<sup>3</sup> Nat’l Ass’n of Counsel for Children, *Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings* (2021), <https://tinyurl.com/493hhyk>; see also Nourit Zimmerman & Tom R. Tyler, *Between Access to Counsel and Access to Justice: A Psychological Perspective*, 37 Fordham Urb. L.J. 473 (2010), <https://tinyurl.com/3ue7v2b6> (arguing that the psychological support and procedural fairness conferred by counsel enhance youths’ comprehension and engagement in legal settings); LaShanda Taylor, *A Lawyer for Every Child: Client-Directed Representation in Dependency Cases*, 47 Fam. Ct. Rev. 605, 607 (2009), <https://tinyurl.com/5n88sjz9> (describing how client-directed representation frameworks accommodate children’s developmental capacities and promote meaningful participation).

<sup>4</sup> Nat’l Ass’n of Counsel for Children, *State Models of Children’s Legal Representation* (2023), <https://tinyurl.com/48zhuuu8>; First Star Inst. & Children’s Advoc. Inst., *A Child’s Right to Counsel: A National Report Card on Legal Representation for Abused and Neglected Children* (4th ed. 2019), <https://tinyurl.com/32rv37sd>.

lawyers are *necessary* to turn a child’s formal right to participate in an immigration proceeding into real-world agency and influence.<sup>5</sup>

*Second*, attorneys secure language access for unaccompanied children via certified interpreters and translating filings. This service is required by the Immigration Court Practice Manual and is essential for children who are not proficient in English.<sup>6</sup>

*Third*, lawyers track notice requirements, monitor service, and move to continue or reopen when notice is inadequate—protections essential to “client-directed representation.”<sup>7</sup> This service is critical in the immigration context, where a missed deadline or appearance can eliminate a child’s opportunity to gain legal status.<sup>8</sup>

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<sup>5</sup> Anna M. Cody, *Children’s Participation Rights in Child Protection Systems: Identifying Opportunities for Implementation* (Dec. 2020) (Ph.D. dissertation, Virginia Commonwealth University), <https://tinyurl.com/n5pzcs9r>.

<sup>6</sup> U.S. Dep’t of Justice, Exec. Off. for Immigr. Rev., *Immigration Court Practice Manual* §§ 4.11, 4.14(a)(3), <https://tinyurl.com/2v3ezetm> (last visited June 17, 2025).

<sup>7</sup> Taylor, *supra* note 3, at 607.

<sup>8</sup> American Immigration Council, *Children in Immigration Court: Over 95 Percent Represented by an Attorney Appear in Court* (2016), <https://tinyurl.com/nhjxtt8e> (last visited June 12, 2025).

These benefits are widely recognized. Indeed, legal representation for children is so essential that it is recognized as a best practice by many national organizations including the American Bar Association, the National Council of Juvenile and Family Court Judges, and the National Conference of Commissioners on Uniform State Laws.<sup>9</sup>

Attorneys also assist their minor clients outside the courtroom. As HHS has recognized, “[t]he confidential attorney-client privilege allows children to feel safe sharing information with attorneys that otherwise may go unvoiced.”<sup>10</sup> Put differently, representation connects children with trusted adults and increases opportunities to identify and

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<sup>9</sup> See ABA, Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings (2011), <https://tinyurl.com/kvxrdamj>; Nat’l Council of Juvenile & Family Ct. Judges, *Enhanced Resource Guidelines* (2016), <https://tinyurl.com/y5kdp2b8>; *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 Fordham L. Rev. 1301 (1996); Uniform Representation of Children in Abuse, Neglect, & Custody Proceedings Act (approved and recommended for enactment 2006), <https://tinyurl.com/mr5d3ajr>.

<sup>10</sup> U.S. Dep’t of Health & Hum. Servs., Admin. For Children & Families, *High Quality Legal Representation for All Parties in Child Welfare Proceedings*, at 4 (2017), <https://tinyurl.com/ykzm4394> (“2017 HHS Memorandum”).

address instances where children are abused or exploited.<sup>11</sup> And lawyers *prevent* vulnerable children from being abused in the first place by verifying the safety of proposed placements, and by connecting clients with culturally competent resources or with family.<sup>12</sup>

## **B. Legal Representation Increases Child Welfare**

Empirical evidence confirms that legal representation leads to better outcomes for child welfare.<sup>13</sup> For instance, a multiyear study in Washington showed that children in foster care who were represented by trained counsel experienced a 45 percent higher reunification rate,

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<sup>11</sup> *See 10 Ways Counsel for Kids Advance Legal Rights for Children Involved in Immigration Matters*, Counsel for Kids, <https://tinyurl.com/2dkc8yvvd> (last visited June 17, 2025); Nat'l Foster Care Youth & Alumni Policy Council, *Supporting Immigrant Children and Youth in Foster Care* at 5 (Dec. 2022), <https://tinyurl.com/bdehajzk> (discussing how educating youths of their rights can reduce vulnerabilities).

<sup>12</sup> *Id.*

<sup>13</sup> *Why Children and Youth Require Legal Representation: A Guide for Right to Counsel Policy Advocates*, Counsel for Kids, <https://tinyurl.com/4cxvb568> (last visited June 17, 2025); *Counsel for Kids in Foster Care*, Counsel for Kids, <https://tinyurl.com/yn3j4r4u> (last visited June 13, 2025).

30 percent fewer placement moves, and 65 percent fewer unnecessary school moves than children who lacked counsel.<sup>14</sup>

This assistance is especially important for unaccompanied minor non-citizens.<sup>15</sup> As the American Academy of Pediatricians has noted, these youth are often going through “highly stressful experiences, like family separation, [which] can cause irreparable harm, disrupting a child’s brain architecture and affecting his or her short- and long-term health.”<sup>16</sup> Lawyers help mitigate these harms in both the short and long term. As the National Foster Care Youth & Alumni Policy Council

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<sup>14</sup> Wash. State Ctr. for Ct. Rsch., *Evaluation of the Washington State Dependent Child Legal Representation Program 10-12* (2021), <https://tinyurl.com/3bxuwpnd>.

<sup>15</sup> Nat’l Foster Care Youth & Alumni Policy Council, *supra* note 11.

<sup>16</sup> American Academy of Pediatrics, *AAP Statement Opposing Separation of Children and Parents at the Border* (2018); *see also* Mika C. Owen, et al., *Advocacy and Collaborative Health Care for Justice-Involved Youth*, *Pediatrics* 1 (July 2020), <https://tinyurl.com/ummy74yd>; Julie M. Linton, et al., *Providing Care for Children in Immigrant Families*, *Pediatrics* 1 (Sept. 2019), <https://tinyurl.com/2aztjatf>; Julie M. Linton, et al., *Detention of Immigrant Children*, *Pediatrics* 1 (May 2017), <https://tinyurl.com/5n93kfav>; Robert H. Pantell, *The Child Witness in the Courtroom*, *Pediatrics* 1 (Mar. 2017), <https://tinyurl.com/mpncfrp4>; Comm. on Child Abuse & Neglect & Comm. on Bioethics, *Forgoing Life-Sustaining Medical Treatment in Abused Children*, *Pediatrics* 1 (Nov. 2000), <https://tinyurl.com/mwkky9j7>.

observes, lawyers not only win legal status for their minor clients, but also unlock health care, employment training, and other resources necessary to secure a successful future.<sup>17</sup>

This should not be a surprise. By investigating a child’s case, marshaling evidence and legal precedent, filing documents and meeting deadlines, attorneys prevent meritorious claims from being lost on technical grounds and ensure that judges can make decisions with a complete record. A report by the Office of the Citizenship & Immigration Service Ombudsman in 2022 observed that Special Immigrant Juvenile petitions filed without counsel were subject to “grant rates [that] vary significantly both within and between the offices,” and accordingly recommended that children be provided access to competent counsel.<sup>18</sup>

The evidence also shows that providing children with counsel in immigration proceedings vastly increases their attendance in court and their compliance with court orders. Without counsel, unaccompanied

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<sup>17</sup> Nat’l Foster Care Youth & Alumni Pol’y Council, *supra* note 11.

<sup>18</sup> U.S. Dep’t of Homeland Sec., Off. of The Citizenship & Immigration Servs. Ombudsman, 2022 Annual Report to Congress 31-33 (2022), <https://tinyurl.com/mte7kp6f>.

children, many of whom speak little English, struggle to appear and present evidence and frequently face *in absentia* orders.<sup>19</sup> By contrast, children with counsel attend immigration court proceedings 95% of the time.<sup>20</sup>

As *amici* can attest, counsel are essential for spotting legal issues, identifying the kinds of relief to which a minor child is entitled, and securing orders that facilitate positive treatment outcomes and recovery for trafficked or exploited youth. For example, a teenager fleeing gang violence will be far more likely to spot a colorable asylum claim (and gather the relevant evidence before memories fade) if they have counsel. Similarly, it is not plausible to suggest that, without counsel, an abandoned child will know to file for Special Immigrant Juvenile Status, much less secure the state court dependency and best interest findings that must accompany a timely Form I-360 petition. Similarly, where a child was forced into labor or sexual exploitation, lawyers will know to pursue a T-visa—working with law-enforcement to obtain the required endorsements—and to request continued-presence orders that

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<sup>19</sup> American Immigration Council, *supra* note 8.

<sup>20</sup> *Id.*

stabilize the child during the investigation. And if the child survived a qualifying crime in the United States and cooperated with authorities, counsel will know that they can seek U-visa protection, preserving future paths to lawful permanent residence. If a child does not have counsel, the likelihood that these pathways are spotted and preserved decreases.

Mastery of these intertwined remedies requires *legal* training because the U.S. immigration system imposes distinct eligibility criteria, evidentiary burdens, and statutory deadlines for each form of relief.<sup>21</sup> That is why research shows that having a lawyer “greatly increases the likelihood that a child will identify a form of legal relief and will have a legal outcome that allows them to remain in the country.”<sup>22</sup>

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<sup>21</sup> *How the U.S. Legal Immigration System Works*, Migration Policy Institute (2019), <https://tinyurl.com/y3ynrk26>.

<sup>22</sup> Jill M. Williams & Honor Brooke Gosch, *Assessing Access to Legal Representation for Unaccompanied Migrant Children: National, State, and County-Level Analysis of Free- and Low-Cost Attorney Prevalence in Relation to Children’s Locations*, <https://tinyurl.com/4knt2nuc> (last visited June 17, 2025).

And for this same reason, all of the major international conventions focused on protecting children—including the Hague Child Protection Convention and the U.N. Palermo Protocol on Trafficking—are built around and presuppose the availability of trained advocates.<sup>23</sup>

In short, where children have counsel, they are far more likely to identify the right form of relief, marshal the necessary evidence, and obtain court orders that both (i) reflect the *correct legal* result and (ii) translate into real-world gains in child welfare.

### **C. Providing Counsel For Children Saves Money**

Providing counsel for minors is not only legally and ethically required, but also something that *saves* the government money.<sup>24</sup> Indeed, evidence from the child-welfare context shows that lawyers tend to *reduce* government costs by expediting case resolution and preventing more costly outcomes.<sup>25</sup>

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<sup>23</sup> Ann M. Haralambie, Ch. 19, *Interstate and International Issues, in Child Protection Law and Practice* (Nat'l Ass'n of Counsel for Child. ed., 3d ed. 2016).

<sup>24</sup> *Seen, Heard, and Represented: A Policymaker's Guide to Counsel for Kids*, Counsel for Kids (Nov. 2023), <https://tinyurl.com/yc6kepfh>.

<sup>25</sup> *Counsel for Kids: A Sound Investment for State Governments*, Counsel for Kids, <https://tinyurl.com/w358n4nx> (last visited June 17, 2025).

In Washington State, for example, a study found that appointing trained attorneys for dependent children generated more than \$1.2 million in net child-welfare savings for the cohort studied, chiefly by reducing days in foster care and accelerating permanency.<sup>26</sup>

Among other things, attorneys can shorten the time a child is in the foster care system, which results in cost-savings both for the *provision* of foster care, and on the nearly \$8 billion a year that states spend when children age out of foster care without support.<sup>27</sup> Because having counsel *saves* money, federal law allows states to claim 50 percent Title IV-E reimbursement for the cost of children’s counsel in dependency cases and 75 percent for training.<sup>28</sup>

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<sup>26</sup> Wash. State Ctr. for Ct. Rsch., *supra* note 14, at 1, 14-16.

<sup>27</sup> Andrew E. Zinn & Jack Slowriver, Chapin Hall at Univ. of Chi., *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County* 18–19 (2008) (finding that appointed counsel significantly reduced children’s length of stay in out-of-home care); Jim Casey Youth Opportunities Initiative, *Issue Brief: Cost Avoidance—The Business Case for Investing in Youth Aging Out of Foster Care* 5 (2013), <https://tinyurl.com/ycb4k34n> (estimating that states collectively spend “nearly \$8 billion annual[ly]” on the downstream costs of youth aging out of foster care without supports).

<sup>28</sup> 45 C.F.R. § 1356.60(c) (authorizing 50 percent federal reimbursement for children’s-counsel administrative costs); 45 C.F.R. § 1356.60(b) (authorizing 75 percent reimbursement for training).

The same economics apply to unaccompanied children in federal custody. In the immigration arena, studies show that attorneys shorten time in care and reduce downstream social-service expenditures.<sup>29</sup> The Office of Refugee Resettlement (ORR) spends about \$256 per child per night in standard shelters and \$775 per child per night in emergency “tent camps,” and housed roughly 119,000 children in FY 2023.<sup>30</sup> Cutting custody by even ten days (far less than the three-month reduction studies have shown) would save the government approximately \$300 million per year.

Making sure that children have lawyers also saves money by promoting efficiency. Lawyers help ensure that children understand filing requirements, receive language access, and appear for court – all

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<sup>29</sup> Chiara Galli & Tatiana Padilla, *New Data on Unaccompanied Minors in U.S. Immigration Court (2009–2023)*, Int’l Migration Rev. (Mar. 28, 2025), <https://tinyurl.com/yeyw6hkd> (multistate study reports that “unaccompanied children face long periods of legal limbo while their cases are decided” and represented children received relief in a much higher proportion than unrepresented children).

<sup>30</sup> Robert Moore, *Millions Diverted from Federal Programs toward Detention of Migrant Children*, NPQ (Sept. 24, 2018), <https://tinyurl.com/2x8xwecn>; U.S. Gov’t Accountability Off., GAO-25-107840, *Efforts by the Office of Refugee Resettlement to address GAO Recommendations* (Nov. 19, 2024), <https://tinyurl.com/47vzbkdx>.

of which increases court throughput. Counsel also helps ensure that courts receive competent and well-presented evidence and argument—thereby saving precious time for judges and their staff. Nationwide TRAC data shows that minors with counsel were five times more likely to obtain relief, freeing the court’s calendar and reducing the government’s detention and shelter costs.<sup>31</sup> In short, the government’s cost-saving rationale is flatly contradicted by the evidence.

## **II. The Government Has Long Recognized The Value Of The Services It Now Seeks To Cut**

The government’s disregard for its statutory obligations is especially troubling because the government has, in a variety of contexts, recognized the importance of the very services it now seeks to defund.

In 2007—prior to the enactment of the TVPRA—the Department of Justice issued a statement regarding immigration proceedings

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<sup>31</sup> Transactional Recs. Access Clearinghouse (TRAC), Syracuse Univ., *Representation for Unaccompanied Children in Immigration Court*, <https://tinyurl.com/m2ppwy95> (last visited June 17, 2025) (73% of represented children stayed in the United States, while only 15% of unrepresented children were allowed to stay); Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Pa. L. Rev. 1, 68 (2015) (“represented cases reveal certain efficiency gains, including fewer hearings and more successful claims”); see also Chiara Galli & Tatiana Padilla, *supra* note 29.

involving unaccompanied children.<sup>32</sup> The DOJ recognized that because of the “complexity of immigration laws and the varying degrees of maturity of child respondents, there is a greater challenge for judges to ensure that children’s proceedings are fair and that the children understand the serious nature of the proceedings. For this reason, immigration judges encourage the use of appropriate *pro bono* resources whenever a child respondent is not represented.”<sup>33</sup> Even in the absence of the TVPRA, DOJ noted that it “works with ORR and a number of non-governmental organizations to identify children in need of legal services and facilitate *pro bono* assistance for them nationwide.”<sup>34</sup>

Just two years ago, ORR authorized the use of federal funds to reimburse state agencies that provided “immigration-related legal assistance” to Ukrainian immigrants—including “Unaccompanied Refugee Minors” (URMs)—fleeing regional violence.<sup>35</sup> HHS authorized

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<sup>32</sup> U.S. Dep’t of Justice, Exec. Off. for Immigr. Rev., *Unaccompanied Alien Children in Immigration Proceedings*, 2007 WL 2319104 (Aug. 8, 2007).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See *ORR-Authorized Legal Assistance Using AUSAA Funds*, Policy Letter 23-05, at 1 (June 23, 2023), <https://tinyurl.com/aarck8zh>.

numerous categories of funding applicable to URM, including the drafting and filing of child-specific immigration forms.<sup>36</sup> This authorization came a year after a nearly identical authorization was issued by ORR on behalf of Afghan refugees, including URM.<sup>37</sup> And ORR’s current policy guide states that “all unaccompanied alien children” should receive legal services, including “direct legal representation in seeking immigration legal relief and/or protection from removal” where necessary.<sup>38</sup>

HHS has championed legal representation for children for many years, in both Republican and Democratic Administrations. For example, in 2017, HHS issued a memorandum to “encourage all child welfare agencies, courts, administrative offices of the courts, and Court Improvement Programs to work together to ensure parents, children and youth, and child welfare agencies, receive high quality legal

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<sup>36</sup> *Id.* at 3.

<sup>37</sup> *See Immigration-Related Legal Assistance Allowable Under ORR ASA Funding*, Policy Letter 22-11 (Mar. 3, 2022), <https://tinyurl.com/59dbvnbz>.

<sup>38</sup> U.S. Dep’t of Health & Hum. Servs., Admin. For Children & Families, *Orr Unaccompanied Alien Children Bureau Policy Guide* § 3.7.1 (2025), <https://tinyurl.com/mrbk4mjs> (“Alien Children Policy Guide”).

representation at all stages of child welfare proceedings.”<sup>39</sup> As HHS explained, “[f]ederal law recognizes the importance of children having an advocate in judicial proceedings.”<sup>40</sup> The importance of providing counsel to children is derived from a “growing body of empirical research linking early appointment of counsel (at or prior to a party’s initial appearance in court) and effective legal representation in child welfare proceedings to improved case planning, expedited permanency and cost savings.”<sup>41</sup>

The positions taken by the government in this case diverges—with no evidence, research, or data—from its longstanding history of supporting legal services for unaccompanied minors. Defendants-Appellants stated in the district court that “federal funding should not be used to fund legal-service organizations like Plaintiffs.”<sup>42</sup> That

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<sup>39</sup> 2017 HHS Memorandum, *supra* note 10, at 1.

<sup>40</sup> *Id.* at 2.

<sup>41</sup> *Id.* at 6; *accord, e.g.*, Exec. Order (June 24, 2020), <https://tinyurl.com/4x3w9js7>; Children’s Bureau, *Utilizing Title IV-E Funding to Support High-Quality Legal Representation and Promote Child and Family Well-Being* (Jan. 20, 2021), <https://tinyurl.com/amemvxay>.

<sup>42</sup> *See* Opp. to Mot. For Temp. Restraining Order, Dkt. 24, at 8 (Mar. 31, 2025).

position contradicts HHS’ current policy, which—reflecting federal law and regulation—states that HHS will “fund[] legal service providers (LSPs) to provide direct immigration legal representation” for eligible children.<sup>43</sup> The government has also suggested that “Plaintiffs have lost funding[,] and [the] need to reallocate resources does not place them within the zone of interests that Congress meant to protect.”<sup>44</sup> But what Plaintiffs, Congress, and the agencies have long agreed upon—until several months ago—is that the welfare of unaccompanied children should be protected *by providing them with counsel*.

### **III. Any Irreparable Harm From A Stay Would Fall On Unrepresented Children, Not On The Government**

The panel correctly found that the government did not meet its burden to show likely irreparable injury absent a stay. As the district court recognized, “Plaintiffs have shown that they are likely to suffer, if not already suffering irreparable harm in the absence of preliminary relief.” D. Ct. ECF No. 87 at 25. In deciding whether to enter a stay, this Court should not ignore that harm to Plaintiffs—and the thousands

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<sup>43</sup> See Alien Children Policy Guide, *supra* note 38, at § 3.7.2.

<sup>44</sup> See Opp. to Mot. For Temp. Restraining Order, *supra* note 42, at 8.

of children they serve, all of whom will be negatively impacted if defunding proceeds. *See* Panel Op. 3-4 & n.1.

*Amici* have witnessed first-hand the mistreatment and exploitation that children suffer when they are deprived of legal counsel—and wish to impress upon the Court that those harms are real, severe, and irreparable. Youth unrepresented by counsel are more likely to remain separated from their siblings, family, and community; suffer increased trauma; have little say in or understanding of the legal proceedings that decide their future; and are more likely to wind up in dangerous physical settings. And unaccompanied minors “face even greater challenges due to their age, education, trauma history, and lack of agency.”<sup>45</sup> They “may have fled persecution, suffered violence during their journey, or experienced other traumatic events.”<sup>46</sup> Indeed, as the TVPRA itself recognizes, “[t]hey may be vulnerable to exploitation in the United States, including child labor or human trafficking.”<sup>47</sup>

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<sup>45</sup> The Advocates for Human Rights, Immigration Court Observation Project, *Unaccompanied Children at 2* (2023), <https://tinyurl.com/mwkeab5r>.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*; compare 8 U.S.C. § 1232(c)(5) (providing counsel to protect children “from mistreatment, exploitation, and trafficking”).

Providing them with counsel is necessary to prevent these irreparable harms.

### CONCLUSION

When a child had a medical problem, they need a doctor. When a child has a legal problem, they need an attorney. The TVPRA was enacted to protect children from the very harm that a stay would create. This Court should leave the panel's decision to affirm the district court injunction, ensuring that children remain protected while this lawsuit proceeds.

Respectfully submitted,

*/s/ Clement Roberts*

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June 20, 2025

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FOR THE NINTH CIRCUIT

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(use "s/[typed name]" to sign electronically-filed documents)

**ADDENDUM  
AMICI CURIAE IN OPPOSITION TO REHEARING**

- 1. The Alliance for Children's Rights**  
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- 2. Barton Child Law & Policy Center**  
Emilie Cook
- 3. Children's Law Center**  
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- 4. The Children's Law Center**  
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20. **Pegasus Legal Services for Children**  
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21. **Travis County Office of Child Representation**  
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22. **Youth Law Center**  
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