

United States Senate

WASHINGTON, DC 20510

October 19, 2026

Robert F. Kennedy, Jr.
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Dear Secretary Kennedy:

We call on you to rescind your decision to have U.S. Department of Health and Human Services (HHS) attorneys represent unaccompanied children in immigration proceedings through the newly created Unaccompanied Alien Children Legal Representation Division (UACLRD). HHS holds these children in custody, decides where they live and shares information about them and their families with immigration enforcement. HHS cannot also be their lawyer.

The immigration judge works for the Trump administration. So does the prosecutor. Under your plan, so would the child's lawyer. That is unacceptable. We demand that you:

1. Rescind the decision creating the UACLRD and confirm in writing, no later than October 30, 2026, that no HHS attorney will represent an unaccompanied child in immigration proceedings; and
2. Restore independent counsel for these children by making every effort to utilize pro bono counsel, as section 235(c)(5) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) (8 U.S.C. 1232(c)(5)) requires, and by funding experienced, independent legal service providers, as 45 CFR 410.1309 provides, through competitive, merit-based awards.

On September 29, 2026, HHS published a notice in the Federal Register¹ that places the UACLRD within its Office of the General Counsel (OGC). According to the notice, the division “provides direct legal services to unaccompanied alien children,” including “introductory legal orientation concerning immigration proceedings” and representation in immigration court. The division reports to the General Counsel through a designated Deputy General Counsel and “may coordinate with other OGC components and appropriate Federal entities as necessary” to carry out its work. The notice says the division will not advise the Administration for Children and Families or the Office of Refugee Resettlement (ORR) on matters involving its clients, but it sets

¹ Department of Health and Human Services, Statement of Organization, Functions, and Delegations of Authority, 91 FR 61422 (Sept. 29, 2026), <https://www.federalregister.gov/documents/2026/09/29/2026-19903/statement-of-organization-functions-and-delegations-of-authority>

out no procedures for screening conflicts, protecting client confidentiality or insulating attorneys from HHS's custodial functions.

HHS has described the division as “an additional mechanism to provide these children direct legal support while dedicated public servants work around the clock to safely reunify them with their families.” **Reunifying children with their families is HHS's job. Legally representing an unaccompanied child, including against HHS in legal proceedings, is not. It is a job for an experienced, expert and independent attorney trained to represent unaccompanied children who are often experiencing extreme stress and trauma.**

Congress was clear in the bipartisan TVPRA. HHS must ensure, to the greatest extent practicable, that unaccompanied children who are or have been in Federal custody have counsel “to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking,” and it must make every effort to utilize the services of pro bono counsel who agree to represent these children without charge.

HHS's own regulations require that the legal orientation children in ORR custody receive “be provided by an independent legal service provider,” and they provide for funding legal service providers to represent children directly when pro bono counsel is not practicable.² The September 29 notice assigns legal orientation to attorneys in your General Counsel's office. An HHS employee is not an independent legal service provider. For nearly two decades, under administrations of both parties, HHS met these obligations by funding outside legal service providers with the expertise and independence these cases require. HHS has spent more than a year dismantling that system.

ORR withheld payments to legal service providers in late 2025 after they declined to hand over confidential client information, and in August a Federal court ordered HHS to pay more than \$65 million in overdue invoices. HHS let the contract covering more than 20,000 children expire on July 31, 2026. Your Department then turned to a small law firm with little immigration experience, which withdrew, and to Our Rescue, a controversial nonprofit with no apparent experience representing children in immigration court, whose \$158 million no-bid sole source contract is subject to a bid protest and currently under a stop-work order.

Today, children are left with an ineffective temporary provider, the U.S. Committee for Refugees and Immigrants, whose representatives have reportedly sat silent at some children's hearings and missed others. Many children in custody have reportedly not received the legal orientation HHS's regulations require, and in August a one-year-old appeared in an Arizona immigration court without a lawyer. Having created this gap, HHS now proposes *not* to fix it but to fill it with its own employees.

² 45 CFR 410.1309(a)(2)(i), (a)(4).

The conflict of interest is clear. UACLRD attorneys would be HHS employees supervised by the HHS General Counsel, who answers to you, the official responsible for every custody, placement and release decision HHS makes. In immigration court, they would face U.S. Department of Homeland Security (DHS) attorneys seeking the child's removal, before an immigration judge who answers to the Attorney General of the United States.

Professional conduct rules in Illinois and across the country prohibit a lawyer from letting the person who employs or pays the lawyer direct or regulate the lawyer's professional judgment on a client's behalf.³ Federal public defenders, sometimes cited as precedent for government-paid counsel, operate under the Federal judiciary, independent of the Department of Justice that prosecutes their clients.

The UACLRD would sit inside the agency that holds its clients in custody. Consider a child abused while in ORR care. Will a UACLRD attorney zealously gather evidence and litigate against HHS colleagues or HHS grantees? If the child may be eligible for a U visa as the victim of a qualifying crime, will the HHS attorney pursue that relief when it exposes failures in HHS's own program? Will the attorney challenge Executive Office for Immigration Review decisions in Federal court, or argue for an interpretation of immigration law that contradicts the Attorney General?

The conflict is sharpest for children seeking Special Immigrant Juvenile (SIJ) status, a path to lawful permanent residence for children who cannot reunify with one or both parents because of abuse, neglect, abandonment or a similar basis under State law. A child in ORR care in Illinois, as elsewhere, may petition a State court for the findings SIJ status requires. But Federal law bars a juvenile court from determining the custody status or placement of a child in HHS custody unless you specifically consent to that jurisdiction,⁴ and ORR decides where each child is placed, including whether to transfer a child to a State where those findings are harder to obtain. A UACLRD attorney would have to ask the attorney's own employer for that consent and challenge that employer's placement and release decisions to keep the child's case alive and win the child's release to a safe, vetted sponsor. An independent lawyer faces no such conflict.

Children must also be able to tell their lawyers about abuse, trafficking and family circumstances, with confidence that the information will be properly reported and without fear that the information will reach immigration enforcement. Independent legal advocates can play an important role in referring cases with indication of trafficking directly to the Office of Trafficking in Persons (OTIP). But without independent legal advocates, HHS's recent policy change requiring care providers to refer cases to ORR instead of directly to OTIP in 24 hours, as mandated by Federal regulation, could endanger children at risk of trafficking even more than it already does.

³ Ill. R. Prof'l Conduct 1.8(f), 5.4(c); Model Rules of Prof'l Conduct R. 1.8(f), 5.4(c) (Am. Bar Ass'n). Federal Public Defender and Community Defender organizations are established under the Criminal Justice Act, 18 U.S.C. 3006A, and are funded through the Federal judiciary.

⁴ 8 U.S.C. 1101(a)(27)(J)(iii)(I).

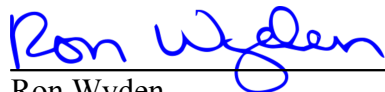
HHS has shown it cannot be trusted to protect children who report abuse or trafficking. According to internal Federal data reported by Reuters, immigration authorities have arrested more than 12,000 people, including children and their sponsors, after tips from ORR. No child can be expected to confide in a lawyer employed by the agency that supplied those tips. The notice does not bar the UACLRD from sharing client information with the Department of Homeland Security. It permits coordination with “appropriate Federal entities,” limited only by the attorneys’ “professional responsibilities” to their clients.

HHS cannot serve as both custodian and counsel. You must meet your statutory obligation to these children. Unaccompanied children deserve lawyers whose only loyalty is to them. We demand that you rescind this harmful policy before a single HHS attorney stands beside a child in immigration court.

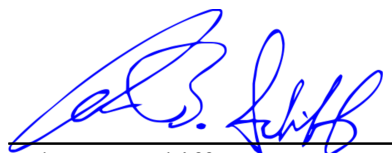
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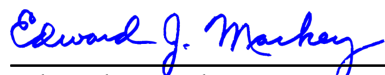
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United States Senator



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