

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.

**BRIEF OF AMICI CURIAE OF SOCIAL SCIENCE RESEARCHERS
IN OPPOSITION TO DEFENDANTS-APPELLANTS' PETITION FOR
REHEARING EN BANC**

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INTEREST AND IDENTITY OF *AMICI CURIAE*¹

Amici² are an interdisciplinary group of research institutions and individual researchers with expertise related to children's development and welfare. The group includes psychologists, sociologists, public policy scholars, social welfare researchers, legal scholars, and criminal justice scholars. The brief is submitted with the consent of all parties and without a motion requesting leave pursuant to Federal Rule of Appellate Procedure 29(a)(2).

Amici offer this brief in opposition to Defendants-Appellants' petition for rehearing en banc. Amici discuss the short and long-term physical and emotional harm that will occur to unaccompanied children if this Court reverses the Panel's decision to deny Appellants' Motion for Stay. Amici urge this court to consider scientific studies and Amici's expertise to help the Court understand the risk of substantial and potentially permanent harm that these children will endure should the Court find for the Appellants and stay the District Court's injunction.

¹ No party or party's counsel authored the proposed brief in whole or part, and no party or party's counsel contributed money that was intended to fund this brief's preparation or submission. No person other than *amici curiae* or their counsel has made a monetary contribution to fund this brief's preparation or submission.

² A list of individual amici joining this brief is included as Attachment A.

A. Institutional Amici.

1. The William T. Grant Foundation

The William T. Grant Foundation supports research to improve the lives of young people, with a priority focus on reducing inequality in youth outcomes. Inequality facing immigrant-origin children and families is one of the Foundation's primary concerns. The Foundation has supported several studies in this area, including works by authors who are cited in the brief. For example, the National Academies report on *The Promise of Adolescence: Realizing Opportunity for All Youth*, referenced in the brief, was authored by seven of our grantees (out of a total of 16 authors). The Foundation stands behind their research, and its important implications for this case.

2. The Foundation for Child Development

The Foundation for Child Development is a private foundation that funds research to improve the development and well-being of children, including immigrant children. The Foundation also invests in efforts to ensure that the government uses this research to benefit children. The research on the matter before the court is clear, and we hope the court will give it serious consideration in its judgment.

3. Society for Research on Adolescence

The Society for Research on Adolescence (SRA) is strongly interested in this matter due to its commitment to advancing the well-being of all adolescents, particularly those facing significant adversity. As an organization dedicated to the scientific study of adolescent development, SRA recognizes that unaccompanied immigrant children, many of whom have experienced trauma, abuse, or exploitation, are uniquely vulnerable and in critical need of legal protections. Research consistently shows that access to legal representation is essential to safeguarding such youth's mental, emotional, and physical health, and aligns with developmental best practices for supporting children in high-stakes legal contexts.

4. The Society for Research in Child Development

The Society for Research in Child Development (SRCD) is a nonpartisan, multidisciplinary professional membership association with over 4,000 child development scientists. Members come from many disciplines, including education, psychology, biology, sociology, anthropology, economics, public health and more. Leading experts have contributed to the research presented in this amicus brief, which SRCD wholeheartedly stands behind. The body of research is straightforward and clear: removing legal representation from minors will cause both short- and long-term harm to children.

ARGUMENT

Amici submit this brief to provide the Court with a summary of the extensive research that demonstrates the exceptional vulnerability of unaccompanied migrant children and the additional trauma that will be inflicted on these children if Appellants eliminate funding for direct representation in immigration proceedings. There is a significant body of research that establishes what Congress has intuited: that unaccompanied minor children in adversarial immigration proceedings are a uniquely vulnerable population that require direct representation to be protected from “mistreatment, exploitation, and trafficking.” *See* 8 U.S.C. § 1232(c)(5). It is both commonsense and well established in research that it is developmentally inappropriate for *any child*—much less a child suffering the traumas of migration, parental separation, and detention—to represent themselves in complex and adversarial legal proceedings. Unaccompanied children also face significant risk of abuse both during and subsequent to their detention, particularly if such children lack a trusted adult in their lives. And children who have been separated from their caretakers and detained during migration experience dangerous levels of stress that cause lifelong psychological and physical harm. The precarious physical and mental state of these children is the context in which the Court reviews Appellants’ request for a stay, including its consideration of the public policy interest in granting a stay.

Our research shows that lawyers help to mitigate *all* of these harms. Granting the stay will significantly and permanently harm the 26,000 unaccompanied children currently receiving direct legal representation funded by the Office of Refugee Resettlement (“ORR”). Without representation, many of these vulnerable unaccompanied children with meritorious claims for immigration relief will be removed to countries where they face abuse, trafficking, and violence. And regardless of the strength of any given unaccompanied child’s claim, lack of representation leads to greater risk of abuse in detention, greater risk of trafficking after detention, greater risk of prolonged detention, and toxic levels of stress that threaten their long-term development and physical and mental health. Such permanent, severe harm to vulnerable children weighs strongly against the Government in the public interest analysis. *Cf. Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987) (where there is likely an injury that is “permanent or at least of long duration” the balance of equities “will usually favor the issuance of an injunction.”).

Amici agree with the Panel that a stay of the district court’s preliminary injunction is inappropriate because the Government has not met its burden to establish either a likelihood of success on the merits or irreparable harm. *See Cmty. Legal Servs. v. HHS*, No. 25-2808, 2025 WL 1393876, at *1 (9th Cir. May 14, 2025). In addition, however, a stay is inappropriate because it is against the public

interest because of the significant and permanent harm to vulnerable children that will result if ORR eliminates direct funding for representation of unaccompanied children pending the resolution of this lawsuit. The Government's attempt to eliminate funding for direct representation undermines Congressional intent to provide this vulnerable class of children with procedural regularity and a fair shot to avoid further trauma associated with detention and unsafe repatriation. That irreversible trauma is all but certain if the Government has its way, even if only during the pendency of the litigation. Consequently, a stay is clearly not in the public interest and en banc review of the Panel's decision should be denied.

I. UNACCOMPANIED CHILDREN ARE A HIGHLY VULNERABLE POPULATION.

Unaccompanied minors traveling to the United States often endure significant trauma, beginning with the dangerous conditions in their home countries and continuing through their treacherous journey to reach the United States. And the conditions of post-migration shelter in the U.S.—even prior to any legal proceedings—further exacerbate the minors' mental and physical vulnerability and threaten unaccompanied children's cognitive performance and well-being.

A. Pre-migration and migration risks and trauma encountered by unaccompanied children negatively impact their cognitive performance and well-being.

It is well documented that high levels of exposure to violence, poverty, and persecution are the primary drivers of unaccompanied youth migration.³ The majority of unaccompanied children arriving in the United States in recent years were from Mexico (20%) and Central American countries, particularly Honduras (20%) and Guatemala (32%).⁴ Studies have shown that migrant children from these countries primarily come from areas characterized by high levels of violence.⁵ Commonly reported reasons for migrant children fleeing their home countries include gang violence, gender-based violence, and domestic abuse.⁶ Fear of being returned to the dangerous conditions from which they escaped is a constant aspect of migrant children's ordeal that exacerbates existing trauma.⁷ These early traumatic experiences in migrant children's countries of origin are compounded by severe hardships and dangerous conditions on the migration journey, which

³ Cong. Rsch. Serv., R43628, *Unaccompanied Alien Children: Potential Factors Contributing to Recent Immigration*, 1, 3–9 (July 3, 2014)

https://www.congress.gov/crs_external_products/R/PDF/R43628/R43628.8.pdf.

⁴ Office of Refugee Resettlement, *Unaccompanied Alien Children: Fact Sheets and Data*. <https://acf.gov/orr/about/ucs/facts-and-data> (current as of June 9, 2025).

⁵ See, e.g., Me, A., et al., *Global Study on Homicide*. United Nations Office on Drugs and Crime, 31, 46, 62–63 (2023) https://www.unodc.org/documents/data-and-analysis/gsh/2023/Global_study_on_homicide_2023_web.pdf (last accessed June 18, 2025).

⁶ MacLean, S. A., et al., *Characterization of the Mental Health of Immigrant Children Separated From Their Mothers at the U.S.–Mexico Border*. *Psychiatry Research*, 286, 112555 (Apr. 2020). <https://doi.org/10.1016/j.psychres.2019.112555>.

⁷ *Id.*

presents additional risks to children's mental and physical health.⁸ Unaccompanied children usually migrate through difficult overland routes and face heightened danger and exploitation.⁹ Migration hardships include hazardous travel conditions, harassment, robbery, and physical assault.¹⁰

B. Risks of trauma continue after children reach the United States.

Even after arriving in the US, unaccompanied children encounter significant challenges that further exacerbate their stress and trauma.¹¹ Numerous reports have documented that detention centers are poorly equipped to meet the needs of immigrant children, lacking basic necessities such as sufficient, high-quality food, clean clothing, adequate sleeping accommodations, and access to appropriate and

⁸ The National Child Traumatic Stress Network, *Unaccompanied Migrant Children*, 2 (Dec. 2014) https://www.nctsn.org/sites/default/files/resources/unaccompanied_migrant_children.pdf (last accessed June 18, 2025).

⁹ Jones, J. & Podkul, J., *Forced From Home: The Lost Boys and Girls of Central America*. Women's Refugee Commission, 7–11 (Oct. 2012) https://www.womensrefugeecommission.org/wp-content/uploads/2020/04/border_childrens_report_10-2012.pdf (last accessed June 18, 2025); Maioli, S. C., et al., *International Migration of Unaccompanied Minors: Trends, Health Risks, and Legal Protection*. Lancet Child Adolesc Health (Dec. 2021) <https://pubmed.ncbi.nlm.nih.gov/34416189/> (last accessed June 18, 2025); Dreier, H. & Luce, K., *Alone and Exploited, Migrant Children Work Brutal Jobs Across the US*. New York Times. (Feb. 28, 2023) <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.htm>; Dreier H., *As Migrant Children Were Put to Work, US Ignored Warnings*. New York Times (Apr. 17, 2023) <https://www.nytimes.com/2023/04/17/us/politics/migrant-child-labor-biden.html>.

¹⁰ Young, J., et al., *Health Risks of Unaccompanied Immigrant Children in Federal Custody and in US Communities*. Am. J. Public Health, 114(3), 340–346 (Feb. 21, 2024) <https://doi.org/10.2105/AJPH.2023.307570>.

¹¹ Galli, C., *Precarious Protections: Unaccompanied Minors Seeking Asylum in the United States*. Univ. of California Press (Feb. 2023); see also Young, et al., *supra* note 10 at 340–46.

basic medical care.¹² Children who have experienced detention also face increased risk of chronic and generalized physical health problems such as malnutrition, respiratory illness, anemia, and gastrointestinal diseases.¹³ Even outside of the detention setting, unaccompanied children are particularly vulnerable to exploitation and abuse due to their isolated status, lack of trusted adult caregivers, and limited legal protections.¹⁴ Many become easy targets for human trafficking, forced labor, sexual exploitation, and domestic servitude.¹⁵

Moreover, the separation of these children from their parents, even for a short time, can trigger a toxic stress response that profoundly impacts their physiological and psychological well-being.¹⁶ Family separation, occurring at any

¹² Attanasio, C., et al., *Attorneys: Texas Border Facility is Neglecting Migrant Kids*. Associated Press (June 21, 2019) <https://apnews.com/46da2dbe04f54adbb875c>; Hesson, T. & Cooke, K. *Migrant Children Report Overcrowding, Spoiled Food, Depression in U.S. Shelters*. Reuters (June 22, 2021) <https://www.reuters.com/world/americas/migrant-children-report-overcrowding-spoiled-food-depression-us-shelters-2021-06-22/>; Romero, S., et al., *Hungry, Scared, and Sick: Inside the Migrant Detention Center in Clint, Tex.* The New York Times (July 9, 2019) <https://nyti.ms/2XPSSw3>.

¹³ Deans, A. K., et al., *Use of Royal Darwin Hospital Emergency Department by Immigration Detainees in 2011*. The Medical Journal of Australia, 199(11), 776–778 (Dec. 16, 2013) <https://doi.org/10.5694/mja13.10447>; Lorek, A., et al., *The Mental and Physical Health Difficulties of Children Held Within a British Immigration Detention Center: A Pilot Study*. Child Abuse & Neglect, 33, 573–585 (Sept. 2009) <https://doi.org/10.1016/j.chiabu.2008.10.005>; Young, et al., *supra* note 10 at 340–46.

¹⁴ Dreier & Luce, *supra* note 9; Canizales, S.L., *Sin Padres, Ni Papeles: Unaccompanied Migrant Youth Coming of Age in the United States*. Univ. of California Press (Aug. 2024).

¹⁵ See, e.g., Dreier & Luce, *supra* note 9; Canizales, *supra* note 14.

¹⁶ Waddoups, A. B., et al., *Developmental Effects of Parent–child Separation*. Annual Review of Developmental Psychology, 1(1), 387–410 (2019) (finding that family separation, occurring at any point before or during migration, increases stress and mental health problems) <http://dx.doi.org/10.1146/annurev-devpsych-121318-085142> (last accessed June 18, 2025); von Werthern, M., et al., *The Impact of Immigration Detention on Mental Health: A*

point before or during migration, increases stress, mental health problems and interrupts education and learning.¹⁷ This separation leaves many immigrant children feeling depressed and anxious, making them further susceptible to adverse developmental outcomes.¹⁸ Research shows that children who are separated from their parents during the immigration process are significantly more likely to experience lasting emotional or behavioral problems than children who remain with their parents, particularly if they migrated before age ten.¹⁹

Toxic stress induced by the combination of the pre-migration environment, migratory journey, and post-migratory landscape interferes with children's brain development, potentially resulting in long-term effects such as increased anxiety, impaired memory and executive functioning, learning challenges, and delays in

Systematic Review. BMC Psychiatry, 18, 382–401 (Dec. 6, 2018) (detention and separation, even for a short time, can trigger a toxic stress response) <https://doi.org/10.1186/s12888-018-1945-y>.

¹⁷ Waddoups et al., *supra* note 16; von Werthern et al., *supra* note 16.

¹⁸ Mares, S., & Jureidini, J. *Psychiatric Assessment of Children and Families in Immigration Detention – Clinical, Administrative and Ethical Issues*. Australian and New Zealand Journal of Public Health, 28(6), 520–526 (Dec. 2004) <https://doi.org/10.1111/j.1467-842x.2004.tb00041.x>; Steel, Z., et al., *Psychiatric Status of Asylum Seeker Families Held for a Protracted Period in a Remote Detention Centre in Australia*. Australian and New Zealand Journal of Public Health, 28(6), 527–536 (Dec. 2004) <https://doi.org/10.1111/j.1467-842x.2004.tb00042.x>.

¹⁹ Lu, Y., He, Q., & Brooks-Gunn, J., *Diverse Experiences of Immigrant Children: How Do Separation and Reunification Shape Their Development?* Society for Research in Child Development, 91(1), e146–e163 (Oct. 19, 2018) <https://doi.org/10.1111/cdev.13171>; MacLean, *supra* note 6; Jones-Mason, K., et al., *The Psychobiological Consequences of Child Separation at the Border: Lessons From Research on Attachment and Emotion Regulation*. Attachment & Human Development, 23(1), 1–36 (Nov. 26, 2019) <https://doi.org/10.1080/14616734.2019.1692879>.

language, cognitive, and social-emotional growth.²⁰ It is important that the Court recognize this context in weighing the equitable factors in Appellants’ request for a stay, as even a temporary deprivation of these children’s access to counsel is likely to intensify or compound long-term developmental and mental harm.

II. SELF-REPRESENTATION IN ADVERSARIAL IMMIGRATION PROCEEDINGS IS DEVELOPMENTALLY INAPPROPRIATE FOR UNACCOMPANIED CHILDREN.

Unaccompanied children are not developmentally equipped to navigate the legal system alone. Eliminating funding for attorneys for unaccompanied children, even temporarily, will cause substantial injury to the children and is not in the public interest. *Nken v. Holder*, 556 U.S. 418, 436 (2009) (stating the public has an interest in not wrongfully removing undocumented people from the United States). The attorneys and staff that Plaintiffs employ are specially equipped to assist these children not just through a “labyrinthine maze of immigration laws” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1040 (9th Cir. 2016) (J. McKeown, J. Smith, concurring), but also to work with youth suffering from trauma and other issues commonly experienced by unaccompanied children.²¹

²⁰ Shonkoff, J. P., et al., *The Lifelong Effects of Early Childhood Adversity and Toxic Stress*. Nat’l Library of Medicine, Pediatrics, 129(1), e232–e246 (Jan. 2012) <https://doiorg.ezproxy1.lib.asu.edu/10.1542/peds.2011-2663>.

²¹ See, e.g., Rocky Mountain Immigrant Advocacy Network (describing their legal team as having “deep expertise in complex deportation defense and children’s immigration law” and their staff as including “[Masters of Social Work]-level social workers who provide additional social support for detained individuals, children, individuals with disabilities, or families with other unique vulnerabilities”) <https://www.rmian.org/our-staff/> (last accessed June 18, 2025);

A. Unaccompanied minors are not developmentally equipped to navigate the legal system, even in the best of circumstances.

Legal proceedings are characterized by complex sentences and legal jargon, neither of which is developmentally appropriate for children. Legal proceedings also require the ability to think abstractly, process complex information, and understand legal concepts. These cognitive requirements are not developmentally appropriate for most children.²² Children have limited abstract reasoning abilities due to rapid and ongoing brain development that spans childhood and adolescence.²³

Children, especially those under 15, are at a stage of their brain development where they lack the ability to fully engage in these types of reasoning.²⁴ It is even more challenging for younger children. Infants, toddlers, preschoolers, and elementary-aged children either do not have the ability, or are just beginning to

Galveston-Houston Immigrant Representation Project (“Our team has extensive experience working with immigrant survivors of human trafficking and violent crimes, detained adults and unaccompanied minors, vulnerable youth, and immigrants with mental health and competency concerns.”) <https://ghirp.org/services/> (last accessed June 18, 2025); Immigrant Defenders Law Center, *Children's Representation Program* (“Our Case Management (CMA) team aids our youth clients with social services support such as registering for school, accessing health care and emergency housing, and securing other benefits. In addition, our CMA team acts as a referral source for programs and services, from trauma counseling and emergency shelter”) <https://www.immdef.org/childrens-representation> (last accessed June 18, 2025).

²² See, e.g., Center for Disease Control, *CDC's Developmental Milestones* (May 8, 2024), <https://www.cdc.gov/ncbddd/actearly/milestones/index.html>.

²³ Phillips, D. A. & Shonkoff, J. P., *From Neurons to Neighborhoods: The Science of Early Childhood Development*. Nat'l Academies Press, 1–5, 89–93, 182–218 (2000) <https://pubmed.ncbi.nlm.nih.gov/25077268/> (last accessed June 18, 2025); see also Backes, E. P. & Bonnie, R. J., *The Promise of Adolescence: Realizing Opportunity for All Youth*. Nat'l Academies Press (May 16, 2019) <https://pubmed.ncbi.nlm.nih.gov/31449373/>.

²⁴ See Phillips & Shonkoff *supra* note 23; Backes & Bonnie, *supra* note 23.

comprehend and respond to more complex inquiries.²⁵ Such children cannot—or at least struggle to—answer questions, follow multi-step directions, express their emotions, narrate their experiences, engage in abstract thinking, or read.²⁶ Children often do not yet have the language to explain their traumatic experiences such as those that support an asylum claim.²⁷ These children may have trouble describing their emotions and narrating traumatic events without assistance.²⁸ Infants and young toddlers may not be able to speak at all. Young children exposed to trauma also show lower verbal ability compared to their peers who are not exposed.²⁹ Even for older youth, talking about traumatic experiences is challenging.³⁰

Even when children can articulate and express themselves, they are generally unaware of the legal relevance of a particular experience.³¹ The negative impacts of the trauma that unaccompanied children have already experienced means that the very information that may be most relevant to whether a child is eligible to stay in the United States is the same information that the child is most

²⁵ Center for Disease Control, *supra* note 22.

²⁶ *Id.*

²⁷ Lubit, R., et al., *Impact of Trauma on Children*. J. of Psychiatric Practice, 128–38 (Mar. 2003) <https://pubmed.ncbi.nlm.nih.gov/15985923/>.

²⁸ *Id.*

²⁹ Graham-Bermann, S. A., et al., *Traumatic Events and Maternal Education as Predictors of Verbal Ability for Preschool Children Exposed to Intimate Partner Violence (IPV)*, Journal of Family Violence (May 2010) <https://www.ojp.gov/ncjrs/virtual-library/abstracts/traumatic-events-and-maternal-education-predictors-verbal-ability>.

³⁰ Lubit et al., *supra* note 27.

³¹ Galli, C., *Wolves in Sheep's Clothing? What Central American Unaccompanied Minors Know About Crossing the US-Mexico Border*, Journal of Borderlands Studies, 38 (6), 975–993 (Apr. 16, 2023) <https://doi.org/10.1080/08865655.2023.2200828>.

hesitant to share.³² Moreover, children do not understand complicated legal concepts like admissibility.³³ And because the areas of children's brains governing impulse control, risk assessment, future planning, and understanding legal consequences are not fully developed, they have difficulty understanding how application of those legal concepts can concretely affect their futures.³⁴ Recent trauma, such as that experienced by unaccompanied migrant children, is strongly predictive of a decline in cognitive performance, including a deterioration of the ability to maintain focus or make sound decisions.³⁵

Further, children are more susceptible to peer pressure and suggestibility than adults. This is especially so when children are faced with opinions of an adult

³² Tenorio, L., *Disclosure and the Evolving Legal Consciousness of Sexual and Gender Minority Central American Unaccompanied Minors*, Law & Social Inquiry 50(1), 195–224 (Feb. 2025) <https://doi.org/10.1017/lsi.2024.38>; Statz, M., *Lawyering an Uncertain Cause: Immigration Advocacy and Chinese Youth in the US*. Nashville, TN, Vanderbilt Univ. Press. (July 2018).

³³ Lakhani, S. M., *Producing Immigrant Victims' "Right" to Legal Status and the Management of Legal Uncertainty*. Law & Social Inquiry, 38(2), 442–473 (2013) <http://www.jstor.org/stable/24545904> (last accessed June 18, 2025); Ryo, E., *Representing Immigrants: The Role of Lawyers in Immigration Bond Hearings*. Law & Society Review, 52(2), 503–531 (2018) <http://www.jstor.org/stable/45093917> (last accessed June 18, 2025); Sacau-Fontenlaa, A. & Morais, J. *A Judge Is the Person Who Decides Who Sings Better: Children's Comprehension of Legal Terminology*. Criminology, Criminal Justice, Law and Society. 25(3), 21–35 (Dec. 1, 2024) <https://doi.org/10.54555/ccjls.11127.126715>.

³⁴ Steinberg, L., *Adolescent Development and Juvenile Justice*, Annual Review of Clinical Psychology, 459–85 (2009) <https://doi.org/10.1146/annurev.clinpsy.032408.153603> (last accessed June 18, 2025); Diamond, A., *Normal Development of Prefrontal Cortex from Birth to Young Adulthood: Cognitive Functions, Anatomy, and Biochemistry* (Aug. 2002), in Stuss, D. T. & Knight, R. T., *Principles of Frontal Lobe Function* (online ed., Oxford Academic, May 1, 2009) <https://doi.org/10.1093/acprof:oso/9780195134971.003.0029> (last accessed June 18, 2025).

³⁵ Matte-Landry, A., et al., *Cognitive Outcomes of Children with Complex Trauma: A Systematic Review and Meta-analyses of Longitudinal Studies*, Trauma, Violence, & Abuse, 24(4), 2743–57 (July 4, 2022) <https://doi.org/10.1177/15248380221111484>.

they perceive to be an authority figure, such as a judge or attorney. This scenario can manifest in court proceedings with a child giving responses that they believe the adult wants to hear, rather than what is in the child's own interest.³⁶ This phenomenon demonstrates the importance of a child having their own attorney, particularly one experienced in helping vulnerable unaccompanied children present their cases to a judge.

Young children and adolescents are not equipped to handle advanced tasks typically handled by adults who, at minimum, possess a high school education, a four year undergraduate degree, a law degree, and who have passed the bar exam.³⁷ Representation by an attorney who is well versed in immigration law and who can draw out and recognize key components of a child's story is often the difference in whether a child is removed.³⁸ Cancelling Congressionally allocated funding for trained attorneys who can advocate for unaccompanied children and help them understand immigration proceedings is a substantial harm to those children.

³⁶ Kassir, S. M., et al., *Police-induced Confessions, 2.0: Risk Factors and Recommendations*. Law and Human Behavior, 49(1), 7–53 (Feb. 10, 2025)

<https://pubmed.ncbi.nlm.nih.gov/39928489/>; Grisso, T. & Schwartz, R. G. *Youth on Trial: A Developmental Perspective on Juvenile Justice*. Univ. of Chicago Press (Sept. 2003).

³⁷ See Phillips & Shonkoff *supra* note 23; see also Backes & Bonnie, *supra* note 23.

³⁸ Galli, C. & Padilla, T., *New Data on Unaccompanied Minors in US Immigration Court (2009–2023)*. Int'l Migration Review (Mar. 28, 2025)

<https://journals.sagepub.com/doi/10.1177/01979183251316528>.

B. Unaccompanied children often lack English language proficiency and literacy, rendering them unable to meaningfully represent themselves.

Unaccompanied children without representation face the additional challenge of communicating with those in the immigration system itself. Challenges include the child's own developmental stage and limited literacy ability, the use of legal jargon, and the fact the child may not speak or understand English. Ninety percent of unaccompanied children do not speak English fluently.³⁹ For the approximately 12 percent of unaccompanied children who do not speak English *or* Spanish, it can be challenging to access translators who can communicate with the children at all.⁴⁰

Many unaccompanied children lack even basic literacy skills, further highlighting the need for representation. As much as 40 percent of migrants in the United States lack basic literacy skills, even in their native language.⁴¹ Some populations have even lower levels.⁴² And some children are simply so young that they are not at a developmental stage where they could read even under the best of

³⁹ See ORR Fact Sheets and Data, *supra* note 4 (In 2024, 88% of unaccompanied children and youth spoke Spanish, 3% spoke Haitian Creole, 1% spoke Q'eqchi, .86% spoke Mam, and .92% spoke French.). See also American Immigration Council, *Letter Requesting Improved Language Access for Unaccompanied Children* (Oct. 31, 2022) <https://www.americanimmigrationcouncil.org/advocacy/letter-requesting-improved-language-access-unaccompanied-children>.

⁴⁰ Ramón, C. & Reyes, L., *Languages Access in the Immigration System: A Primer*, The Bipartisan Policy Center (Sept. 18, 2020), <https://bipartisanpolicy.org/blog/language-access-in-the-immigration-system-a-primer/>.

⁴¹ *Id.*

⁴² *Id.*

circumstances. Even older children may be illiterate due to interrupted schooling or trauma.⁴³

These challenges of language fluency and literacy result in increased adverse outcomes to children without representation.

III. REDUCING REPRESENTATION WILL UNNECESSARILY HARM CHILDREN, INCLUDING THOSE WITH MERITORIOUS CLAIMS.

Because unaccompanied children do not have the developmental capacity to effectively represent themselves in complex legal proceedings, it is perhaps unsurprising that legal representation has been shown to be an extremely important factor in determining whether an unaccompanied child is deported. Still, the data is particularly stark: unaccompanied children who lack legal representation are four times more likely to be removed than those who are represented.⁴⁴ Between 2005 and 2017, 84 percent of unrepresented unaccompanied children received removal orders, while just 21 percent of represented unaccompanied children received such orders.⁴⁵ Over the same period, seven percent of represented unaccompanied children received immigration relief, whereas less than one percent of unrepresented unaccompanied children received immigration relief.⁴⁶ Removal

⁴³ Custodio, B. & O'Loughlin, J. B., *Students with Interrupted Formal Education: Understanding Who They Are*, American Educator, 10 (2020) <https://files.eric.ed.gov/fulltext/EJ1249795.pdf> (last accessed June 18, 2025).

⁴⁴ Cong. Rsch. Serv., R43599, *Unaccompanied Alien Children: An Overview*, p. 39 (Sept. 5, 2024) <https://www.congress.gov/crs-product/R43599>.

⁴⁵ *Id.*

⁴⁶ *Id.*

proceedings against 42 percent of represented unaccompanied children were terminated, ending the immediate threat of deportation.⁴⁷ Only four percent of unrepresented unaccompanied children had their removal proceedings terminated.⁴⁸ All told, unaccompanied children with legal representation obtained outcomes that allowed them to remain in the United States approximately 70 percent of the time, compared to just nine percent for those who lack representation.⁴⁹

Even understanding when and where to show up to Court is elusive for unrepresented children. When children receive summonses or other legal notices, they cannot reasonably be expected to understand them without an attorney and other support services. The absence of representation and support leads to stark discrepancies. Having an attorney who can assist a child with maintaining contact with the immigration court is critical, for example, to prevent the child from being deported in absentia.⁵⁰ Only five percent of non-detained, represented children are

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*; Berberich, K. & Siulc, N., *Why Does Representation Matter? The Impact of Legal Representation in Immigration Court*, Vera Institute of Justice, 2 (Nov. 2018) <https://vera-institute.files.svdcdn.com/production/downloads/publications/why-does-representation-matter.pdf>.

⁵⁰ See ABA CILA & ABA Comm'n on Immigr., *Unaccompanied Minors in Immigration Court: The Critical Role of Legal Representation*, 2 (Apr. 10, 2025). <https://www.americanbar.org/content/dam/aba/administrative/immigration/2025-04-10-uc-immigration-court-explainer.pdf>.

ordered removed in absentia for failure to appear in court, compared to 80 percent of unrepresented children.⁵¹

These figures indicate that many of the 26,000 unaccompanied children currently benefiting from ORR-funded legal representation *will* be removed if they lose such representation during the pendency of the litigation notwithstanding meritorious claims and a significant risk of violence or other harm upon removal. The Supreme Court has acknowledged that “there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely face substantial harm.” *Nken*, 556 U.S. at 436. That interest is at its peak when preventing the wrongful removal of *children* to countries where they face a substantial risk of harm upon removal.

Moreover, eliminating direct funding for representation will permanently harm unaccompanied children in several additional ways. As Congress recognized, lawyers play a crucial role in protecting unaccompanied minors from “mistreatment, exploitation, and trafficking.” 8 U.S.C. § 1232(c)(5).⁵² Lawyers protect against *future* trafficking and abuse because they form a trusting bond with

⁵¹ Berberich & Siulc, *supra* note 49 at 2; *see also*, ABA *supra* note 50 at 2; Am. Immigr. Council, *Children in Immigration Court: Over 95 Percent Represented by an Attorney Appear in Court*, 2 (May 16, 2016) https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/children_in_immigration_court_0.pdf.

⁵² *See also* Young, et al., *supra* note 10 at 340–345 (highlighting the health risks and risks of trafficking and abuse faced by unaccompanied children during the pendency of their immigration proceedings).

their unaccompanied child client, and such a bond is important to the child's ability to share details of past abuse.⁵³ Without a lawyer to unearth and act on details of past abuse, children are more likely to be removed or released into conditions in which they will face further trafficking and abuse.⁵⁴

Lawyers also play a crucial role in protecting their unaccompanied children clients from the abuse and neglect that is all too common during immigration detention.⁵⁵ Due in part to their isolation, unaccompanied children often struggle to report the abuse or neglect that they face in detention because they either do not realize that such treatment is abnormal or because they do not have a trusted adult

⁵³ *Id.* at 342 (highlighting shortcomings in healthcare screening for unaccompanied children in detention due to absence of an adult with whom a child feels comfortable sharing sensitive information); Greenberg, M., et al., *Strengthening Services for Unaccompanied Children in U.S. Communities*, Migration Policy Institute, 23 (June 2021) (“... the lawyer may be the only person with whom the child is safely able to disclose important information such as being trafficked or suffering abuse by caretaker.”) (internal quotation marks omitted) https://www.migrationpolicy.org/sites/default/files/publications/mpi-unaccompanied-children-services_final.pdf. See also Edyburn, K.L., & Meek, S., *Seeking Safety and Humanity in the Harshest Immigration Climate in a Generation: A Review of the Literature on the Effects of Separation and Detention on Migrant and Asylum-Seeking Children and Families in the United States During the Trump Administration*, Social Policy Report, 34(1), 14 (2021) (finding that unaccompanied children struggled to develop relationships with mental health clinicians working in ORR facilities because such clinicians were viewed as being a part of the adversarial immigration system).

⁵⁴ Greenberg et al., *supra* note 53 at 23 (“Having high-quality legal representation can make the difference between remaining safe in the United States or returning to a life of violence, abuse, or neglect in their home country[.]”) (internal quotation marks omitted).

⁵⁵ See, e.g., Matlow, R., et al., *Guidance for Mental Health Professionals Serving Unaccompanied Children Released From Government Custody*, Nat'l Center for Youth Law, 25-32 (Nov. 2021) https://youthlaw.org/sites/default/files/attachments/2022-03/2021_Guidance-for-Mental-Health-Professionals-Serving-Unaccompanied-Children-Released-from-Government-Custody.pdf; Hesson & Cooke, *supra* note 12; Romero et al., *supra* note 12; Attanasio et al., *supra* note 12.

in their life who can recognize that there is a problem.⁵⁶ Again, lawyers are well-positioned to build the invaluable trusting relationship necessary for unaccompanied children to feel comfortable reporting that something is wrong while they are in detention.⁵⁷

Reducing representation will also unnecessarily prolong the confinement of unaccompanied children. The length of time that unaccompanied children spend in immigration detention is correlated with negative mental health outcomes like depression, post-traumatic stress disorder, post-traumatic stress symptoms, anxiety, somatic disorders, and other neurological psychological disorders.⁵⁸ While attorneys can identify potential alternatives to immigration detention and opportunities to shorten periods of confinement, children cannot identify such options for themselves. *See* Section II, *supra*. Without a lawyer, children with family to whom they could be released, who are eligible for less restrictive custodial settings, or who could safely be returned to their country of origin will unnecessarily languish in conditions of confinement that threaten their short- and

⁵⁶ Matlow et al., *supra* note 55 at 11, 20, 35 (finding that unaccompanied children who lack trusted confidants are particularly vulnerable to abuse and harm while in custody).

⁵⁷ *See* Greenberg et al., *supra* note 53 at 23.

⁵⁸ *See* Bamford, J., et al., *Mental Health Outcomes of Unaccompanied Refugee Minors: A Rapid Review of Recent Research*. Nat'l Library of Medicine, Curr. Psychiatry Rep., 23, 1-11 (Jul.1, 2021) (finding evidence that “the process of detention is extremely damaging for [unaccompanied refugee minors’] mental health outcomes.”) <https://pubmed.ncbi.nlm.nih.gov/34196826/>; Matlow et al., *supra* note 55 at 25–27 (summarizing research showing that the “profound short- and long-term harm” of detention to unaccompanied children “only increases when detention is prolonged.”); Edyburn & Meek, *supra* note 53 at 14.

long-term mental and physical health.⁵⁹ Given the significant psychological harm and possible physical harm that results from even short-term detention while separated from a caregiver, unnecessarily prolonged detention will harm children.⁶⁰

Finally, lawyers help to minimize potentially debilitating levels of stress, anxiety, despair, and isolation that unaccompanied children encounter while navigating immigration proceedings. *See* Section I, *supra*. Alleviating the stress from detention and separation by promoting stable relationships with caring adults pays huge dividends in terms of a child's long-term physical and mental health.⁶¹ Research confirms that the experience of significant stress and anxiety at a young age is not just a temporary discomfort, but rather carries profound, lifelong consequences.⁶² Toxic stress interferes with a child's brain development, potentially resulting in long-term effects such as increased anxiety, memory impairment, reduced executive functioning, learning challenges, and delays in language, cognitive, and social-emotional growth.⁶³

⁵⁹ Berberich & Siulc, *supra* note 49 at 2 (represented detained immigrants about three times more likely to be granted bond).

⁶⁰ Matlow et al., *supra* note 55 at 25–27; Bamford et al., *supra* note 58 at 1–11.

⁶¹ *See, e.g.,* von Werthern et al., *supra* note 16 at 382–401 (detention and separation, even for a short time, can trigger a toxic stress response).

⁶² *See, e.g.,* Krushas, A. E. & Schwartz, J. A., *An Examination of the Components of Toxic Stress in Childhood and Biological Markers of Physical Health in Emerging Adulthood*. *Journal of Child & Adolescent Trauma*, 15(1), 105–119 (Jan. 14, 2022) <https://doi.org/10.1007/s40653-022-00436-7>; Matlow et al., *supra* note 55 at 11–14, 27; Backes & Bonnie, *supra* note 23 at 86–94. *See also* Jones-Mason et al., *supra* note 19.

⁶³ *See, e.g.,* Shonkoff et al., *supra* note 20 at e232–e246; Backes & Bonnie, *supra* note 23 at 86–94. *See also* Jones-Mason et al., *supra* note 19.

Reducing social support in stressful situations exacerbates the long-term negative health outcomes of toxic stress.⁶⁴ Research has specifically found that the negative long-term impacts resulting from the stress of parental separation during migration can be mitigated through other stable, supportive relationships.⁶⁵ Conversely, the absence of adequate adult support during times of childhood stress plays a key role in transforming stress into dangerous toxic stress.⁶⁶ Lawyers provide their unaccompanied children clients with both a stable relationship with a protective adult and a sense of control, two factors that can significantly mitigate toxic stress.⁶⁷ The government's elimination of funding for direct representation will deprive unaccompanied children of a crucial source of calm, consistency, and information during the pendency of the litigation. This will add to the already dangerous levels of stress incurred by unaccompanied children throughout their ordeal.

⁶⁴ Bamford et al., *supra* note 58 at 3, 5, 8.

⁶⁵ Waddoups et al., *supra* note 16 at 397, 400.

⁶⁶ Krushas & Schwartz, *supra* note 62 at 105–06.

⁶⁷ Gilgoff, R., et al., *Opportunities to Treat Toxic Stress*, Am. Academy of Pediatrics (Dec. 1, 2022)

https://publications.aap.org/pediatrics/article/151/1/e2021055591/190226?autologincheck=redirected&utm_source=TrendMD&utm_medium=TrendMD&utm_campaign=Pediatrics_TrendMD 0; Matlow et al., *supra* note 55 at 28–33, 35.

CONCLUSION

Staying the preliminary injunction would be against the public interest because eliminating funding for lawyers trained to work with unaccompanied children will cause severe and permanent damage. Children with meritorious claims will be removed to harmful conditions. Children will face greater rates of abuse and trafficking. Children will unnecessarily languish in harmful detention conditions. Children will be more likely to suffer from prolonged exposure to debilitating stress that carries severe, lifelong consequences. Such needless permanent harm to profoundly vulnerable children can be avoided by denying the government's petition for rehearing en banc and keeping the district court's preliminary injunction in place.

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ATTACHMENT A

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