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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
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17 COMMUNITY LEGAL SERVICES IN
18 EAST PALO ALTO, *et al.*,

19 Plaintiffs,

20 v.

21 UNITED STATES DEPARTMENT OF
22 HEALTH AND HUMAN SERVICES,
23 *et al.*,

24 Defendants.
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Case No. 25-cv-02847-AMO

AMICUS CURIAE BRIEF OF THE
NATIONAL CENTER FOR YOUTH
LAW, THE CENTER FOR HUMAN
RIGHTS AND CONSTITUTIONAL
LAW, CHILDREN’S RIGHTS, AND
THE UC DAVIS IMMIGRATION
LAW CLINIC IN SUPPORT OF
PLAINTIFFS’ MOTION FOR A
PRELIMINARY INJUNCTION

Judge: Hon. Araceli Martínez-Olguín

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1 **I. Identity and Interests of *Amici Curiae***

2 *Amici curiae* are children’s civil rights legal organizations with decades of
3 experience representing detained immigrant children. The *amici* organizations all
4 serve, or have previously served, as counsel to the nationwide plaintiff classes in
5 *Flores v. Bondi*, No. CV 85-4544-DMG (AGRx) (C.D. Cal.) and *Lucas R. v.*
6 *Becerra*, No. CV 18-5741-DMG (PLAx) (C.D. Cal.), two cases that established
7 critical legal protections for children in federal immigration custody.

8 Through our hundreds of interviews with children in immigration custody
9 and investigations of detention conditions across the nation over many years, *amici*
10 are deeply familiar with how vulnerable unaccompanied immigrant children are to
11 “mistreatment, exploitation, and trafficking.” 8 U.S.C. § 1232(c)(5). In our
12 experience litigating *Flores* and *Lucas R.*, we have become highly knowledgeable
13 about the mistreatment that too many children endure while they are in the federal
14 government’s custody. We have also witnessed numerous children spend months
15 or years in Office of Refugee Resettlement (“ORR”) congregate care facilities
16 without access to meaningful education or the opportunity to experience a normal
17 childhood. *Amici* are invested in ensuring children can access fully funded legal
18 representation because we have seen how children’s attorneys play a necessary and
19 critical role in protecting children from mistreatment and abuse and assisting them
20 in exercising their legal rights, including their right to placement “in the least
21 restrictive setting that is in the best interest of the child.” 8 U.S.C. § 1232(c)(2)(A).

22 The National Center for Youth Law (“NCYL”) is a non-profit law firm that
23 has fought to protect the rights of children and youth for more than fifty years.
24 Headquartered in Oakland, California, NCYL leads high impact campaigns that
25 weave together litigation, research, policy development, and technical assistance.
26 NCYL’s Immigration Team works to ensure that immigrant children are able to
27 live in communities rather than in government custody and have the resources they
28 need to heal and thrive. NCYL has been co-counsel to the plaintiff class in *Flores*

1 *v. Bondi*, landmark litigation that set minimum standards for youth detained in
2 federal immigration custody, since the case’s inception in 1985. NCYL also filed
3 *Lucas R. v. Becerra* and *Duchitanga v. Lloyd*, which expanded due process rights
4 for children in immigration custody and ensured their timely release to safe
5 sponsors. NCYL also led the development of the Children’s Safe Welcome Act, a
6 federal bill introduced in 2022 and 2024 that restructures the immigration system
7 to prioritize the best interests of children. Supported by leading child-focused
8 experts and advocates, this legislation served as a key building block for the ORR
9 Foundational Rule. For decades, NCYL has sought to advance the rights of
10 detained immigrant youth through litigation and policy.

11 The Center for Human Rights and Constitutional Law (“CHRCL”) is a non-
12 profit organization that provides training and technical support to direct legal
13 service providers, addresses systemic injustice through advocacy and impact
14 litigation, and advances and protects the rights of immigrants, refugees, children,
15 and communities impacted by systems of oppression. CHRCL attorneys have been
16 appointed class counsel in a number of nationwide class actions regarding the
17 rights of immigrants in government custody, including in *Flores v. Bondi* and
18 *Lucas R. v. Becerra*. Through its work with immigrant communities and legal
19 service providers, CHRCL is acutely aware of the critical importance of legal
20 representation in protecting the rights of immigrant children.

21 Children’s Rights is a national organization that investigates, exposes, and
22 combats violations of the rights of children through strategic advocacy and class
23 action litigation. Children’s Rights is co-counsel for the plaintiff class in *Flores v.*
24 *Bondi* and regularly meets with class members throughout the U.S. to monitor
25 compliance with the Settlement Agreement. Children’s Rights also works to
26 improve outcomes for immigrant children in state foster systems by ensuring they
27 have access to their Special Immigrant Juvenile status (“SIJS”)
28 entitlements. Additionally, Children’s Rights provides direct representation and

1 legal advocacy to SIJS clients. Children’s Rights has a 30-year track record of
2 holding governments accountable, creating positive systemic change, and keeping
3 children safe.

4 The UC Davis School of Law Immigration Clinic (“The Clinic”) has
5 expertise in immigration and juvenile law and has been recognized for its complex
6 federal litigation on behalf of detained immigrants, including detained
7 unaccompanied children. The Clinic provides representation and legal assistance to
8 detained immigrants and challenges unlawful and prolonged detention to protect
9 the rights of people in immigration detention. The Clinic has represented plaintiffs
10 in *Flores v. Bondi* and *Saravia v. Sessions* and is currently representing plaintiffs
11 in *Lucas R. v. Becerra*. All of these cases dealt with procedural and substantive
12 protections for immigrant children in federal immigration custody. The Clinic has
13 a long history of representing detained immigrants on such issues and has
14 represented clients or provided amicus briefing in multiple favorable published
15 decisions, including cases related to the right to a bond hearing, federal court
16 habeas jurisdiction, and criminal deportability.

17 **II. Introduction**

18 ORR’s elimination of funded legal representation undermines Congress’s
19 central objective in passing the Trafficking Victims Protection Reauthorization Act
20 (TVPRA): to protect unaccompanied children.

21 Based on our significant experience representing children in ORR custody,
22 *amici* recognize that funding the direct representation of children is an integral part
23 of protecting detained children from harm. Congress also recognized this. The
24 TVPRA directs ORR to ensure unaccompanied children “who are or have been in
25 [ORR] custody . . . have counsel to represent them in legal proceedings or matters
26 and protect them from mistreatment, exploitation, and trafficking.” 8 U.S.C.
27 § 1232(c)(5). “The use of the conjunctive ‘and’ indicates that counsel for minors
28 shall *both* represent minors in legal matters and *also* protect them from

1 mistreatment, exploitation, and trafficking. The role of counsel is thus inextricably
2 linked to protection against those enumerated harms.” *Lucas R. v. Becerra*, No. CV
3 18-5741-DMG (PLAx), 2022 WL 2177454, at *30 (C.D. Cal. Mar. 11, 2022).

4 Direct legal representation of children “protect[s] [children] from
5 mistreatment” in numerous forms. 8 U.S.C. § 1232(c)(5). Children’s attorneys
6 have played a critical role in identifying and protecting children from abuse,
7 unduly restrictive conditions, and barriers to family reunification that *amici* have
8 litigated in *Flores* and *Lucas R.*

9 The 1997 *Flores* Settlement Agreement sets basic standards for the detention
10 of immigrant children nationwide, including their right to release without
11 unnecessary delay. *See Flores v. Johnson*, No. CV 85-4544-DMG (AGRx), ECF
12 No. 101 (Exhibits 1-3) (C.D. Cal. Feb. 2, 2015) (hereinafter “*Flores*”). The *Lucas*
13 *R.* litigation established unaccompanied children’s rights to due process when ORR
14 places them in a restrictive setting or denies release to a close relative sponsor. *See*
15 *Lucas R.*, 2022 WL 2177454. Settlements in *Lucas R.* also protect the rights of
16 unaccompanied children with disabilities and children prescribed psychotropic
17 medications and establish that ORR may not retaliate against legal service
18 providers for representing children in matters adverse to ORR. *See Memorandum*
19 *in Support of Joint Motion for Final Approval of Settlements, Lucas R.*, 5-7, ECF
20 No. 418-1.

21 Through our work, *amici* have consistently witnessed both insufficient
22 oversight within ORR facilities to protect children’s rights and numerous barriers
23 for children to report concerns and abuses. In this context, having access to an
24 independent and outside advocate whom the child trusts—their attorney—is
25 necessary to protect them from serious harm in custody. As one of the only trusted
26 and consistent adult advocates in a child’s life while they are detained, the child’s
27 attorney is naturally well-positioned to identify when a child is being harmed and
28 to act on that information. Children’s attorneys also help ensure that ORR provides

1 children safe placements “in the least restrictive setting that is in the[ir] best
2 interest,” and expeditiously releases them to a safe and suitable sponsor—two
3 express goals of the TVPRA. 8 U.S.C. § 1232(c)(2)(A). Numerous protections in
4 ORR’s governing regulations—the ORR Foundational Rule—and ORR’s policies,
5 which exist to ensure children can exercise their rights under the Due Process
6 Clause of the U.S. Constitution and the TVPRA, become meaningless without
7 access to counsel.

8 Cutting off funding for direct representation not only runs contrary to the
9 TVPRA and Foundational Rule, but also leaves unaccompanied children more
10 vulnerable to mistreatment and abuse while they are in ORR custody. *Amici*
11 respectfully request that this Court grant Plaintiffs’ Motion for a Preliminary
12 Injunction.

13 **III. Argument**

14 Unaccompanied children are particularly vulnerable because they arrive to
15 the United States without their parent or legal guardian and are placed in a system
16 that lacks sufficient oversight and protections for their well-being. Independent
17 attorneys build trust and confidence with detained youth over the course of a
18 child’s time in detention and are a critical mitigating force to the harms of
19 detention in congregate care settings. The presence of independent counsel in ORR
20 facilities helps to ensure the TVPRA’s requirement that youth “have counsel to
21 represent them . . . and protect them from mistreatment, exploitation, and
22 trafficking.” 8 U.S.C. § 1232(c)(5).

23 **A. Unaccompanied children are extraordinarily vulnerable to** 24 **mistreatment and abuse while in ORR custody.**

25 *Amici* have met with and listened to the stories of hundreds of
26 unaccompanied children over more than two decades. Many of these children have
27 experienced significant trauma stemming from extreme poverty, abuse in their
28 home, war, political violence, organized crime, or sexual assault. When children

1 attempt to flee to the United States, they face long and hazardous journeys, often
2 crossing several international borders and traveling hundreds of miles on foot, by
3 bus, boat, plane, or precariously riding atop massive freight trains. The “lack of
4 parents or other caregivers places unaccompanied children at higher risks of
5 experiencing additional traumatic events, such as physical or sexual assault, during
6 their trip to the United States.”¹ These traumatic events compound children’s
7 previous traumatic experiences in their home countries. Throughout
8 unaccompanied children’s migration journey, “separation and disconnection from
9 primary caregivers and family supports puts children at risk for additional exposure
10 to traumatic stressors, adding to the cumulative burden of peri-migration trauma
11 exposure.” *Id.* at 20. This risk continues when children enter government custody.
12 “Because of children’s disconnection and limited opportunities for contact with
13 caregivers and family while in government custody, children lack protection from
14 institutional or predatory violence, exploitation, and victimization.” *Id.*

15 Trusted adults, such as legal service providers, are essential to protecting
16 children’s basic safety while in government custody. *Amici*’s multiple motions to
17 enforce the *Flores* Settlement in recent years highlight the vulnerability of
18 unaccompanied children in ORR custody and the enduring need for oversight to
19 ensure their safety. Decades of well-corroborated accounts of the severe
20 mistreatment unaccompanied children have faced in government custody, and the
21 structural deficiencies within ORR that result in this mistreatment, illustrate the
22 necessity of funded legal representation in fulfilling Congress’s objective of
23 ensuring the safety of unaccompanied children.

24
25 ¹ Ryan Matlow, Melissa Adamson, Neha Desai, Julian Ford, *Guidance for Mental*
26 *Health Professionals Serving Unaccompanied Children Released from*
27 *Government Custody*, 12, (Nov. 2021)
28 https://youthlaw.org/sites/default/files/attachments/2022-03/2021_Guidance-for-Mental-Health-Professionals-Serving-Unaccompanied-Children-Released-from-Government-Custody.pdf.

1 **1. Amici’s litigation enforcing the Flores Settlement demonstrates**
2 **the harm children suffer in ORR custody.**

3 In 1985, amici NCYL and CHRCL filed the *Flores* lawsuit to challenge the
4 Immigration and Naturalization Service’s (“INS”) inhumane practices of denying
5 children release to suitable adult relatives and detaining them in horrific
6 conditions. *See* Complaint, *Flores*, ECF No. 1. In INS facilities, children were
7 forced to share sleeping quarters with unrelated adults, were denied access to
8 education and recreation, and were subjected to strip and body cavity searches. *Id.*
9 at ¶¶ 42-46. The *Flores* plaintiffs and the federal government reached an agreement
10 in 1997, which is now binding on the INS’s successor agencies, the Department of
11 Homeland Security (“DHS”) and the Department of Health and Human Services
12 (“HHS”). The case remains under the judicial supervision of Chief District Judge
13 Dolly M. Gee in the District Court for the Central District of California, although it
14 has been partially terminated as to HHS in light of the ORR Foundational Rule, 45
15 C.F.R. § 410.1000, *et seq.* *See Flores v. Garland*, 2024 WL 3467715, at *9 (C.D.
16 Cal. June 28, 2024). As noted by the district court in 2019, “the evidentiary record
17 [in *Flores*] overwhelmingly shows that throughout several presidential
18 administrations, the Agreement has been necessary, relevant, and critical to the
19 public interest in maintaining standards for the detention and release of minors
20 arriving at the United States’ borders.” *Flores v. Barr*, 407 F. Supp. 3d 909, 928-29
21 (C.D. Cal. 2019).

22 In 2016, *Flores* counsel challenged ORR’s practice of “detain[ing]
23 unaccompanied minors for months, and even years, without providing them with
24 any opportunity to be heard before a neutral person with authority to review the
25 basis for the detention.” *Flores v. Sessions*, 862 F.3d 863, 872 (9th Cir. 2017). Our
26 clients, wrongfully confined in secure detention facilities, described horrific and
27 prison-like conditions. *Id.* at 872-73 (citing children’s descriptions of being
28 “locked [] up in the cells every night, to sleep on benches made out of cement

1 with mattresses””; “threatened with [] pepper spray”; and held in a facility “with
 2 flooding toilets and unusable showers.”).² Children’s immigration attorneys
 3 provided critical evidence of the abuse of children in restrictive placements and the
 4 lack of process they were afforded to contest their confinement. *See, e.g.*,
 5 Declaration of Lorilei Alicia Williams, *Flores*, ECF No. 239-2 (Ex. 10).

6 In 2018, *Flores* counsel challenged ORR’s practices of “(1) placing Class
 7 Members in Residential Treatment Centers (“RTCs”), staff-secure facilities, and
 8 secure facilities; (2) administering psychotropic drugs to Class Members without
 9 first obtaining a court order or the informed consent of a person authorized by state
 10 law to approve such decisions; and (3) unnecessarily prolonging Class Members’
 11 detention in ORR facilities.” *Flores v. Sessions*, No. CV 85-4544, 2018 WL
 12 10162328, at *1 (C.D. Cal. July 30, 2018). Youth in restrictive facilities reported
 13 being told by facility staff that if they refused to take psychotropic medication,
 14 they would remain detained, be denied release to their sponsor, or be physically
 15 forced to take the drugs. *See, e.g.*, Declaration of Julio Z. ¶¶ 15-16, *Flores*, ECF
 16 No. 420-5 (Ex. 64); Declaration of Rosa L. ¶ 5, *Flores*, ECF No. 420-2 (Ex. 17).
 17 Children also described being physically threatened by facility staff and either
 18 experiencing or witnessing forced medication injections. *See, e.g.*, Decl. of Julio
 19 Z. ¶¶ 15-16, *Flores*, ECF No. 409-5 (Ex. 64) (“The staff threatened to throw me on
 20 the ground and force me to take the medication. I also saw staff throw another
 21 youth to the ground, pry his mouth open and force him to take the medicine. . . .”);
 22 Decl. of Rosa L. ¶ 6, *Flores*, ECF No. 420-2 (Ex. 17), (“Sometimes they give me
 23 forced injections . . . one or two staff hold my arms and the nurse gives me an
 24 injection.”).

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 26
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 28 ² The Ninth Circuit affirmed the district court’s holding that ORR must afford bond
 hearings to unaccompanied children under the *Flores* Settlement. *Id.* at 881.

1 In 2019, *Flores* counsel challenged ORR’s practice of holding children in
2 prison-like conditions at the unlicensed influx facility in Homestead, Florida, for
3 prolonged periods. Corrected Points and Authorities in Support of Mot. to Enforce
4 Settlement Agreement, *Flores*, ECF No. 578. Children we interviewed described
5 being threatened by staff, and every child expressed fear and anxiety regarding the
6 rules and the threats staff used to coerce compliance. In interviews with children
7 detained at Homestead, Dr. Matlow, a licensed psychologist and Clinical Assistant
8 Professor in the Department of Psychiatry and Behavioral Science at the Stanford
9 School of Medicine, observed “the signs and symptoms of acute distress that are
10 expected in reaction to ongoing trauma” including “despair and hopelessness,”
11 “emotional flatness, numbing, and avoidance of thoughts and feelings related to
12 their experience...” and that “[t]he acute forms of distress and functional
13 impairment that were observed during site visits are expected to have a lasting and
14 pervasive impact on the children detained.” Declaration of Dr. Ryan Matlow at 91,
15 *Flores*, ECF No. 578-1 (Ex. 7).

16 In 2021, the government opened 14 unlicensed “emergency intake sites”
17 (EISs) across the country. See Memorandum in Support of Motion to Enforce
18 Settlement re Emergency Intake Sites (“*Flores* EIS Motion to Enforce”), 5, *Flores*,
19 ECF No. 1161-1. ORR contracted with private companies that used widely varying
20 physical facilities to hold children, ranging from massive tent structures on military
21 bases, to convention halls, to oil worker “man camps.” Children’s immigration
22 attorneys were among the first to raise concerns about the terrible conditions their
23 young clients were subjected to at EISs. See, e.g., Declaration of Jonathan D.
24 Ryan, *Flores*, ECF No. 1161-8 (attorney describing children’s reports of receiving
25 undercooked and cold food, having to wear the same undergarments for multiple
26 days, not receiving education, being separated from their siblings, and being
27 unable to go outside for days on end).

28

1 *Amici* interviewed nearly 200 children in EISs and challenged ORR’s
2 practice of detaining children in unsafe conditions at these sites for prolonged
3 periods of time. *See Flores* EIS Motion to Enforce. The extended periods children
4 spent detained in EISs, with no guidance as to when they would be released, little
5 to no individual attention from adults, and insufficient structured activities caused
6 children to suffer severe mental distress, including anxiety attacks, difficulty
7 sleeping and eating, self-harm, and suicidal thoughts. *See, e.g.*, Declaration of
8 E.A.M.R. ¶ 17, *Flores*, ECF No. 1136-6 (“Some of the girls have plastic
9 identification cards on a lanyard around their neck, but I can’t have one of those
10 because I was on the 1:1 suicide watch list. Some girls were using the plastic
11 identification cards to cut themselves . . .”). The EISs also had little to no
12 oversight from trained staff—ORR did not require contractors or staff to speak
13 Spanish or have experience in caring for children. *See Flores* EIS Motion to
14 Enforce at 9-10. This resulted in staff who were unable to protect children from
15 bullying or physical assault, as detailed by a legal service provider whose clients
16 were transferred to restrictive facilities after inadequate staffing and supervision at
17 an EIS led to unsafe conditions. *See* Declaration of Hannah P. Flamm ¶¶ 23-26,
18 *Flores*, ECF No. 1161-12.

19 From *amici*’s experience litigating *Flores*, we are deeply familiar with the
20 serious mistreatment children may experience in ORR custody and how children’s
21 immigration attorneys remain an essential backstop to identify and prevent this
22 abuse.

23 **2. Numerous other accounts confirm severe mistreatment of** 24 **detained unaccompanied children.**

25 Other well-documented accounts of harm to children established through
26 litigation, government investigations, and independent reports corroborate the
27 mistreatment and exploitation of detained children that we as *amici* have witnessed
28 firsthand.

1 In 2017, unaccompanied children detained at the Shenandoah Valley
 2 Juvenile Center filed a federal class action lawsuit alleging “violence by staff,
 3 abusive and excessive use of seclusion and restraints, and the denial of necessary
 4 mental health care.” Complaint at 1, *John Doe v. Shenandoah Valley Juvenile*
 5 *Center Commission*, No. CV 17-0097 (W.D. Va. Oct. 4, 2017), ECF No. 1.
 6 Children detained at Shenandoah described being handcuffed and shackled, placed
 7 in solitary confinement, and tied to chairs with bags over their heads. *See, e.g.*,
 8 Declaration of John Doe 1 ¶ 20, *Flores*, ECF No. 409-5 (Ex. 73) (“I was forced to
 9 wear handcuffs on my wrists and shackles on my feet for approximately 10 days in
 10 a row.”); Declaration of John Doe 3 ¶ 12, *Flores*, ECF No. 409-5 (Ex. 75)
 11 (“[W]henever I was put in restriction, they took away my mattress and blanket.
 12 They took my clothes away about 8 times.”); Declaration of D.M. ¶¶ 16-17,
 13 *Flores*, ECF No. 409-5 (Ex. 76) (“Once you’re strapped down, they have total
 14 control over you. They also put a bag over your head. It has little holes; you can
 15 see through it. But you feel suffocated with the bag on.”).

16 In 2022, the HHS Office of Inspector General found that staff reported being
 17 discouraged from or being retaliated against for raising concerns about children’s
 18 safety at ORR’s Fort Bliss Emergency Intake Site.³

19 In 2024, the U.S. Department of Justice sued Southwest Key Programs, Inc.,
 20 the largest operator of ORR facilities in the nation. The lawsuit alleged that
 21 “[f]rom at least 2015 through at least 2023, multiple Southwest Key employees
 22 have subjected unaccompanied children in their care to repeated and unwelcome
 23 sexual abuse, harassment, and misconduct and a hostile housing environment,
 24

25
 26 ³ See U.S. Dep’t of Health & Human Services Office of Inspector General,
 27 *Operational Challenges Within ORR and the ORR Emergency Intake Site at Fort*
 28 *Bliss Hindered Case Management for Children*, OEI-07-21-00251, 20 (Sept. 27,
 2022), <https://www.congress.gov/118/meeting/house/116285/documents/HMTG-118-IF02-20230726-SD007.pdf>.

1 including severe sexual abuse and rape, solicitation of sex acts, solicitation of nude
2 photos, entreaties for sexually inappropriate relationships, sexual comments and
3 gestures, leering, and inappropriate touching. . . . In harassing these children, these
4 Southwest Key employees exploited the children’s vulnerabilities, language
5 barriers, and distance from family and loved ones.” Complaint ¶ 1, *U.S. v.*
6 *Southwest Key Programs, Inc.*, No. CV 24-00798 (W.D. Tex. July 17, 2024), ECF
7 No. 1. The complaint describes numerous instances over several years of
8 Southwest Key employees failing to report knowledge of the sexual abuse of
9 children, further emphasizing the need for funded legal representation to protect
10 children from this mistreatment and exploitation. *See generally id.*

11 **3. ORR lacks the necessary oversight to protect children in its**
12 **custody from mistreatment.**

13 *Amici* have long had serious concerns regarding ORR’s ability to effectively
14 oversee the grantee facilities it contracts with to detain unaccompanied children.
15 These concerns are based on *amici*’s numerous interviews with children, reports
16 from legal service providers, government investigations, and regulatory changes in
17 licensing requirements. ORR’s inadequate oversight amplifies unaccompanied
18 children’s vulnerability to abuse while in government custody.

19 As evident from the years of *amici*’s litigation discussed above, enforcement
20 of the *Flores* Settlement has been the primary oversight mechanism for children in
21 ORR custody for decades. However, upon ORR’s publication of governing
22 regulations in the form of the Foundational Rule, the district court partially
23 terminated some provisions of the Settlement as to HHS, pursuant to the
24 Settlement’s terms.⁴ *Flores*, 2024 WL 3467715, at *7-8. The court’s partial
25

26
27 ⁴ Paragraph 40 of the FSA provides that all terms of the Settlement “shall terminate
28 45 days following defendants’ publication of final regulations implementing this

1 termination of the Settlement was conditioned on ORR not later rescinding or
2 modifying the Foundational Rule to make its policies inconsistent with the
3 Settlement. *Id.* at *9.

4 Pursuant to the Foundational Rule, ORR facilities are generally required to
5 either have a state license or meet the requirements of state licensing if the state
6 refuses to license ORR facilities. *See* 45 C.F.R. §§ 410.1001, 410.1302.

7 Historically, the majority of ORR placements have been in Texas and Florida, two
8 states that refuse to license ORR facilities. Investigations of Child Abuse and
9 Neglect Rule, 89 Fed. Reg. 93498, 93499-501 (Nov. 27, 2024) (codified at 45
10 C.F.R. § 412). For unaccompanied children placed in these states, the only
11 oversight mechanism is ORR itself.

12 However, the Foundational Rule does not require ORR to vet or inspect new
13 facilities to ensure they are capable of meeting minimum standards before
14 accepting children, which is especially concerning as the Government
15 Accountability Office (GAO) has previously found that ORR repeatedly failed to
16 take minimum steps to vet its grantees and adhere to its own regulations when
17 auditing facilities.⁵

18 Although the Foundational Rule created an Unaccompanied Children’s
19 Office of the Ombudsperson that “may” receive complaints regarding ORR’s
20 compliance with its regulation and standards, more than half of the Office’s staff
21

22
23
24 Agreement.” *Flores*, 2024 WL 3467715, at *1. The Settlement remains in full
25 force as to the provisions governing secure, heightened supervision, and out-of-
26 network facilities, because ORR did not consistently implement those provisions of
the Settlement. *Id.* at *6.

27 ⁵ *See* U.S. Gov’t Accountability Office, *Actions Needed to Improve Grant*
28 *Application Reviews and Oversight of Care Facilities*, GAO-20-609, 2, 16-21, 33-
34 (Sept. 2020), <https://www.gao.gov/assets/gao-20-609.pdf>.

1 was fired in February 2025.⁶ *See* 45 C.F.R. § 410.2002(a). The absence of
2 independent state licensing oversight, combined with inadequate ORR monitoring
3 and the reduced capacity of the Office of the Ombudsperson, underscores the
4 critical role of legal service providers in safeguarding their clients from
5 mistreatment and exploitation.

6 **B. Funded legal service providers are essential to protect detained children**
7 **from mistreatment.**

8 Attorneys directly representing immigrant children are typically the best
9 positioned to identify abuse and protect children from mistreatment while they are
10 in ORR custody, because they are independent and trusted adults.

11 A child’s attorney is typically one of the only adults—and sometimes *the*
12 only adult—independent of ORR or its contractors who has regular interactions
13 with the child when they are in custody. For many children, the attorney-client
14 relationship may be the only consistent, supportive relationship they experience
15 while in detention. *Amici* have met with countless detained children who suffer
16 from severe stress, anxiety, and depression. These experiences are typically rooted
17 in the child’s separation from their caregivers and the uncertainty of not knowing
18 when they will be released from custody. Having an ongoing relationship with a
19 stable, supportive adult whose sole purpose is to advocate for them helps them
20 cope with the uncertainty of detention.

21 Over our many years of interviewing detained children, they have
22 consistently expressed to us how important their attorneys are to them. As one girl,
23 Camila, put it: “My lawyer has really helped me to learn about my rights and has
24 supported me in times where I have been very afraid.” Declaration of Camila G.
25 ¶ 16, *Flores*, ECF No. 420-4 (Ex. 55). As experts in adolescent psychology

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27 ⁶ Fola Akinnibi, *Child Migrant Watchdog Guttled in DOGE Cuts*, Bloomberg, Feb.
28 19, 2025, <https://www.bloomberg.com/news/articles/2025-02-19/unaccompanied-children-office-of-the-ombuds-guttled-in-doge-cuts>.

1 confirm, a child’s access to at least one stable, caring relationship with an adult
2 improves their ability to cope with experiences of adversity—such as the
3 uncertainty inherent in ORR custody.⁷

4 This supportive relationship is the foundation on which the unaccompanied
5 child’s attorney builds trust. The child’s attorney visits them in person where they
6 are detained and has phone or video conversations with them on a routine basis.
7 The attorney is sometimes the only adult who is able or willing to answer the
8 child’s questions about what is happening to them and what will happen next.
9 Through these repeated, supportive interactions, a child’s attorney builds rapport
10 and establishes trust. As a result, the child is comfortable disclosing sensitive
11 information that will help determine their options for immigration relief. But
12 beyond helping the attorneys do their job, this rapport building has the
13 accompanying effect of ensuring there is an adult the child trusts enough to talk to
14 if they are being mistreated or abused in ORR custody. As explained below, this
15 type of relationship and trust simply cannot be replicated through a one-time
16 “know your rights” presentation and legal screening.

17 Unaccompanied children are often reluctant to disclose mistreatment to staff
18 members in the ORR facility where they are detained. Children who have
19 experienced violence or trauma in their familial relationships—like some
20 unaccompanied children—often lack trust in others because “[t]hese youth have
21 learned that adults cannot keep them safe, do not attend to their needs, and may
22
23
24
25

26 ⁷ National Scientific Council on the Developing Child, *Supportive Relationships*
27 *and Active Skill-Building Strengthen the Foundations of Resilience: Working paper*
28 *13* at 5 (2015), <https://developingchild.harvard.edu/wp-content/uploads/2024/10/The-Science-of-Resilience2.pdf>.

1 harm them.”⁸ For immigrant children, their fears are amplified by language and
2 cultural barriers.⁹

3 Indeed, many *Flores* class members said they did not trust staff members
4 enough to make a report that they were being mistreated or abused. Children have
5 reported to *amici* that facility staff threaten to write reports that will affect their
6 immigration case, take away privileges, or delay their release from custody if they
7 misbehave. *See, e.g.*, Declaration of H.M. ¶ 6, *Flores*, ECF No. 578-4 (Ex. 55)
8 (“When I arrived, the staff here told me the rules . . . If we break the rules, we will
9 get a report. The staff say that if we get a report, they will send it to the judge who
10 decides whether we will stay in this country.”); Declaration of H.S. ¶ 11, *Flores*,
11 ECF No. 578-4 (Ex. 49) (“Getting a report means we will spend more time here.
12 The YCs [Youth Counselors] tell us this themselves, and I have heard them say
13 this directly to groups of us many times.”); Declaration of W.V.V. ¶ 16, *Flores*,
14 ECF No. 1161-17 (“Some kids won’t report bad things that happen because they
15 are afraid.”). These threats from staff “engender [children’s] distrust and lack of
16 confidence in the adults around them.” Psychological Evaluation of Children and
17 Conditions at Fort Bliss Emergency Intake Site at 6 (“Dr. Matlow Eval”), *Flores*,
18 ECF No. 1161-7. The children who do muster the courage to speak up about being
19 mistreated—whether at the hands of staff or other youth—are often ignored or
20

21
22 ⁸ Talia Kraemer & Eliza Patten, *Establishing a Trauma-Informed Lawyer-Client*
23 *Relationship (Part One)*, 33 ABA Child Law Practice (Oct. 2014)
24 https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-33/october-2014/establishing-a-trauma-informed-lawyer-client-relationship/.

25
26 ⁹ Jodi A. Quas, & Thomas D. Lyon, *Questioning Unaccompanied Immigrant*
27 *Children: Lessons from Developmental Science on Forensic Interviewing*, Society
28 for Research in Child Development Child Evidence Brief (Oct. 2019)
<https://www.srcd.org/research/questioning-unaccompanied-immigrant-children-lessons-developmental-science-forensic>.

1 punished. *See, e.g.*, Declaration of Alejandro G. ¶ 5, *Flores*, ECF 420-4 (Ex. 52)
 2 (“The staff punished me . . . when I told them that I felt unsafe.”); Declaration of
 3 Daniel F. ¶ 6, *Flores*, ECF No. 420-4 (Ex. 51) (“One youth here has physically
 4 assaulted me . . . I have filed at least twelve complaints to the staff to report the
 5 youth’s conduct, but the staff have taken no action to protect me”).

6 The staff members children interact with in the facilities where they are
 7 detained frequently change, making it difficult to build trusting relationships. In
 8 facilities with a constant rotation of staff, children cannot “develop[] supportive
 9 relationships that provide a consistent source of trust, stability, and security.” Dr.
 10 Matlow Eval at 7, *Flores*, ECF No. 1161-7; *see also, e.g.*, Declaration of Bryan
 11 Ortiz Vela ¶ 5, *Flores*, ECF No. 239-3 (Ex. 14) (“A few weeks later, they switched
 12 me to a different psychologist. I felt that I had developed a relationship with the
 13 first psychologist I was meeting with and felt uncomfortable having to share my
 14 thoughts and feelings with a new person.”); Declaration of D.J. ¶ 14, *Flores*, ECF
 15 No. 547-6 (Ex. 54) (“The YCs [Youth Counselors] change often, and it is hard to
 16 get to know the YCs very well. I do not feel comfortable with the YCs because I
 17 feel like I don’t know them and I don’t trust them.”). Mental health care providers
 18 in ORR facilities themselves have recognized that many institutional barriers hurt
 19 their ability to build rapport with children.¹⁰

20 Moreover, ORR has historically failed to ensure that facilities consistently
 21 provide language interpretation and translation services, which obviously impedes
 22 its ability to protect children in its custody. At the dangerous Emergency Intake
 23 Sites ORR opened in 2021, ORR did not even require contractors or staff to speak
 24

25 ¹⁰ *See* U.S. Dep’t of Health and Human Services, Office of Inspector General, *Care*
 26 *Provider Facilities Described Challenges Addressing Mental Health Needs of*
 27 *Children in HHS Custody*, 11, 14 (Sept. 2019), [http://oig.hhs.gov/oei/reports/oei-](http://oig.hhs.gov/oei/reports/oei-09-18-00431.asp)
 28 [09-18-00431.asp](http://oig.hhs.gov/oei/reports/oei-09-18-00431.asp) (citing high caseloads, rotating assignments, and children’s
 perception of their clinicians as immigration agents as obstacles to developing
 rapport with children).

1 Spanish. *See Flores* EIS Motion to Enforce at 9-10. *Amici* have also met with
2 multiple children whom ORR incorrectly identified as Spanish speakers, when in
3 fact they only spoke an indigenous language. These children are particularly
4 vulnerable to mistreatment. *See* Declaration of Jonathan D. Ryan ¶¶ 21-22, *Flores*,
5 ECF No. 1161-8; *see also* Complaint ¶¶ 65-66, *U.S. v. Southwest Key Programs,*
6 *Inc.* (“[A]t 20 of Southwest Key’s then-thirty-one shelters, children spoke a range
7 of languages other than English or Spanish, including languages specific to Central
8 American countries, such as K’iche’ or Mam. Southwest Key fails to consistently
9 offer interpretation services for those children . . . [this] creates a barrier to
10 reporting and communicating about sexual abuse and harassment.”). Indigenous
11 children have reported to *amici* that their attorney was the first or only individual
12 in the United States to even call an interpreter to speak to them in their native
13 language.

14 It is no surprise, therefore, that attorneys directly representing children are
15 almost always among the first individuals to sound the alarm about children being
16 harmed in ORR custody, as highlighted above. *See supra*, Section III.A.1.

17 ORR’s actions to arbitrarily and abruptly end funding for the direct legal
18 representation of unaccompanied children will inevitably result in mistreatment
19 and abuse of detained children that goes undetected and unaddressed. For
20 vulnerable children without an independent, trusted adult to interact with, that void
21 will not be filled by a one-time legal consultation. The mistrust of others that many
22 children feel while detained is often heightened during the first few days or weeks
23 in detention—the period in which the legal consultation must happen. *See* 45
24 C.F.R. §§ 410.1309(a)(2)(i), (v) (requiring legal presentation and consultation
25 within 10 business days of a child’s arrival to an ORR facility). The early timing of
26 the consultation also means that it is not an opportunity for legal service providers
27 to learn of abuse or mistreatment that might occur later during the child’s
28 detention. Defendants maintain that ORR can fulfill its obligations under the

1 TVPRA and the Foundational Rule by providing “know your rights” presentations
2 and legal screening consultations with a legal service provider. Defs.’ Opp. to Mot.
3 for Temp. Restraining Ord. and Prelim. Inj. at 5, ECF No. 24. But the critical role
4 that children’s attorneys play in “protect[ing] them from mistreatment” in ORR
5 custody will not and cannot be replicated through these one-off interactions. 8
6 U.S.C. § 1232(c)(5). First, the purpose of the consultation is limited to
7 “determin[ing] possible forms of relief.” 45 C.F.R. § 410.1309(a)(2)(v). Second,
8 and more importantly, children—especially those who have experienced violence
9 and trauma—need ongoing, consistent interactions with a supportive adult to build
10 trust and rapport. That trust is the foundation that is often required before a child
11 will disclose that they are being mistreated or abused.

12 For many unaccompanied children, their attorney is the only trusted adult
13 they can turn to if they are being harmed in ORR custody. Eliminating funded
14 direct representation of children undercuts Congress’s objectives of ensuring “safe
15 and secure placements” for children and having counsel to “protect them from
16 mistreatment, exploitation, and trafficking.” 8 U.S.C. § 1232(c)(5).

17 **C. Critical protections in federal law, regulation, and policy are**
18 **meaningless without funded legal representation.**

19 Even if children do not experience abuse and neglect in ORR custody, it is
20 critical that they have access to trusted advocates to protect their well-being. While
21 children are in ORR custody, ORR makes decisions with profound impacts on their
22 legal rights and well-being, including decisions related to their placement,
23 reunification with family, and access to healthcare and education. Unlike state
24 child welfare systems, ORR does not guarantee children access to an attorney or
25 even a guardian ad litem to advocate for them in these matters. *Compare* 45 C.F.R.
26 §§ 410.1308(d), 410.1309(b)(2) (ORR *may* appoint a child advocate or fund non-
27 immigration related legal counsel), *with* 42 U.S.C. § 5106a(b)(2)(B) (states must
28

1 provide a guardian ad litem in child welfare proceedings).¹¹ As a result, a child’s
2 immigration attorney is often their only and best advocate. In recognition of this
3 role, ORR’s regulations and policies require notice to attorneys of record of
4 important developments in a child’s case. If children lose direct representation in
5 their immigration cases, they are also likely to be left to navigate ORR’s
6 administrative processes alone—even when what is at stake is their liberty and
7 ability to grow up with family.

8 For example, if a child in ORR custody is transferred to a restrictive
9 placement such as a juvenile detention center, they have rights under the U.S.
10 Constitution and ORR’s regulations to notice of the reasons for their placement
11 and an administrative hearing to challenge the basis of their detention. *See Lucas*
12 *R.*, 2022 WL 2177454, at *14-23; 45 C.F.R. §§ 410.1901, 410.1902. ORR must
13 provide a copy of this notice to the child’s “attorney of record, legal service
14 provider, [and] child advocate” in all cases, and to a child’s parent or legal
15 guardian in most cases. 45 C.F.R. § 410.1901(c). This automatic notice to counsel
16 is required because “[n]otice is not an effective safeguard of liberty interests if the
17 child does not understand his or her right.” *Lucas R.*, 2022 WL 2177454, at *21;
18 *see also id.* (“Class Members must be able to *request* a hearing at which they can
19 present their own evidence, with the assistance of counsel.”).

20 Many legal service providers will offer legal representation to children
21 placed in restrictive settings in recognition of their particular vulnerability. *See,*
22 *e.g.*, Declaration of Laura Nally ¶ 9, March 25, 2025, ECF No. 7-15. When a child
23 in a restrictive placement has a trusted immigration attorney, their attorney can
24 help them understand their options related to their restrictive placement—including
25 _____

26 ¹¹ Over two-thirds of states provide children a right to counsel in child welfare
27 proceedings. *See* National Association of Counsel for Children, *State Models of*
28 *Children’s Legal Representation* (October 2024), <https://counselforkids.org/wp-content/uploads/2024/10/Model-of-Rep-Chart-October-2024.pdf>.

1 possible implications for their immigration case—and in many cases will represent
2 them pro bono in these administrative proceedings, consult with other legal service
3 providers across the Acacia Center for Justice network, or seek other pro bono
4 representation for the child. If a child does not have individual representation and
5 the assigned legal service provider is funded only to provide a one-time
6 consultation related to relief from removal, 45 C.F.R. § 410.1309(a)(2)(v), the
7 child is highly unlikely to be able to exercise their due process rights alone.

8 ORR policy also requires notice to a child’s attorney of record in other
9 situations where a child’s substantive rights are implicated, such as if a child is
10 involved in an incident involving law enforcement or is arrested while in ORR
11 custody.¹² In *amici*’s role as *Flores* counsel, we became aware of multiple cases
12 where children in ORR custody with significant mental health needs were arrested,
13 discharged from ORR custody, detained by local law enforcement, and
14 subsequently detained by Immigration and Customs Enforcement (ICE) before
15 being transferred back to ORR. *See* Declaration of Mishan Wroe in Support of
16 Opposition to Defendants’ Motion to Terminate ¶¶ 16-17, May 31, 2024, *Flores*,
17 ECF No. 1427-1. In those cases, ORR disclaimed responsibility for the children
18 and it was children’s individual immigration attorneys who played a vital role in
19 protecting their legal rights and raising concerns about mistreatment. *See*
20 Declaration of Jennifer Vanegas ¶¶ 7-12, July 19, 2022, *Flores*, ECF No. 1427-10
21 (MIRC attorney spent “countless hours trying to contact anyone whom I could
22 identify as potentially having the ability to help” client detained by ICE in abusive
23 conditions); Declaration of M. Vaneza Alvarado ¶¶ 6-9, June 24, 2022, *Flores*,
24
25

26
27 ¹² *See* ORR Unaccompanied Children Bureau Policy Guide, Section 5.8.11,
28 [https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-
guide-section-5#5.8.11](https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-5#5.8.11) (last accessed April 9, 2025).

1 ECF No. 1427-11 (RAICES attorney convinced local authorities that client was
2 unlawfully being held with the adult population).

3 Children’s attorneys also play an essential role in facilitating children’s
4 release to sponsors or, if no sponsor is available, the Unaccompanied Refugee
5 Minor (URM) program. The TVPRA requires that unaccompanied children in
6 ORR custody “be promptly placed in the least restrictive setting that is in the best
7 interest of the child.” 8 U.S.C. § 1232(c)(2)(A). This is usually with a sponsor. *See,*
8 *e.g., Saravia v. Sessions*, 905 F.3d 1137, 1142-43 (9th Cir. 2018). When no
9 suitable sponsor is available, children who are victims of trafficking or have other
10 qualifying immigration statuses may be placed in the URM program, which is a
11 refugee foster care program. *See* 8 U.S.C. § 1232(c)(2)(A); 8 U.S.C. § 1522(d).

12 Legal service providers generally prioritize entering direct representation for
13 children without available sponsors or with extended lengths of stay. *See, e.g.,*
14 Declaration of Roxana Avila-Cimpeanu ¶ 15, March 26, 2025, ECF No. 7-4. Some
15 children have spent years in ORR congregate care before being released to a
16 sponsor or to the URM program. *See, e.g. Lucas R.*, 2022 WL 2177454, at *7.
17 Because they have an ongoing relationship with the child, children’s attorneys are
18 well-positioned to help identify and ease obstacles to release. *See, e.g.,* 45 C.F.R.
19 § 410.1207(b), (c) (requiring ORR or care provider staff to “work with the
20 potential sponsor, relevant stakeholders, and ORR to address the portions of the
21 sponsor application that remain unresolved” during 90-day reviews); 45 C.F.R.
22 § 410.1309(c)(2) (requiring ORR to provide attorneys of record contact
23 information of potential sponsors who have submitted a family reunification
24 application, if the sponsor consents). Without direct representation, children with
25 long lengths of stay in detention may not have anybody to advocate for their
26 placement in a less restrictive setting or to work with ORR and the care provider to
27 facilitate release.
28

1 Attorneys can also help protect children’s constitutional rights to family
2 reunification when ORR denies release to a close relative sponsor. *Lucas R.*, 2022
3 WL 2177454, at *14, 25. In these cases, due process requires that the “minor and
4 minor’s counsel are notified of the denial and have the opportunity to request to
5 inspect the evidence.” *Id.* at *27; *see also* 45 C.F.R. § 410.1205(e). When the sole
6 reason for a release denial is a concern that the child is a danger to themselves or
7 others, the child has a right to appeal the denial and to consult with their attorney
8 of record. 45 C.F.R. §§ 410.1205(f), 410.1206(c). As with restrictive placement
9 reviews, children who have direct legal representation are much more likely to
10 understand their legal rights and their options in relation to release, including
11 possible implications for their immigration case. Although ORR does not
12 guarantee representation related to release appeals, children’s immigration
13 attorneys often engage in pro bono advocacy on behalf of their clients and refer
14 clients and their sponsors to pro bono counsel when appropriate.

15 If a child does not have an available sponsor, their best option is usually the
16 URM program. The URM program brings important benefits, including placement
17 in a community setting where children can attend public school and enjoy
18 significantly more freedom than in ORR custody, as well as access to the same
19 range of benefits as children in state child welfare systems. 45 C.F.R. § 400.112(a);
20 45 C.F.R. § 400.116(a). But unaccompanied children are eligible for URM
21 placement only if they have a qualifying immigration status. *See* 8 U.S.C.
22 § 1232(c)(2)(A); 8 U.S.C. § 1522(d).¹³ Without an immigration attorney, children
23 are unlikely to obtain the documentation necessary to qualify for URM and can
24 remain in limbo in ORR custody indefinitely.

25
26 ¹³ *See also* Office of Refugee Resettlement, ORR Guide to Eligibility, Placement,
27 and Services for Unaccompanied Refugee Minors (URM): Section 1,
28 <https://acf.gov/orr/policy-guidance/orr-guide-eligibility-placement-and-services-unaccompanied-refugee-minors-urm> (last accessed April 8, 2025).

1 Even under the best circumstances, children experience serious harm from
2 prolonged institutional confinement such as ORR custody.¹⁴ This harm is
3 especially severe when they are placed in restrictive settings. *Id.* Children have
4 repeatedly expressed to us their feelings of hopelessness when they do not see a
5 prompt path to release. *See, e.g.,* Declaration of Gabriela N. ¶¶ 5, 9-10, June 8,
6 2018, *Lucas R.*, ECF No. 25-18 (“I have asked to meet with attorneys, but the staff
7 says that no one is here to help me . . . I liked the attorney I worked with when I
8 was at Shiloh. Now that I’ve been transferred, I don’t know what’s going on with
9 my case . . . I can’t stand being locked up any more. I feel so helpless and
10 desperate. I don’t know what to do. I want to be released so badly. I want to live
11 with my family.”).

12 Without an attorney to protect their interests, children in ORR custody
13 without a suitable sponsor or whose sponsor is encountering obstacles to
14 reunification may be left in institutional custody without hope that anyone is
15 advocating for their release.

16 **IV. Conclusion**

17 Over many years of representing detained children and working with their
18 legal service providers, *amici* have seen how children’s attorneys are rarely ever
19 just their immigration attorney; they are advocates for children’s health and safety
20 and critical witnesses to the federal government’s treatment of children. As
21 Congress recognized in the TVPRA, funded legal representation is necessary to
22 protect these particularly vulnerable children who are often mistreated and denied
23 their rights in ORR custody. *Amici* respectfully request that this Court grant
24 Plaintiffs’ Motion for a Preliminary Injunction.

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26
27 ¹⁴ *See* Ryan Matlow, Melissa Adamson, Neha Desai, Julian Ford, *Guidance for*
28 *Mental Health Professionals Serving Unaccompanied Children Released from*
Government Custody 25-27.

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Respectfully submitted,

Dated: April 10, 2025

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