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## Feds Must Keep Funding Migrant Kids' Counsel, Judge Says

By **Elliot Weld**

Law360 (April 30, 2025, 2:22 PM EDT) -- A California federal judge has ruled the government must keep funding legal representation for unaccompanied children in immigrant hearings for the time being, saying Congress created rules requiring the government to do so as long as funds remain for it.

U.S. District Judge Araceli Martinez-Olguin said in a Tuesday order that the Unaccompanied Children Program Foundational Rule, which was created to enforce provisions of the William Wilberforce Trafficking Victims Protection Act of 2008, requires the government to fund direct legal services for migrant children if pro bono services cannot be secured.

"The government proffers no evidence that it found pro bono counsel or even sought out alternative representation for the unaccompanied children," Judge Martinez-Olguin said.

The U.S. Department of Health and Human Services had been sued in March by groups that provide representation to migrant children after the Office of Refugee Resettlement decided to terminate the contract it held with the groups.

The legal services groups were "prejudiced by the government's failure to comply with the foundational rule because they are inhibited in their ability to fulfill their missions of ensuring representation for unaccompanied children," Judge Martinez-Olguin said.

The judge said the U.S. Supreme Court has held an agency cannot depart from a prior policy without showing there are good reasons for doing so and that none of the documents the government pointed to in this case say anything about alternatives to the existing policy of funding legal representation.

The ORR argued its reasoning was that it could rely on pro bono resources for the migrant children in "meritorious cases" and stay in compliance with existing rules, but Judge Martinez-Olguin said this argument conflicts with the foundational rule and no documents shown by the agency refer to pro bono resources as a replacement for direct legal representation.

The termination of funding is likely to cause harm to the legal services groups, as they had already been forced to issue layoff notices and could be required "to dismiss their specialized and seasoned attorneys," the order reads.

The public interest weighed in favor of granting the groups injunctive relief as illustrated by several amicus briefs arguing to restore funding, the judge said. A group of former HHS officials warned that children without counsel face more risk of exploitation and human trafficking, and a group of civil rights legal organizations said direct legal counsel combats potential mistreatment of migrant children in ORR custody, the order said.

Judge Martinez-Olguin rejected the government's claims that the groups lacked standing to sue, saying they were being harmed by the ORR's conduct and such harm could be remedied by court intervention. The judge said the government regularly characterized the groups' claims as "nothing more than a money grab," but the groups do not seek a payout — only to ensure that migrant children have representation.

A representative for HHS declined to comment.

Judge Martinez-Olguin implemented a temporary restraining order on April 1 **ordering** the government to restore funding to the groups, but the Amica Center for Immigrant Rights said in a statement on Wednesday that the Trump administration has yet to comply.

"This preliminary injunction is vital to ensure that more children are not left defenseless in a system designed to work against them," said Adina Appelbaum, a program director at the Amica Center.

"The court has made it clear: The government must restore legal services for unaccompanied children. This isn't a policy debate. It's a legal obligation. It's a human obligation. And so far, the government has failed both," she added. "No unaccompanied child should face deportation alone. No system should abandon babies and toddlers — especially when the consequences are this dire."

The legal services groups are represented by Alvaro Huerta, Carson Scott and Lya Ferreyra of the Immigrant Defenders Law Center, Adina Appelbaum, Frederick Benz, Peter Alfredson and Samantha Hsieh of the Amica Center for Immigrant Rights, and Esther Sung, Karen Tumlin and Laura Flores-Perilla of Justice Action Center.

The government is represented by Jonathan Ross, Michael Celone and Katelyn Masetta-Alvarez of the U.S. Department of Justice.

The case is Community Legal Services in East Palo Alto et al. v. U.S. Department of Health and Human Services et al., case number 3:25-cv-02847, in the U.S. District Court for the Northern District of California.

--Additional reporting by Madeline Lyskawa. Editing by Philip Shea.

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