



### **PRELIMINARY STATEMENT**

1. There are currently thousands of unaccompanied immigrant minors (also known as unaccompanied children, or “UCs”) in the legal custody of the federal government. These young people are extremely vulnerable: Many have come to the United States fleeing abuse and torture in their home countries; many have been sexually abused or assaulted either in their home countries, during their long journey to the United States, or after their arrival; some have also been trafficked for labor or prostitution in the United States or some other country; and many have been separated from their families.

2. The federal government is legally required to provide these young people with basic necessities, such as housing, food, and access to emergency and routine medical care, including family planning services, post-sexual assault care, and abortion. And as is true with everyone in the United States, the Constitution prohibits the government from imposing an “undue burden” on the right to obtain an abortion.

3. Defendants have recently revised nationwide policies that allow them to wield an unconstitutional veto power over unaccompanied immigrant minors’ access to abortion in violation of their Fifth Amendment rights. Under these nationwide policies, Defendants also force unaccompanied minors who request abortion to visit a pre-approved anti-abortion crisis pregnancy center, which requires the minor to divulge the most intimate details of her life to an entity hostile to their abortion decision, in violation of her First and Fifth Amendment rights. Defendants also force minors to notify parents or other family members of their request for abortion and/or the termination of their pregnancy, or notify family members themselves, in violation of the First and Fifth Amendments.

4. Recently, an unaccompanied immigrant minor in the legal custody of the federal government, J.D., learned she was pregnant and told the shelter in Texas where she lives that she would like to have an abortion. Because Texas requires parental consent or a judicial waiver of that requirement, J.D. (for “Jane Doe;” a motion to refer to her by pseudonymous initials will be forthcoming) went to court and, with the assistance of an attorney ad litem and a guardian ad

litem, received judicial permission to consent to the abortion on her own. Defendants have, however, taken the position that J.D. is prohibited from accessing an abortion: Defendants will not transport her for the abortion, nor will they allow anyone else to do so. Defendants are essentially holding J.D. hostage to prevent her from getting an abortion in blatant violation of J.D.'s constitutional rights.

5. Defendants have also forced J.D. to visit a religious, anti-abortion crisis pregnancy center, and, over J.D.'s objections, told J.D.'s mother that J.D. was pregnant. To vindicate her constitutional rights to terminate her pregnancy and to avoid compelled speech, her court-appointed guardian ad litem, Rochelle Garza seeks an immediate TRO to grant J.D. access to judicially approved abortion, and on behalf of the class of similarly situated unaccompanied immigrant minors, a preliminary injunction to prevent Defendants from obstructing, interfering with, or blocking other individuals' access to abortion.

6. While abortion is a very safe procedure, each week of delay increases the risk associated with it.

7. Absent emergency injunctive relief, Defendants' actions will have the effect of forcing J.D. to continue her pregnancy and have a baby against her will.

### **JURISDICTION AND VENUE**

8. This action arises under the First and Fifth Amendments to the United States Constitution and presents a federal question within this Court's jurisdiction under Article III of the Constitution and 28 U.S.C. § 1331.

9. Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Federal Rules of Civil Procedure 57 and 65, and by the inherent equitable powers of this Court.

10. Plaintiff J.D. is entitled to damages based on civil rights violations committed by federal officials contrary to the First and Fifth Amendments to the United States Constitution pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

11. The Court has authority to award costs and attorneys' fees under 28 U.S.C. § 2412.

12. Venue is proper in this district under 28 U.S.C. § 1391(e).

**PARTIES**

13. Plaintiff Rochelle Garza is the court-appointed guardian ad litem for J.D., a minor who came to the United States without her parents from her home country. J.D. was detained by the federal government and placed in a federally funded shelter in Texas. J.D. is years old, pregnant, and told the staff at the shelter where she is currently housed that she wanted an abortion. J.D. faced extreme resistance from Defendants. After Plaintiff's counsel contacted Defendants' counsel, J.D. was allowed to pursue a judicial bypass in lieu of securing parental consent for the abortion as required by Texas law. With the assistance of attorney and guardian ad litem, J.D. secured a court order permitting her to have an abortion without parental consent. Nevertheless, Defendants have now taken the position that they will not allow J.D. to access abortion.

14. J.D. was forced to cancel multiple appointments for state-mandated counseling and the abortion due to Defendants' obstruction, which has pushed J.D. later into pregnancy; although abortion is very safe, each week of delay increases the risks. Abortion is approximately 14 times safer than childbirth in terms of morbidity. Absent a TRO from this Court, J.D. will be forced to carry to term against her will.

15. Defendants also forced J.D. to visit an anti-abortion crisis pregnancy, and over J.D.'s objection, Defendants told J.D.'s mother about her pregnancy.

16. Defendants' actions have caused, and continue to cause, J.D. physical, mental, and emotional pain and suffering.

17. J.D. will move this Court to be referred to in this litigation by the initials "J.D." for "Jane Doe" to protect her privacy. She fears retaliation because she has requested an abortion, and she does not want her family to know she is seeking an abortion.

18. J.D. sues on her own behalf and as the class representative of other similarly situated young women.

19. Defendant Eric Hargan is the Acting Secretary of the United States Department of Health and Human Services (“HHS”) and is responsible for the administration and oversight of the Department. Defendant Hargan has authority over the Administration for Children and Families, a subdivision of HHS. By interfering with, prohibiting and/or obstructing unaccompanied immigrant minors’ access to abortion, Defendant Hargan is violating the First and Fifth Amendments.

20. Defendant Steven Wagner is the Acting Assistant Secretary for Administration for Children and Families. Defendant Wagner has authority over the Office of Refugee Resettlement (“ORR”), a subdivision of Administration for Children and Families. By interfering with, prohibiting and/or obstructing unaccompanied immigrant minors’ access to abortion, Defendant Wagner is violating the First and Fifth Amendments. Defendant Wagner is sued in his individual capacity.

21. Defendant Scott Lloyd is the Director of ORR. By interfering with, prohibiting and/or obstructing unaccompanied immigrant minors’ access to abortion, Defendant Lloyd is violating the First and Fifth Amendments. Defendant Lloyd is sued in his individual capacity.

### **FACTS GIVING RISE TO THIS ACTION**

#### **The Unaccompanied Children (“UC”) Program**

22. ORR has responsibility for the “care and custody of all unaccompanied [] children, including responsibility for their detention, where appropriate.” 8 U.S.C. § 1232(b)(1). Unaccompanied immigrant minors are under 18 years old, have no legal immigration status, and either have no parent or legal guardian in the United States, or there is no parent or legal guardian in the United States able to provide care and physical custody. 6 U.S.C. § 279(g)(2).

23. By statute, any federal department or agency that determines that it has an unaccompanied immigrant minor in its custody must transfer the minor to ORR within 72 hours

of making that determination. *Id.* § 1232(b)(3). The federal government reports that in Fiscal Year 2016, 59,692 unaccompanied immigrant minors were referred to ORR.

24. The federal government and all of its programs are required to ensure that the best interests of the unaccompanied immigrant minor are protected. Section 462 of the Homeland Security Act requires ORR to “ensur[e] that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied child.” 6 U.S.C. § 279(b)(1)(B).

25. In addition, Section 235 of the Trafficking Victims Protection Act directs HHS to ensure that unaccompanied immigrant minors are “promptly placed in the least restrictive setting that is in the best interest of the child.” 8 U.S.C. § 1232(c)(2)(A).

26. Most unaccompanied immigrant minors who are referred to ORR are eventually released from custody to parents or sponsors who live in the United States. Such minors are often held in short-term facilities or shelters while they await release to their parents or sponsors. A significant number of unaccompanied immigrant minors are not released to parents or sponsors, and spend longer periods of time in custody. For some minors, ORR cannot identify an individual who can serve as a viable sponsor. Young people who are expected to be in the government’s custody for an extended period or those who have special needs are sometimes transferred to group homes or a foster family. For others, ORR may determine that the minor should be placed in a more restrictive custodial setting. Young people who are flight risks, for example, are held in jail-like facilities with limited, if any, freedom.

**Unaccompanied Immigrant Minors Are Legally Entitled to Receive Access to Reproductive Health Care**

27. Unaccompanied immigrant minors have an acute need for reproductive health care, which is both time-sensitive and is necessary over the course of their time in federal custody. For example, a high number of these young women are victims of sexual assault. Some of these women will need access to emergency contraception, and some will need access to abortion. Any female aged 10 or older must undergo a pregnancy test within 48 hours of

admission to an ORR-funded facility. This is the point at which many young women first learn they are pregnant. Many unaccompanied minors need pregnancy prevention services and/or access to abortion during their short or long periods in ORR custody.

28. The federal government is legally obligated to ensure that all programs that provide care to these young people comply with the minimum requirements detailed in the *Flores v. Reno* Settlement Agreement, CV-85-4544-RJK (C.D. Cal. Jan. 17, 1997) (“*Flores* agreement”). The *Flores* agreement is a nationwide consent decree that requires the government to provide or arrange for, among other things, “appropriate routine medical . . . care,” including specifically “family planning services[] and emergency health care services.”

29. Additionally, in response to its obligations under the Prison Rape Elimination Act and the Violence Against Women Reauthorization Act of 2013, ORR issued a regulation requiring all ORR-funded care provider facilities to, among other things, provide unaccompanied immigrant minors who are victims of sexual assault with access to reproductive healthcare. The regulation states, in relevant part, that grantees providing care to unaccompanied immigrant minors who have experienced sexual abuse while in federal custody must ensure “unimpeded access to emergency medical treatment, crisis intervention services, emergency contraception, and sexually transmitted infections prophylaxis.” 45 C.F.R. § 411.92(a). The regulation further provides that grantees must ensure that a young person subject to sexual abuse is offered a pregnancy test, and “[i]f pregnancy results from an instance of sexual abuse, [the] care provider facility must ensure that the victim receives timely and comprehensive information about all lawful pregnancy-related medical services.” *Id.* § 411.93(d). Grantees were required to comply with this regulation by June 24, 2015.

30. Upon information and belief, unaccompanied immigrant minors face significant barriers to obtaining services not provided by the government and/or its grantees. For example, even if a teen can leave the shelter, she still may not be able to obtain access to abortion or contraceptives without assistance because she likely speaks little or no English; she may have no support system, other than that provided by the federal program; she may have no means of

transportation to the doctor's office; and she may have little or no financial resources. If she is not informed that contraceptives and abortions are available in the United States, she may not even know that these options exist, given that many of these young people come from countries where abortion is illegal.

**Defendants' Interference With, Obstruction, or Prohibition On  
Unaccompanied Immigrant Minors' Access to Abortion**

31. Defendants are wielding an unconstitutional veto power over unaccompanied immigrant minors' access to abortion. In March 2017, ORR revised its policies to prohibit all federally funded shelters from taking "any action that facilitates" abortion access for unaccompanied minors in their care without "direction and approval from the Director of ORR." This includes scheduling appointments with medical providers, ensuring access to non-directive options counseling, ensuring access to court to seek a judicial bypass in lieu of parental consent, and providing access to the abortion itself.

32. In an email to all ORR staff, then-Acting Director of ORR Ken Tota summarized the policy: "Grantees are prohibited from taking any actions in [requests for abortion] without . . . signed authorization from the Director of ORR."

33. Defendants have exercised their unconstitutional veto power to deny J.D. access to abortion. After Plaintiff's counsel's intervention, Defendants permitted J.D. to seek a judicial bypass in lieu of parental consent required by Texas law. J.D. secured that court order with the assistance of an attorney ad litem and a guardian ad litem, Plaintiff Garza. J.D. had an appointment scheduled with a health center for options counseling (the first step in the process of obtaining an abortion under Texas law), but Defendants told the ad litem, Plaintiff's counsel, and the shelter that Defendants prohibited J.D. to be transported by her ad litem to the health



center. Defendants also made clear that J.D. would be prohibited from obtaining the abortion itself.

34. The judicial bypass order obtained for J.D. is still valid. Plaintiff Garza is ready and able to transport J.D. to all appointments necessary for the abortion, including the state-mandated options counseling sessions and the medical procedure itself.

35. Upon information and belief, Defendants have instructed the shelter in which J.D. resides to prohibit J.D. from leaving the facility to access abortion, and has told the shelter that if they allow her access, they will revoke the shelter's government grant. But for that instruction, the shelter is willing to allow Plaintiff Garza to transport J.D. to the abortion facility.

36. Upon information and belief, Stephen Wagner and/or Scott Lloyd personally authorized ORR to block J.D.'s access to abortion.

37. Defendants have also interfered with abortion access for other minors. In fact, the Director of ORR, Scott Lloyd, has taken the position that "[g]rantees should not be supporting abortion services pre or post-release; only pregnancy services and life-affirming options counseling."

38. Defendants' actions toward J.D. are consistent with their policy, which has been enforced against other young women as well.

39. For example, in March 2017, another unaccompanied minor at a federally funded shelter in Texas decided to have an abortion. After obtaining a judicial bypass and receiving counseling, she started the medical abortion regimen for terminating a pregnancy. This regimen begins with a dose of mifepristone, followed by a dose of misoprostol within 48 hours later. After the minor took the mifepristone, ORR intervened, and forced her to go to an "emergency room of a local hospital in order to determine the health status of [her] and her unborn child."

The Acting Director of ORR, Ken Tota, directed ORR as follows: “[i]f steps can be taken to preserve the life of . . . her unborn child, those steps should be taken.” Eventually, after the intervention of other advocates, ORR allowed the minor to complete the medication abortion and take the second dose of pills.

40. Furthermore, Defendant ORR Director, Scott Lloyd, has personally contacted one or more unaccompanied immigrant minors who was pregnant and seeking abortion, and discussed with them their decision to have an abortion. Upon information and belief, Defendant Lloyd is trying to use his position of power to coerce minors to carry their pregnancies to term.

41. ORR has also created a nationwide list of “Trusted Providers in HHS Cities,” which is predominately comprised of anti-abortion crisis pregnancy centers.

42. Crisis pregnancy centers (“CPCs”) are categorically opposed to abortion, and generally do not provide information about pregnancy options in a neutral way. Many are also religiously affiliated, and proselytize to women.

43. Defendants forced J.D. to visit one of these centers for “counseling,” forcing her to share her most private personal and medical information to an entity that is hostile to her decision to have an abortion.

44. Defendants have also required other minors to be counseled by crisis pregnancy centers, both before and after the abortion, including at the explicit direction of Defendant ORR Director Scott Lloyd.

45. Defendants have also unconstitutionally forced unaccompanied immigrant minors to tell their parents and/or immigration sponsors about their abortion decision, or Defendants themselves have told minors’ family members or sponsors about the minors’ pregnancy and/or abortion decision, against the express wishes of the minor, both before and after the abortion.

46. Defendants told J.D.'s mother about J.D.'s pregnancy – over J.D.'s objections – and are trying to force J.D. to also tell her mother she is pregnant and seeking an abortion. In another minor's case, Defendant Lloyd explicitly required “the grantee or the federal field staff [to] notify her parents of the termination,” even after she had obtained a judicial bypass to be allowed to access abortion without her parents' involvement or knowledge.

### **CLASS ALLEGATIONS**

47. Pursuant to Federal Rule of Civil Procedure 23(b)(1) and (b)(2), Plaintiff Rochelle Garza brings this action as a class on her behalf of J.D., and on behalf of all other pregnant unaccompanied immigrant minors in ORR custody nationwide, including those who will become pregnant during the pendency of this lawsuit.

48. The class is so numerous that joinder is impracticable. In any given year, there are hundreds of pregnant unaccompanied minors in defendants' custody. Joinder is inherently impractical because the number of unnamed, future class members who will be pregnant while in ORR custody is unknown and unknowable, especially given the transient nature of the unaccompanied minors population and the temporal limitations of pregnancy. The young people affected by ORR's abortion restriction policy are geographically dispersed across the country. Proposed class members are highly unlikely to file individual suits on their own behalf given the practical, legal, linguistic, monetary, and fear-based barriers that prevent their ability to access independent counsel to challenge ORR's abortion restrictions.

49. The claims of the Plaintiff Class members share common issues of law, including but not limited to whether: i) ORR's policy of exercising a veto power over a UC's abortion access; ii) HHS's policy of requiring a forced visit to an anti-abortion crisis pregnancy center;

and iii) disclosing – or forcing the minor to disclose - to parents or immigration sponsor her abortion decision violate the Constitution.

50. The claims of the Plaintiff Class members share common issues of fact, including but not limited to the implementation of Defendants’ policy and practice of obstructing or preventing of access to abortion in the various ways detailed above.

51. The claims of J.D. are typical of the claims of members of the Plaintiff Class.

52. The named Plaintiff will fairly and adequately protect the interests of the Plaintiff Class. The named Plaintiff has no interest that is now or may be potentially antagonistic to the interests of the Plaintiff Class. The attorneys representing the named Plaintiff are experienced civil rights attorneys and are considered able practitioners in federal constitutional litigation. These attorneys should be appointed as class counsel.

53. Defendants have acted, have threatened to act, and will act on grounds generally applicable to the Plaintiff Class, thereby making final injunctive and declaratory relief appropriate to the class as a whole. The Plaintiff Class may therefore be properly certified under Fed. R. Civ. P. 23(b)(2).

54. Prosecution of separate actions by individual members of the Plaintiff Class would create the risk of inconsistent or varying adjudications and would establish incompatible standards of conduct for individual members of the Plaintiff Class. The Plaintiff Class may therefore be properly certified under Fed. R. Civ. P. 23(b)(1).

### **CAUSES OF ACTION**

#### **FIRST CLAIM FOR RELIEF** **FIFTH AMENDMENT RIGHT TO PRIVACY AND LIBERTY** **(PLAINTIFF J.D. AND CLASS AGAINST DEFENDANTS)**

55. Defendants violate unaccompanied immigrant minors' right to privacy guaranteed by the Fifth Amendment by wielding a veto power over their abortion decisions, and obstructing, interfering with, or blocking access to abortion, including by forcing minors to visit crisis pregnancy centers and preventing them from going to medical facilities where they can obtain legal abortions.

56. Defendants violate the Fifth Amendment rights of unaccompanied minors by revealing, or forcing the minors to reveal, information about their pregnancy and abortions to their parents or other family members, including immigration sponsors, both before and after the abortion.

**SECOND CLAIM FOR RELIEF**  
**FREEDOM OF SPEECH**  
**(PLAINTIFF J.D. AND CLASS AGAINST DEFENDANTS)**

57. By compelling unaccompanied immigrant minors to discuss their decisions to have abortions and the circumstances surrounding those decisions with crisis pregnancy centers, and with their parents or immigration sponsors, Defendants violate the unaccompanied immigrant minors' rights against compelled speech guaranteed by the First Amendment.

**THIRD CLAIM FOR RELIEF**  
**INFORMATIONAL PRIVACY**  
**(PLAINTIFF J.D. AND CLASS AGAINST DEFENDANTS)**

58. By requiring unaccompanied immigrant minors to disclose their identities, their pregnancies, and their decisions to seek or have an abortion, to a crisis pregnancy center, parents, and/or immigration sponsors, Defendants violate the minors' rights to informational privacy guaranteed by the Fifth Amendment.

**FOURTH CLAIM FOR RELIEF**  
**FIRST AMENDMENT – ESTABLISHMENT CLAUSE**

**(PLAINTIFF J.D. AND CLASS AGAINST DEFENDANTS)**

59. Defendants violate the Establishment Clause by requiring unaccompanied immigrant minors to obtain counseling at crisis pregnancy centers that are often religiously affiliated, and that proselytize the unaccompanied immigrant minors who are forced to go there.

60. Defendants' actions alleged herein endorse and impose upon the class members a particular set of religious beliefs.

61. Defendants' actions alleged herein have the predominant purpose of advancing a particular set of religious beliefs.

62. Defendants' actions alleged herein have the predominant effect of advancing a particular set of religious beliefs.

63. Defendants' actions alleged herein are religiously coercive.

**FIFTH CLAIM FOR RELIEF**  
**FIFTH AMENDMENT AND *BIVENS***  
**(PLAINTIFF J.D. AGAINST DEFENDANTS WAGNER AND LLOYD)**

64. Defendants Wagner and/or Lloyd acted intentionally and unlawfully in violating Plaintiff J.D.'s clearly established rights under the Fifth Amendment by vetoing her abortion decision and blocking her ability to obtain an abortion, and otherwise obstructing, interfering with access to abortion, including forcing J.D. to visit a crisis pregnancy center, telling J.D.'s mother about her pregnancy, and attempting to force J.D. to discuss her pregnancy and abortion decision with her mother. These defendants therefore caused J.D. to suffer injuries that can be compensated with money damages.

65. Defendants Wagner and Lloyd acted with the intention of violating J.D.'s Fifth Amendment rights, or with reckless indifference or callous disregard for J.D.'s Fifth Amendment rights, thus entitling her to punitive damages.

66. These violations are redressable under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

**SIXTH CLAIM FOR RELIEF**  
**FIRST AMENDMENT AND *BIVENS***  
**(PLAINTIFF J.D. AGAINST DEFENDANTS WAGNER AND LLOYD)**

67. Defendants Wagner and/or Lloyd acted intentionally and unlawfully in violating J.D.'s clearly established rights under the First Amendment to refrain from compelled speech by forcing J.D. to visit a crisis pregnancy center and discuss her medical decisions.

68. Defendants Wagner and Lloyd acted with reckless indifference or callous disregard for J.D.'s First Amendment rights, thus entitling her to punitive damages.

69. These violations are redressable under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

**RELIEF REQUESTED**

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in her favor and:

1. Certify this action as a class action under Federal Rule of Civil Procedure 23.
2. Declare, pursuant to 28 U.S.C. § 2201, that Defendants' actions, as set forth above, violate the Establishment and Free Speech Clauses of the First Amendment to the United States Constitution, and the Fifth Amendment right to privacy, liberty, and informational privacy;
3. Enter a Temporary Restraining Order preventing Defendants from obstructing J.D.'s access to abortion;
4. Enter a preliminary injunction as to the Plaintiff Class;

5. Enter a permanent injunction preventing Defendants from wielding a veto power over an unaccompanied minors' abortion decision, including interfering, obstructing, or blocking her abortion;
6. Enter a permanent injunction preventing Defendants from forcing unaccompanied immigrant minors from visiting crisis pregnancy centers as a condition of having an abortion or after an abortion;
7. Enter a permanent injunction preventing Defendants from revealing, or forcing unaccompanied immigrant minors to reveal, to the minors' parents or immigration sponsors information about the minors' abortion decisions, either prior to or after the abortion decisions;
8. Enter a permanent injunction preventing Defendants from retaliating against unaccompanied immigrant minors for seeking or obtaining abortions;
9. Award compensatory and punitive damages to J.D. against Defendants Wagner and Lloyd in an amount to be determined at trial;
10. Award costs and fees for this action, including attorneys' fees;
11. Award such further relief as this Court deems appropriate.

October 13, 2017

Respectfully Submitted,

/s Arthur B. Spitzer

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\*Motion for admission for *pro hac vice* forthcoming

*Attorneys for Plaintiff*

## CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

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|--|--|
| <b>I. (a) PLAINTIFFS</b><br>ROCHELLE GARZA, as guardian ad litem to unaccompanied minor J.D., on behalf of herself and others similarly situated<br><br>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>88888</u><br>(EXCEPT IN U.S. PLAINTIFF CASES) | <b>DEFENDANTS</b><br>ERIC D. HARGAN, Acting Secretary of Health and Human Services, in his official capacity; STEPHEN WAGNER, Acting Assistant Secretary for Administration for Children and Families, in his official and individual capacity; and SCOTT LLOYD, Director of Office of Refugee Resettlement, in his official and individual capacity<br>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____<br>(IN U.S. PLAINTIFF CASES ONLY)<br><small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small> |
| (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)<br>Arthur B. Spitzer<br>American Civil Liberties Union Foundation of the District of Columbia<br>4301 Connecticut Avenue, N.W., Suite 434<br>Washington, DC 20008<br>202-457-0800                 | ATTORNEYS (IF KNOWN)<br>U.S. Department of Justice   |

| <b>II. BASIS OF JURISDICTION</b><br>(PLACE AN X IN ONE BOX ONLY) <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input type="radio"/> 1 U.S. Government Plaintiff         </div> <div style="width: 48%;"> <input type="radio"/> 3 Federal Question (U.S. Government Not a Party)         </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input checked="" type="radio"/> 2 U.S. Government Defendant         </div> <div style="width: 48%;"> <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)         </div> </div> | <b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b> <table style="width: 100%; border: none;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table> |                         | PTF   | DFT                     |                         | PTF | DFT | Citizen of this State | <input type="radio"/> 1 | <input type="radio"/> 1 | Incorporated or Principal Place of Business in This State | <input type="radio"/> 4 | <input type="radio"/> 4 | Citizen of Another State | <input type="radio"/> 2 | <input type="radio"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="radio"/> 5 | <input type="radio"/> 5 | Citizen or Subject of a Foreign Country | <input type="radio"/> 3 | <input type="radio"/> 3 | Foreign Nation | <input type="radio"/> 6 | <input type="radio"/> 6 |
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## IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

|   |  |  |   |
|---|--|--|---|
| <input type="radio"/> <b>A. Antitrust</b><br><br><input type="checkbox"/> 410 Antitrust | <input type="radio"/> <b>B. Personal Injury/Malpractice</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Medical Malpractice<br><input type="checkbox"/> 365 Product Liability<br><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Product Liability | <input type="radio"/> <b>C. Administrative Agency Review</b><br><br><input type="checkbox"/> 151 Medicare Act<br><br><u>Social Security</u><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><u>Other Statutes</u><br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved) | <input checked="" type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b><br><br>Any nature of suit from any category may be selected for this category of case assignment.<br><br>*(If Antitrust, then A governs)* |
|---|--|--|---|

|   |    |  |
|---|----|--|
| <input type="radio"/> <b>E. General Civil (Other)</b> | OR | <input type="radio"/> <b>F. Pro Se General Civil</b> |
|---|----|--|

|   |   |  |  |
|---|---|--|--|
| <u>Real Property</u><br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent, Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property<br><br><u>Personal Property</u><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <u>Bankruptcy</u><br><input type="checkbox"/> 422 Appeal 27 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><br><u>Prisoner Petitions</u><br><input type="checkbox"/> 535 Death Penalty<br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Conditions<br><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement<br><br><u>Property Rights</u><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application<br><input type="checkbox"/> 840 Trademark | <u>Federal Tax Suits</u><br><input type="checkbox"/> 870 Taxes (US plaintiff or defendant)<br><input type="checkbox"/> 871 IRS-Third Party 26 USC 7609<br><br><u>Forfeiture/Penalty</u><br><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other<br><br><u>Other Statutes</u><br><input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 430 Banks & Banking<br><input type="checkbox"/> 450 Commerce/ICC Rates/etc.<br><input type="checkbox"/> 460 Deportation | <input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 465 Other Immigration Actions<br><input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Satellite TV<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input type="checkbox"/> 950 Constitutionality of State Statutes<br><input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act) |
|---|---|--|--|

|  |  |   |  |
|--|--|---|--|
| <input type="radio"/> <b>G. Habeas Corpus/ 2255</b><br><br><input type="checkbox"/> 530 Habeas Corpus – General<br><input type="checkbox"/> 510 Motion/Vacate Sentence<br><input type="checkbox"/> 463 Habeas Corpus – Alien Detainee  | <input type="radio"/> <b>H. Employment Discrimination</b><br><br><input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)<br><br><i>*(If pro se, select this deck)*</i>  | <input type="radio"/> <b>I. FOIA/Privacy Act</b><br><br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)<br><br><i>*(If pro se, select this deck)*</i>  | <input type="radio"/> <b>J. Student Loan</b><br><br><input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans) |
| <input type="radio"/> <b>K. Labor/ERISA (non-employment)</b><br><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Mgmt. Relations<br><input type="checkbox"/> 740 Labor Railway Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="radio"/> <b>L. Other Civil Rights (non-employment)</b><br><br><input type="checkbox"/> 441 Voting (if not Voting Rights Act)<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 440 Other Civil Rights<br><input type="checkbox"/> 445 Americans w/Disabilities – Employment<br><input type="checkbox"/> 446 Americans w/Disabilities – Other<br><input type="checkbox"/> 448 Education | <input type="radio"/> <b>M. Contract</b><br><br><input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholder's Suits<br><input type="checkbox"/> 190 Other Contracts<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <input type="radio"/> <b>N. Three-Judge Court</b><br><br><input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)       |

**V. ORIGIN**  
☒ 1 Original Proceeding  
 ☐ 2 Removed from State Court  
 ☐ 3 Remanded from Appellate Court  
 ☐ 4 Reinstated or Reopened  
 ☐ 5 Transferred from another district (specify)  
 ☐ 6 Multi-district Litigation  
 ☐ 7 Appeal to District Judge from Mag. Judge  
 ☐ 8 Multi-district Litigation – Direct File

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 28 U.S.C. § 2201. Suit alleging violation of Free Speech Clause of First Amendment and Fifth Amendment right to privacy, liberty, and informational privacy.

|                                    |   |   |  |
|------------------------------------|---|---|--|
| <b>VII. REQUESTED IN COMPLAINT</b> | <input checked="" type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 | <b>DEMAND \$</b> To be determined at trial<br><b>JURY DEMAND:</b> | Check YES only if demanded in complaint<br>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> |
|------------------------------------|---|---|--|

|                                     |                   |   |   |
|-------------------------------------|-------------------|---|---|
| <b>VIII. RELATED CASE(S) IF ANY</b> | (See instruction) | YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> | If yes, please complete related case form |
|-------------------------------------|-------------------|---|---|

|                       |   |
|-----------------------|---|
| <b>DATE:</b> 10/13/17 | <b>SIGNATURE OF ATTORNEY OF RECORD</b> <i>[Signature]</i> |
|-----------------------|---|

**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

## District of Columbia

Defendant(s)

## SUMMONS IN A CIVIL ACTION

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Print**

**Save As...**

**Reset**

## District of Columbia

Defendant(s)

Civil Action No.

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

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☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_ , a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

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☐ Other *(specify)*: \_\_\_\_\_

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Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Print**

**Save As...**

**Reset**





Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

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 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

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 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

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I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Print**

**Save As...**

**Reset**

## District of Columbia

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

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☐ Other *(specify)*: \_\_\_\_\_

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I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Print**

**Save As...**

**Reset**

## District of Columbia

Defendant(s)

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* JESSIE K. LIU  
United States Attorney for the District of Columbia  
United States Attorney's Office  
555 4th Street, NW  
Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

Arthur B. Spitzer (D.C. Bar No. 235960)  
American Civil Liberties Union Foundation of the District of Columbia  
4301 Connecticut Avenue NW, Suite 434  
Washington, D.C. 20008  
Tel. 202-457-0800

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_ , a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Print**

**Save As...**

**Reset**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

|   |   |            |
|---|---|------------|
| ROCHELLE GARZA, as guardian ad litem to | ) |            |
| unaccompanied minor J.D., on behalf of  | ) |            |
| herself and others similarly situated,  | ) |            |
|   | ) | No. 17-cv- |
| Plaintiff,                              | ) |            |
|   | ) |            |
| v.                                      | ) |            |
|   | ) |            |
| ERIC D. HARGAN, <i>et al.</i> ,         | ) |            |
|   | ) |            |
| Defendants.                             | ) |            |
|   | ) |            |

---

**APPLICATION FOR A TEMPORARY RESTRAINING ORDER**

Pursuant to Federal Rule of Civil Procedure 65 and Local Rule 65.1, Rochelle Garza, as guardian ad litem to unaccompanied minor J.D., hereby applies for the issuance of an order temporarily restraining Defendants (along with their respective successors in office, officers, agents, servants, employees, attorneys and anyone acting in concert with them) from, *inter alia*, interfering with or obstructing J.D.’s access to abortion; forcing, coercing, or requiring J.D. to obtain “counseling” from an anti-abortion entity, including a crisis pregnancy center or “pregnancy resource center” either before or after the abortion; forcing, coercing, or requiring J.D. to notify anyone of her abortion decision, either before or after the abortion; disclosing J.D.’s abortion decision themselves, either before or after the abortion, to her family or immigration sponsor; coercing or attempting to “persuade” J.D. to carry her pregnancy to term; or retaliating against J.D. based on her decision to have an abortion.

This motion is based on the memorandum of points and authorities submitted herewith, all declarations, pleadings and filings filed in this action, and such oral arguments and evidence as may be presented at a hearing on the motion.

The grounds for this application are that Defendants’ actions and policies violate J.D.’s rights under the First and Fifth Amendments to the Constitution of the United States, insofar as

these actions and policies unlawfully violate J.D.'s rights to privacy, liberty and informational privacy, and rights against compelled speech; that J.D. will suffer irreparable injury if the Defendants are not enjoined; that Defendants will not be injured if a temporary restraining order issues; and that the public interest favors the issuance of a temporary restraining order.

October 13, 2017

Respectfully submitted,

/s/ Arthur B. Spitzer

Arthur B. Spitzer (D.C. Bar No. 235960)  
Scott Michelman (D.C. Bar No. 1006945)  
American Civil Liberties Union Foundation  
of the District of Columbia  
4301 Connecticut Avenue NW, Suite 434  
Washington, D.C. 20008  
Tel. 202-457-0800  
Fax 202-457-0805  
*aspitzer@acludc.org*  
*smichelman@acludc.org*

Brigitte Amiri\*  
Meagan Burrows\*  
American Civil Liberties Union Foundation  
125 Broad Street, 18th Floor  
New York, NY 10004  
Tel. (212) 549-2633  
Fax (212) 549-2652  
*bamiri@aclu.org*  
*mburrows@aclu.org*

Daniel Mach (D.C. Bar No. 461652)  
American Civil Liberties Union Foundation  
915 15th Street NW  
Washington, DC 20005  
Telephone: (202) 675-2330  
*dmach@aclu.org*

Jennifer L. Chou\*  
Mishan R. Wroe\*  
American Civil Liberties Union Foundation of  
Northern California, Inc.  
39 Drumm Street  
San Francisco, CA 94111  
Tel. (415) 621-2493  
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*jchou@aclunc.org*

*mwroe@aclunc.org*

Melissa Goodman\*  
American Civil Liberties Union Foundation of  
Southern California  
1313 West 8th Street  
Los Angeles, California 90017  
Tel. (213) 977-9500  
Fax (213) 977-5299  
*mgoodman@aclusocal.org*

*\*Admission for pro hac vice forthcoming*

*Attorneys for Plaintiff*



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

|   |   |            |
|---|---|------------|
| ROCHELLE GARZA, as guardian ad litem to | ) |            |
| unaccompanied minor J.D., on behalf of  | ) |            |
| herself and others similarly situated,  | ) |            |
|   | ) | No. 17-cv- |
| Plaintiff,                              | ) |            |
|   | ) |            |
| v.                                      | ) |            |
|   | ) |            |
| ERIC D. HARGAN, <i>et al.</i> ,         | ) |            |
|   | ) |            |
| Defendants.                             | ) |            |
|   | ) |            |

---

**EMERGENCY MOTION TO SHORTEN DEFENDANTS' TIME  
IN WHICH TO RESPOND TO PLAINTIFF'S APPLICATION  
FOR A TEMPORARY RESTRAINING ORDER**

Pursuant to Fed. R. Civ. P. 6(c)(1)(C) and 83(b), Plaintiff moves for the entry of an order requiring Defendants to respond on or before Monday, October 16, 2017 to Plaintiff's application for a temporary restraining order, filed simultaneously with this motion.

Plaintiff's motion should be granted because the facility at which Plaintiff J.D. is scheduled to obtain her abortion, but which she is currently barred from being transported to as a result of the Defendants' actions challenged in this lawsuit, only provides abortion care on Thursdays, Fridays and Saturdays. Pursuant to state-mandated requirements that (1) J.D. wait 24 hours between obtaining compulsory pre-abortion counseling and undergoing the abortion procedure, and (2) that the same physician perform both the counseling and the procedure itself, J.D. must be able to go for her counseling on Thursday, October 19 to be able to obtain an abortion on Friday, October 20 and/or Saturday, October 21. Accordingly, unless J.D. obtains the relief she seeks that will enable her to see a provider in this window, J.D. will be pushed a week

further into her pregnancy, delaying her ability to access the care to which she is entitled, at an ever-increasing risk to her physical and mental health and well-being.

In order to resolve this matter before Wednesday, October 18, 2017 – the date on which a temporary restraining order must be issued if Plaintiff J.D. is to obtain the relief she seeks next week – Plaintiff has requested a hearing on or before the morning of Wednesday, October 18, 2017, which would require an expedited response from Defendants. If the application for a temporary restraining order is not ruled upon by Wednesday, October 18, 2017, Plaintiff J.D. will suffer irreparable injury as a result of the violation of her Fifth Amendment rights.

For the reasons stated above, Defendants should be directed to respond by Monday October 16, 2017 to Plaintiff's application for a temporary restraining order. A proposed order is filed herewith.

October 13, 2017

Respectfully submitted,

/s/ Arthur B. Spitzer

Arthur B. Spitzer (D.C. Bar No. 235960)  
Scott Michelman (D.C. Bar No. 1006945)  
American Civil Liberties Union Foundation  
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Los Angeles, California 90017  
Tel. (213) 977-9500  
Fax (213) 977-5299  
*mgoodman@aclusocal.org*

*\*Admission for pro hac vice forthcoming*

*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

|   |   |            |
|---|---|------------|
| ROCHELLE GARZA, as guardian ad litem to | ) |            |
| unaccompanied minor J.D., on behalf of  | ) |            |
| herself and others similarly situated,  | ) |            |
|   | ) | No. 17-cv- |
| Plaintiff,                              | ) |            |
|   | ) |            |
| v.                                      | ) |            |
|   | ) |            |
| ERIC D. HARGAN, <i>et al.</i> ,         | ) |            |
|   | ) |            |
| Defendants.                             | ) |            |
| _____                                   | ) |            |

**[PROPOSED] ORDER ON PLAINTIFF’S MOTION TO SHORTEN DEFENDANTS’  
TIME IN WHICH TO RESPOND TO PLAINTIFF’S APPLICATION FOR A  
TEMPORARY RESTRAINING ORDER**

Upon consideration of Plaintiff’s Motion to Shorten Defendants’ Time in Which to Respond to Plaintiff’s Application for a Temporary Restraining Order, it is hereby:

ORDERED, that the motion is granted, and the Defendants shall file any response to Plaintiff’s application for a temporary restraining order on or before Monday, October 16, 2017.

Dated: October \_\_\_\_, 2017

\_\_\_\_\_  
United States District Judge

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

|   |   |            |
|---|---|------------|
| ROCHELLE GARZA, as guardian ad litem to | ) |            |
| unaccompanied minor J.D., on behalf of  | ) |            |
| herself and others similarly situated,  | ) |            |
|   | ) | No. 17-cv- |
| Plaintiff,                              | ) |            |
|   | ) |            |
| v.                                      | ) |            |
|   | ) |            |
| ERIC D. HARGAN, <i>et al.</i> ,         | ) |            |
|   | ) |            |
| Defendants.                             | ) |            |
|   | ) |            |

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**REQUEST FOR A TRO HEARING  
ON OR BEFORE THE MORNING OF WEDNESDAY, OCTOBER 18, 2017**

Plaintiff respectfully moves the Court to schedule a hearing on her application for a temporary restraining order not later than the morning of Wednesday, October 18, 2017, or any alternative date or time that the Court sees fit so as to enable it to issue a ruling on Plaintiff's motion at or before the close of business on Wednesday, October 18, 2017.

This motion should be granted because the abortion provider closest to J.D.'s shelter only provides abortion care on Thursdays, Fridays and Saturdays. Pursuant to state-mandated requirements that (1) J.D. wait 24-hours between obtaining compulsory pre-abortion counseling and undergoing the procedure, and (2) that the same physician perform both the counseling and the procedure itself, J.D. must be able to go for her counseling on Thursday, October 19 and obtain the abortion on Friday, October 20 or Saturday, October 21. Accordingly, unless her request for injunctive relief is heard and a ruling is issued by the close of business on Wednesday October 18, 2017, so as to enable her to see a provider within this window, J.D. will be pushed a week further into her pregnancy, delaying her ability to access the care to which she is entitled, at an ever-increasing risk to her physical and mental health and well-being.

October 13, 2017

Respectfully submitted,

/s Arthur B Spitzer

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*\*Admission for pro hac vice forthcoming*

*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

|   |   |            |
|---|---|------------|
| ROCHELLE GARZA, as guardian ad litem to | ) |            |
| unaccompanied minor J.D., on behalf of  | ) |            |
| herself and others similarly situated,  | ) |            |
|   | ) | No. 17-cv- |
| Plaintiff,                              | ) |            |
|   | ) |            |
| v.                                      | ) |            |
|   | ) |            |
| ERIC D. HARGAN, <i>et al.</i> ,         | ) |            |
|   | ) |            |
| Defendants.                             | ) |            |
|   | ) |            |

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**MOTION FOR A PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 65 and Local Rule 65.1, Rochelle Garza, as guardian ad litem to unaccompanied minor J.D., on behalf of herself and others similarly situated, hereby applies for the issuance of a preliminary injunction enjoining Defendants (along with their respective successors in office, officers, agents, servants, employees, attorneys and anyone acting in concert with them) from, *inter alia*, interfering with or obstructing J.D.’s and Plaintiff Class members’ access to abortion; forcing, coercing, or requiring J.D. and Plaintiff Class members to obtain “counseling” from an anti-abortion entity, including a crisis pregnancy center or “pregnancy resource center” either before or after the abortion; forcing, coercing, or requiring J.D. and Plaintiff Class members to notify anyone of their abortion decision, either before or after the abortion; disclosing J.D.’s and Plaintiff Class members’ abortion decision themselves, either before or after the abortion, to the minor’s family or immigration sponsor; coercing or attempting to “persuade” J.D. and Plaintiff Class Members to carry their pregnancies to term; or retaliating against J.D. and Plaintiff Class Members based on their decision to have an abortion. Plaintiff’s counsel has consulted with Defendants’ counsel, who does not consent to the relief requested.



This motion is based on the memorandum of points and authorities submitted herewith, all declarations, pleadings and filings filed in this action, and such oral arguments and evidence as may be presented at the hearing on the motion.

The grounds for this application are that Defendants' actions and policies violate J.D.'s and the Plaintiff Class members' rights under the First and Fifth Amendments to the Constitution of the United States, insofar as these actions and policies unlawfully violate J.D.'s and the Plaintiff Class members' rights to privacy, liberty and informational privacy, and rights against compelled speech; that J.D. and Plaintiff Class members will suffer irreparable injury if the Defendants are not enjoined; that Defendants will not be injured if a temporary restraining order and/or injunction issues; and that the public interest favors the issuance of a temporary restraining order and/or injunction.

October 13, 2017

Respectfully submitted,

/s/ Arthur B. Spitzer

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*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

|   |   |                  |
|---|---|------------------|
| ROCHELLE GARZA, as guardian ad litem to     | ) |                  |
| unaccompanied minor J.D., on behalf of J.D. | ) |                  |
| and others similarly situated,              | ) | Civil No. 17-cv- |
|   | ) |                  |
| Plaintiff,                                  | ) |                  |
|   | ) |                  |
| v.  | ) |                  |
|   | ) |                  |
| ERIC D. HARGAN, <i>et al.</i> ,             | ) |                  |
|   | ) |                  |
| Defendants.                                 | ) |                  |
|   | ) |                  |

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**PLAINTIFF’S MEMORANDUM IN SUPPORT OF HER APPLICATION FOR A  
TEMPORARY RESTRAINING ORDER AND MOTION FOR A PRELIMINARY  
INJUNCTION**

**PRELIMINARY STATEMENT**

Rochelle Garza, as court-appointed guardian ad litem for J.D., seeks a temporary restraining order to prohibit the federal government from continuing to block J.D. from getting an abortion, and a preliminary injunction to prohibit the federal government from interfering with the Plaintiff Class’s ability to obtain abortions, if they decide to do so.<sup>1</sup>

J.D. is a 17-year-old unaccompanied immigrant minor who is currently in the federal government’s legal custody, living in a government-funded shelter in Texas. J.D. is 17 years old, pregnant and has decided to have an abortion. Because Texas law requires parental consent or a judicial waiver of that requirement before a minor may obtain an abortion, J.D., with the assistance of a court-appointed attorney ad litem and a guardian ad litem, went to court and obtained judicial authorization to consent on her own to the care. Defendants are nevertheless

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<sup>1</sup> “J.D.” stands for “Jane Doe,” and Plaintiff’s motion to proceed using pseudonymous initials will be forthcoming.

refusing to transport, or allow anyone else to transport, J.D. to the health center to obtain counseling or the abortion procedure itself. They are holding her hostage to ensure that she does not have an abortion, but rather continues the pregnancy, and has a baby, against her will. Defendants' actions are blatantly unconstitutional. Entirely shutting off a person's access to abortion services is the greatest conceivable "undue burden" on a person's constitutional right to an abortion — it prohibits her from exercising her rights at all.

J.D. seeks immediate, emergency injunctive relief to prevent Defendants from continuing to obstruct her access to abortion and to allow her out of the shelter to get the care she seeks. Defendants' actions have already delayed J.D. from getting her abortion for several weeks. Because of requirements imposed by Texas law, the next time J.D. would be able to see the abortion provider for the state-mandated counseling (which must occur at least 24 hours prior to the abortion), and to obtain the abortion is on October 19, 20, and/or 21. If she does not get the abortion during that window she will be delayed at least an additional week. Thus, absent an immediate temporary restraining order, J.D. will be pushed further into her pregnancy, which increases the health risks associated with the procedure, and at some point will be forced to carry to term against her will.

Unfortunately, J.D. is not the only unaccompanied minor subject to Defendants' unconstitutional actions. Indeed, Defendants' actions stem from newly adopted policies that apply to unaccompanied immigrant minors nationwide and that purport to grant Defendants unfettered veto power over a minor's abortion decision, and that erect other unconstitutional barriers in the path of minors seeking abortion access. Therefore, Plaintiff also seeks a preliminary injunction to prohibit Defendants from obstructing or interfering with abortion access for a class of similarly situated pregnant unaccompanied immigrant minors.

### **FACTUAL BACKGROUND**

Unaccompanied immigrant minors come to the United States without their parents, often fleeing violence or abuse. By statutory definition, unaccompanied immigrant minors are under 18 years old, have no legal immigration status, and either have no parent or legal guardian in the United States, or have no parent or legal guardian in the United States who is able to provide care and physical custody. *See* 6 U.S.C. § 279(g)(2). After their initial apprehension, the Office of Refugee Resettlement (ORR) bears responsibility for the “care and custody of all unaccompanied [] children, including responsibility for their detention, where appropriate.”<sup>8</sup> 8 U.S.C. § 1232(b)(1). The federal government and all of its programs are required to ensure that the best interests of the unaccompanied immigrant minor are protected. *See* 6 U.S.C. § 279(b)(1)(B); 8 U.S.C. § 1232(c)(2)(A).

Protecting the minors’ best interests includes ensuring access to health care, including reproductive health care. Indeed, the federal government is legally obligated to ensure that all programs that provide care to these young people comply with the minimum requirements detailed in the Settlement Agreement in *Flores v. Reno*, CV-85-4544-RJK (C.D. Cal. Jan. 17, 1997) (“*Flores* agreement”). The *Flores* agreement is a nationwide consent decree that requires the government to provide or arrange for, among other things, “appropriate routine medical . . . care,” including specifically “family planning services[] and emergency health care services.”<sup>2</sup> Additionally, an ORR regulation requires all ORR-funded care provider facilities to, among

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<sup>2</sup> Federal prisoners and those detained by Immigration Customs and Enforcement (ICE) also have a legal right to access abortion. 28 C.F.R. § 551.23 (a federal inmate may decide whether to have an abortion, and if she does, “the Clinical Director shall arrange for an abortion to take place”); ICE Guidelines, Detention Standard 4.4, Medical Care (if an ICE detainee requests abortion, ICE “shall arrange for transportation at no cost” to the detainee), available at [https://www.ice.gov/doclib/detention-standards/2011/medical\\_care\\_women.pdf](https://www.ice.gov/doclib/detention-standards/2011/medical_care_women.pdf).

other things, provide unaccompanied immigrant minors who are victims of sexual assault while in federal custody with access to reproductive healthcare. 45 C.F.R. § 411.92(a) *et seq.*

Unaccompanied immigrant minors have an acute need for reproductive health care, in part because a high number of these young women are victims of sexual assault, immediately before, during and after their journeys to the United States.

Nevertheless, Defendants have implemented a newly revised policy that allows them to wield an unconstitutional veto power over unaccompanied immigrant minors' access to abortion. In March 2017, ORR announced that all federally funded shelters are prohibited from taking "any action that facilitates" abortion access for unaccompanied minors in their care without "direction and approval from the Director of ORR." Ex. 1, Decl. of Brigitte Amiri in Supp. of Pls' Mot. for TRO/PI ("Amiri Decl."), Ex. A. This includes arranging for pregnancy options counseling, ensuring access to court to seek a judicial bypass in lieu of parental consent, and providing access to the abortion itself. *See, e.g., id.*, Ex. B. For example, one email from the then-Acting ORR Director summarized that: "Grantees should not conduct [abortion] procedures, or take any steps that facilitate future [abortion] procedures *such as scheduling appointments, transportation, or other arrangements* without signed written authorization from the ORR Director." *Id.*, Ex. B (emphasis added). In fact, it is the current ORR Director's position that "[g]rantees should not be supporting abortion services pre or post-release; only pregnancy services and life-affirming options counseling." *Id.*, Ex. C.

Defendants are currently implementing this unconstitutional policy to deny J.D. access to abortion. J.D. is 17 years old, and came to the United States from her home country without her parents. Ex. 2, Declaration of J.D. ("Doe Decl.") ¶¶ 2–3. She was apprehended and placed into federal custody. *Id.* ¶ 4. She is currently in a shelter in Texas. *Id.* She is pregnant, and decided

to have an abortion. *Id.* ¶ 5. Instead of arranging for J.D.'s requested medical care, Defendants forced J.D. to visit a religious, anti-abortion crisis pregnancy center where she was required to undergo an ultrasound for no medical purpose, made to reveal intimate details about herself, and subjected to the center's attempts to dissuade her from having an abortion. *Id.* ¶ 13. Despite her ordeal, J.D. continued to be resolute in her decision to have an abortion. With the assistance of court-appointed guardian and attorney ad litem, J.D. obtained a judicial bypass of the state's parental consent requirement and therefore now has the legal right to consent to the procedure. *Id.* ¶ 6-7.

Thereafter, J.D. had an appointment scheduled with a health center for counseling, but ORR refused to transport, or allow J.D. to be transported by anyone, to the health center. *Id.* ¶¶ 9-11. Defendants also made clear that J.D. would be prohibited from obtaining the abortion itself. Since that time, Defendants have continued to prevent J.D. from accessing abortion, and have told her mother about her pregnancy over J.D.'s objection. *Id.* ¶ 15. ORR has ordered the shelter to place J.D. under close supervision at the shelter, and has prohibited the shelter from allowing J.D. to leave the facility for the purpose of accessing abortion counseling or an abortion.

Defendants' actions have already caused J.D. to delay her abortion by several weeks. Defendants first obstructed her access to the judicial bypass process. After Plaintiff's counsel called Defendants' lawyers and she was permitted to seek the bypass, Defendants forced her to miss her original appointment scheduled for September 28, 2017. Faced with this unconstitutional obstruction, J.D. sought to obtain emergency relief on October 5, 2017, by joining as a named plaintiff in *American Civil Liberties Union of Northern California v. Burwell*, No. 3:16-cv-03539-LB, (N.D. Cal), a case arising from other ORR practices that interfere with

unaccompanied immigrant minors' ability to obtain reproductive health care, proceeding against the same Defendants in the District Court for the Northern District of California. Amiri Decl. at ¶ 6. On October 11, 2017, after expedited briefing, Magistrate Judge Beeler issued an order denying Plaintiffs leave to amend the complaint to add J.D., finding that venue and joinder would be improper. In that ruling, however, the court noted that had it granted leave to amend it would have granted the TRO and ordered the requested relief, as the government has "no justification for restricting J.D.'s access." *See American Civil Liberties Union of Northern California v. Burwell.*, No. 3:16-cv-03539-LB, (N.D. Cal), October 11, 2017 Order Denying Motions for Leave to Amend and a TRO (attached as Ex. J to Amiri Decl.).<sup>3</sup>

J.D. is not alone. Defendants have interfered with other minors' access to abortion. For example, in March 2017, an unaccompanied minor at a federally funded shelter in Texas decided to have an abortion. After obtaining a judicial bypass and receiving the state-mandated counseling, she decided to have a medication abortion. This regimen begins with a dose of mifepristone, which stops the pregnancy from growing, followed by a dose of misoprostol, which expels the pregnancy, within 48 hours. After the minor took the mifepristone, ORR intervened, and forced her to go to an "emergency room of a local hospital in order to determine the health status of [her] and her unborn child." Amiri Decl., Ex. A. The then-Acting Director of ORR, Ken Tota, directed ORR as follows: "[i]f steps can be taken to preserve the life of . . . her unborn child, those steps should be taken." *Id.* Eventually, ORR allowed the minor to complete the medication abortion and take the second dose of pills.

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<sup>3</sup> J.D., with the assistance of her guardian and attorney ad litem, also has initiated a confidential and sealed state court proceeding, under state law, against the shelter for abuse and neglect for failure to ensure that her medical care needs are met. Although the case raises no federal question and involves no federal defendant, the Department of Justice is now representing the shelter, has removed the state case to federal court, and is seeking its dismissal.



Indeed, high-level officials at ORR in Washington, D.C., have taken the extraordinary step of becoming personally involved with individual minors' pregnancy and abortion decisions. For example, Scott Lloyd has *personally* contacted unaccompanied immigrant minors who were pregnant and seeking abortion, and discussed with them their decision to have an abortion. *Id.*, Exs. D, E. This raises serious concerns that Defendant Lloyd is using his position of power to coerce young women to carry their pregnancies to term.

J.D.'s experience, and the experience of other minors described above, is a direct result of policies put in place by ORR. In addition to the policy allowing them to prohibit young women in their care from accessing abortion, ORR has also adopted a policy requiring young women who indicate that they are considering abortion to meet with anti-abortion staff at an HHS-approved site. These sites, contained on a nationwide list of "Trusted Providers in HHS Cities," are predominately anti-abortion crisis pregnancy centers ("CPCs"). *Id.*, Ex. F. CPCs are categorically opposed to abortion, and generally do not provide information about pregnancy options in a neutral way. In fact, many provide factually inaccurate information about pregnancy and/or abortion. Many are also religiously affiliated, and proselytize to women.<sup>4</sup> In addition to Plaintiff J.D., ORR requires other minors seeking abortions to be "counseled" by these CPCs, including some at the explicit direction of ORR Director Scott Lloyd. *See id.* Ex. G; *see also id.* Ex. E.

As a matter of practice, ORR is also unconstitutionally forcing unaccompanied immigrant minors to tell their parents and/or immigration sponsors of their pregnancy and abortion decision, or ORR is itself telling minors' parents and/or sponsors about the minors' pregnancy and

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<sup>4</sup> *See* Minority Staff of the H. Comm. on Gov't Reform, False and Misleading Health Information Provided By Federally Funded Pregnancy Resource Centers, 109th Cong. 1 (2006), *available at* [http:// www.chsourcebook.com/articles/waxman2.pdf](http://www.chsourcebook.com/articles/waxman2.pdf).

abortion decision, against the express wishes of the minors. For example, Defendants contacted J.D.'s mother in her home country about J.D.'s pregnancy, over J.D.'s objections. Defendants are also trying to force J.D. to tell her mother that she is considering an abortion, despite the fact that J.D. has suffered abuse at the hands of her parents. In the case of another minor, Defendant Lloyd, in an email, directed that "the grantee or the federal field staff must notify her parents of the termination," even after the minor had obtained a judicial bypass to prevent her parents learning of her decision to terminate her pregnancy. *Id.*, Exs. H, I. J.D. is concerned about her privacy, and does not want any other family members to know of her abortion decision.

### **ARGUMENT**

To obtain a preliminary injunction, a plaintiff must establish (1) "that [s]he is likely to succeed on the merits," (2) "that [s]he is likely to suffer irreparable harm in the absence of preliminary relief," (3) "that the balance of equities tips in [her] favor," and (4) "that an injunction is in the public interest." *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Courts in this Circuit have traditionally applied these factors on a "sliding scale," where a stronger showing on some factors can compensate for a weaker showing others. *See, e.g., Davenport v. Int'l Brotherhood of Teamsters*, 166 F.3d 356, 360 (D.C. Cir. 1999). It has been suggested, but not decided, that a likelihood of success on the merits may be required. *See Sherley v. Sebelius*, 644 F.3d 388, 392–93 (D.C. Cir. 2011) (citing *Winter*, 555 U.S. at 20–22). Under either approach, Plaintiff makes the necessary showing here. Standards for issuing a temporary restraining order and a preliminary injunction are "the same" and can therefore be analyzed together. *Singh v. Carter*, 168 F. Supp. 3d 216, 223 (D.D.C. 2016).

## **I. Plaintiff J.D. Is Likely to Succeed on the Merits of Her Claims.**

### **A. Defendants' Conduct Violates Plaintiff's Fifth Amendment Rights.**

### **1. Defendants Cannot Block J.D.'s Access to Abortion.**

In 1992, the Supreme Court in *Planned Parenthood v. Casey* reaffirmed what it characterized as the “central holding” of *Roe v. Wade*, namely that the government may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability. 505 U.S. 833, 871 (1992). In *Casey*, the Supreme Court adopted the “undue burden” standard for assessing state laws or regulations that restrict abortion. The Court explained:

A finding of an undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus. A statute with this purpose is invalid because the means chosen by the State to further the interest in potential life must be calculated to inform the woman’s free choice, not hinder it. And a statute which, while furthering the interest in potential life or some other valid state interest, has the effect of placing a substantial obstacle in the path of a woman’s choice cannot be considered a permissible means of serving its legitimate ends.

*Id.* at 877. Subsequent Supreme Court decisions reaffirm this principle, most recently in the Court’s decision in *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), *as revised* (June 27, 2016).

There is no question that Defendants are violating J.D.’s Fifth Amendment rights by preventing J.D. from obtaining an abortion. Indeed, Defendants are not only refusing to transport her, but are preventing anyone else from transporting her, to the health care facility to obtain an abortion. J.D. has secured private funding for the abortion itself, and her guardian and attorney ad litem stand ready to transport her, and, absent a prohibition from ORR, the shelter would allow her to go. Defendants are essentially holding her hostage to prevent her from exercising her fundamental constitutional right to abortion. The constitutional violation could

not be more blatant or straightforward: Defendants cannot ban abortion for J.D., or any unaccompanied minor.<sup>5</sup>

The fact that J.D. is a minor in no way mitigates the constitutional violation here. As the Supreme Court has explained, “[c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights.” *Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52, 74 (1976) (quoted with approval in *Bellotti v. Baird*, 443 U.S. 622, 634, n.12 (1979)). Thus, even in the context of a minors’ parents, the Court has held that “the unique nature and consequences of the abortion decision make it inappropriate to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient’s pregnancy.” *Bellotti*, 443 U.S. at 643 (internal quotations and citation omitted); *see also Casey*, 505 U.S. at 899. Accordingly, although the Court has upheld laws requiring parental consent, it has only done so if there is an alternative confidential mechanism for the minor to obtain authorization for the procedure, such as the judicial bypass process in Texas. *Id.* And, indeed, J.D. obtained authorization from a Texas court to consent on her own to the abortion. But under ORR’s new policy, ORR has nonetheless vetoed J.D.’s abortion decision. Defendants’ actions, and policy, are a blatant violation of the Fifth Amendment.

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<sup>5</sup> J.D.’s constitutional rights are not diminished because of her immigration status. *See R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 187–88 (D.D.C. 2015) (“[T]he Supreme Court has made clear that ‘once an alien enters the country, the legal circumstances changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.’”) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)).

## 2. Defendants Cannot Tell Minors' Parents About Their Abortion Decisions.

Moreover, Defendants are also violating the Fifth Amendment by forcing minors to tell their parents or sponsors about their abortion decision, or telling the parents or sponsors themselves. In the context of analyzing the constitutionality of parental consent laws, the Supreme Court has been clear that the minor must have an avenue to obtain an abortion, without consultation or notification to her parents. *Bellotti*, 443 U.S. at 647. As one court put it, if *Bellotti* means anything, “it surely means that States seeking to regulate minors’ access to abortion must offer a credible bypass procedure, *independent of parents or legal guardians*.” *Causeway Med. Suite v. Ieyoub*, 109 F.3d 1096, 1112 (5th Cir. 1997); *see also Bellotti*, 443 U.S. at 647 (holding that if a state requires parental involvement in a minor’s abortion decision the state must provide an procedure through which “every minor must have the opportunity—if she so desires—to go directly to court without first consulting or notifying her parents”). Indeed, “[c]onfidentiality during and after the [judicial bypass] proceeding” is paramount, *Indiana Planned Parenthood Affiliates Ass’n v. Pearson*, 716 F.2d 1127 (7th Cir. 1983), for the myriad reasons that minors decide not to tell their parents of their abortion decision, including fear of “abuse at the hands of one or more of their parents,” *Planned Parenthood of Ind. and Ky., Inc. v. Comm’r, Indiana State Dep’t of Health*, No. 1:17-cv-01636SEBDML, 2017 WL 2797757, at \*13 (S.D. Ind. June 28, 2017).

Once a minor has been granted a judicial bypass, the government ceases to have any legitimate interest in notifying the minor’s parents. As courts have explained, “[w]hen the minor is mature enough to make her own decisions independent of her parents, the State has no more interest in notifying her parents than it would in notifying the parents of an adult woman — namely, none.” *Planned Parenthood v. Wasden*, 376 F. Supp. 2d 1012, 1020 (D. Idaho 2005)

(preliminarily enjoining law that allowed for notice to a parent after a minor obtained an emergency abortion); *see also Planned Parenthood v. Miller*, 63 F.3d 1452, (8th Cir. 1995) (holding that “[b]y showing that they are capable of mature, informed consideration, such minors establish that the State has no legitimate reason for imposing a restriction on their liberty interests that it could not impose on adult women”). Similarly, in cases where a judicial bypass court finds that it is in the best interest of the minor to proceed without telling her parents, “the State has no further reasons for requiring such notice.” *Id.* at 1460. For all of these reasons, Plaintiff is likely to succeed on the merits of her Fifth Amendment claim.

#### **B. Defendants’ Policies and Conduct Violates Minors’ Free Speech Rights.**

By compelling a young woman to disclose her decision to have an abortion and discuss the circumstances surrounding that decision—one of the most intimate and personal decisions a person can make—to a third party who is opposed to her decision, Defendants’ policy violates the First Amendment prohibition on government-compelled speech. *See Planned Parenthood Minnesota, N. Dakota, S. Dakota v. Daugaard*, 799 F. Supp. 2d 1048, 1054–58 (D.S.D. 2011) (preliminarily enjoining under the First Amendment a law requiring patients seeking abortion to first be counseled by a crisis pregnancy center).

The First Amendment protects both “[t]he right to speak and the right to refrain from speaking.” *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). Moreover, the Supreme Court has repeatedly emphasized that “this general rule, that the speaker has the right to tailor the speech, applies not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid.” *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 573 (1995) (citing cases); *accord Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 62 (2006) (“compelled statements of fact . . . like

compelled statements of opinion, are subject to First Amendment scrutiny”); *Riley v. Nat’l Fed’n of the Blind of N.C.*, 487 U.S. 781, 797–98 (1988) (law that compels “statements of ‘fact’” subject to same First Amendment scrutiny as law compelling statements of belief). These cases make clear that, subject to limited exceptions not applicable here, laws that compel speech are subject to strict scrutiny. *See Riley*, 487 U.S. at 798; *Wooley*, 430 U.S. at 715–16; *Gralike v. Cook*, 191 F.3d 911, 919–21 (8th Cir. 1999), *aff’d*, 531 U.S. 510 (2001). As such, a law that compels this kind of private speech can be upheld only if it is narrowly tailored to achieve a compelling state interest.

Defendants’ policy forces minors to be counseled by a CPC, either before and/or after the abortion. J.D. has already been forced to go to a religiously affiliated CPC, where she was forced to look at a sonogram of her fetus, *see* J.D. Dec ¶ 13, and she does not want to go to one again. Defendants’ policy unquestionably compels speech. Indeed, under Defendants’ policy, minors seeking an abortion must discuss their abortion decision, one of “the most intimate and personal choices a person may make in a lifetime, [a] choice[] [that is] central to personal dignity and autonomy,” *Casey*, 505 U.S. at 851, with an entity that is hostile to the minors’ abortion decision. Compelling speech in such a manner is unconstitutional unless the Act (1) serves a compelling state interest, and (2) is narrowly drawn to achieve that end. *See, e.g., Riley*, 487 U.S. at 800; *United States v. Playboy Entm’t Grp., Inc.*, 529 U.S. 803, 813 (2000). Defendants’ policy fails both prongs of this demanding standard.

Defendants’ policy does not further any compelling interest. Even assuming, *arguendo*, that it did, Defendants’ policy is not “narrowly tailored.” Most obviously, Defendants’ policy is neither “necessary” nor the least restrictive means, *i.e.*, the means that least infringes on the woman’s First Amendment rights, to further the government’s purported interest in fetal life or

the woman's health by ensuring informed and voluntary decision making. The most obvious alternative to Defendants' policy is both the most sensible and the one universally employed across the country and across virtually all medical circumstances: relying on the patient's chosen medical providers to ensure that her decision is informed and voluntary. *Planned Parenthood of Minnesota*, 799 F. Supp. 2d at 1057; *see also Casey*, 505 U.S. at 884 ("the doctor-patient relation here is entitled to the same solicitude it receives in other contexts"); *Doe v. Bolton*, 410 U.S. 179, 199–200 (1973). The fact that the Supreme Court has generally upheld laws that require a patient to obtain counseling *from the abortion provider* prior to obtaining an abortion, *see, e.g., Casey*, 505 U.S. at 881-84, is irrelevant. Here, J.D. was forced to go to a non-medical, ideological, religiously affiliated anti-abortion entity and discuss her abortion decision. Thus, the Defendants alleged interest can be met without compelling minors to speak to a CPC. Accordingly, Plaintiff is likely to succeed on her First Amendment claim.

**C. Plaintiff Will Suffer Irreparable Injury Unless Defendants are Enjoined.**

Plaintiff J.D. will suffer immediate and irreparable harm if this Court does not require Defendants to provide her with immediate access to medical services to terminate her pregnancy. The right to choose to terminate a pregnancy is, by its nature, of limited duration. A woman who is blocked or seriously delayed in her effort to obtain abortion cannot later exercise her choice even if the impediment to doing so is later removed.

That denial of a woman's right to choose to terminate her pregnancy constitutes irreparable injury was made clear in *Roe*, 410 U.S. at 153:

The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of



bringing a child into a family already unable, psychologically and otherwise, to care for it.

Here, Plaintiff J.D. faces irreparable harm if she is not granted the relief that she seeks and she is forced to carry the pregnancy to term against her will. Other similarly situated young women likewise face irreparable harm from ORR's policies, which place them in the same position.

Irreparable harm here is caused not only by the denial of access to abortion but by any delay caused by Defendants as well. J.D.'s request for an abortion has already been delayed by Defendants' conduct. Plaintiff is being exposed to increased medical risks by the delay caused by Defendants; although abortion is very safe, each week the pregnancy progresses, the risks to the woman increase. *See Williams v. Zbaraz*, 442 U.S. 1309, 1314–15 (1979) (Stevens, J., sitting as Circuit Justice) (increased risk of “maternal morbidity and mortality” supports claim of irreparable injury). “[T]ime is likely to be of the essence in an abortion decision.” *H.L. v. Matheson*, 450 U.S. 398, 412 (1981). Similar delays imposed on similarly situated young women will cause the same irreparable harm to them.

Plaintiff J.D., and others similarly situated, will also be irreparably harmed if they are forced to tell (or if Defendants tell) family members or immigration sponsors that they are seeking or have obtained an abortion. There are myriad reasons why some minors do not want to tell their parents, or immigration sponsors, including fear of abuse and rejection. *See, e.g., Planned Parenthood of Ind. & Ky.*, 2017 WL 2797757, at \*13.

Plaintiff J.D. and the Plaintiff Class will also be irreparably harmed by being forced to be “counseled” by a CPC, in violation of their First Amendment free speech rights. “[A] woman who chooses to undergo an abortion [and who is forced into counseling at a CPC] will experience a high degree of degradation because she will be forced to disclose to her decision to someone who is fundamentally opposed to it.” *Planned Parenthood of Minnesota*, 799 F. Supp.

2d at 1063. In addition, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

**D. The Balance of Harm Strongly Favors Plaintiff.**

As discussed, *supra*, Plaintiff J.D., and others similarly situated, will suffer irreparable harm in the absence of relief from this Court. In contrast, the injunction would impose no measurable harm on Defendants. Defendants have no legal right to prevent young women from accessing abortion care, to force them to go anti-abortion counseling, or to inform their parents or sponsors of the pregnancy or desired abortion against their wishes. J.D. has secured funding for the abortion, and transportation to the abortion provider, and thus there is not even any financial cost to Defendants to allowing J.D. to seek the care that she seeks and is constitutionally entitled to obtained.

**E. A TRO/Preliminary Injunction Serves the Public Interest.**

The public interest is served when constitutional rights are protected. “It is always in the public interest to prevent the violation of a party’s constitutional rights.” *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 105 (D.D.C. 2012) (quoting *Abdah v. Bush*, No. 04-cv-1254, 2005 WL 711814 at \*6 (D.D.C. Mar. 29, 2005)); accord *Lamprecht v. F.C.C.*, 958 F.2d 382, 390 (D.C. Cir. 1992) (“a [government] policy that is unconstitutional would inherently conflict with the public interest”); see also *Arizona Dream Act Coal. v. Brewer*, 855 F.3d 957, 978 (9th Cir. 2017); *Newsom ex rel. Newsom v. Albemarle Cty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003) (“Surely, upholding constitutional rights serves the public interest.”); *Planned Parenthood Ass’n of City of Cincinnati, Inc. v. City of Cincinnati*, 822 F.2d 1390, 1400 (6th Cir. 1987) (“the public is certainly interested in the prevention of enforcement of ordinances which may be unconstitutional”); *Carey v. Klutznick*, 637 F.2d 834, 839 (2d Cir. 1980) (“the public interest ...

requires obedience to the Constitution”). In the instant case, there is no conceivable way the public interest will be adversely affected by Plaintiff J.D.’s ability to terminate her pregnancy, the most private and intimate of decisions. Thus, there is no harm done to the public interest.

### **CONCLUSION**

For all of the foregoing reasons, Plaintiff respectfully requests that this Court issue a temporary restraining order prohibiting the Defendants from continuing to interfere with her right to obtain an abortion, and a preliminary injunction prohibiting the Defendants from continuing to interfere with the reproductive health rights of the Plaintiff Class.

DATED: October 13, 2017

Respectfully submitted,

/s/ Arthur B. Spitzer

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*Attorneys for Plaintiff*

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ROCHELLE GARZA, as guardian ad litem to )  
unaccompanied minor J.D., on behalf of )  
herself and others similarly situated, )

Plaintiffs, )

v. )

ERIC D. HARGAN, *et al.*, )

Defendants. )

Civil No. 17-CV-

**Declaration of** [REDACTED]

---

I, [REDACTED], do hereby depose and state as follows:

1. I submit this declaration in support of Plaintiffs' motion for a temporary restraining order.
2. I came to the United States from my home country without my parents.
3. I am 17 years old.
4. I was detained upon arrival, and am currently in a shelter in Texas.
5. I am pregnant. I have decided to have an abortion.
6. I have sought and obtained a judicial bypass of Texas's parent consent law.
7. Both an attorney ad litem and a guardian ad litem were appointed to assist me in the judicial bypass. They both speak Spanish and have explained what is happening to me and my legal rights.
8. This declaration has been translated for me by my ad litem so that I know its contents and it states the truth.
9. I have had several appointment scheduled with a licensed health care facility in Texas for an examination by a licensed physician who specializes in obstetrics and gynecology, and to obtain options counseling, including on September 28 and October 6, 2018.

CONFIDENTIAL

10. I had an appointment scheduled for the abortion on September 29 and October 7, 2017.
11. I have been told my ad litem that Defendants prohibited me from traveling to the health care center for the examination, counseling, and abortion.
12. I am hopeful to obtain an abortion as soon as possible. I understand the next counseling appointment should have been October 12, with the abortion appointment on October 13. However, because I keep being delayed, the only appointments available to me are on October 18 and 19, 2017.
13. Defendants have forced me to obtain counseling from a religiously affiliated crisis pregnancy center where I was forced to look at the sonogram.
14. Defendants have been talking to me about my pregnancy – I feel like they are trying to coerce me to carry my pregnancy to term.
15. Defendants told my mother about my pregnancy and are trying to force me to tell her as well.
16. I do not want to be forced to carry a pregnancy to term against my will.
17. I do not want to proceed in court using my real name because I fear retaliation because I am seeking an abortion. I do not want my family to know that I am seeking an abortion.
18. I agree to be a class representative for similarly situated individuals.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 11, 2017

[REDACTED]

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

|   |   |            |
|---|---|------------|
| ROCHELLE GARZA, as guardian ad litem to | ) |            |
| unaccompanied minor J.D., on behalf of  | ) |            |
| herself and others similarly situated,  | ) | No. 17-cv- |
|   | ) |            |
| Plaintiff,                              | ) |            |
|   | ) |            |
| v.                                      | ) |            |
|   | ) |            |
| ERIC D. HARGAN, <i>et al.</i> ,         | ) |            |
|   | ) |            |
| Defendants.                             | ) |            |
|   | ) |            |

---

**DECLARATION OF BRIGITTE AMIRI IN SUPPORT OF PLAINTIFF'S  
APPLICATION FOR A TRO AND MOTION FOR A PRELIMINARY INJUNCTION**

I, Brigitte Amiri, declare as follows:

1. I am a Senior Staff Attorney at the American Civil Liberties Union Foundation and counsel for Plaintiff in the above captioned matter. I have personal knowledge of the facts stated in this declaration and I could and would testify competently to them, if called to do so.

2. On September 21, 2017, I became aware that J.D., an unaccompanied immigrant minor, was in a federally funded shelter in Texas, and that the Defendants were resisting her request for access to abortion. I learned that Defendants were going to require J.D. to obtain counseling from a religious, anti-abortion crisis pregnancy center (CPC). I contacted Defendants' counsel on September 22, 2017, and raised concerns about the constitutionality of forcing J.D. to be counseled by a CPC, and Defendants' overall interference with J.D.'s abortion access.

3. After I contacted Defendants' counsel, Defendants allowed J.D. to access state court to obtain a judicial bypass in lieu of parental consent, as required for abortion in Texas. She was appointed a guardian ad litem and an attorney ad litem, and secured a judicial bypass on September 25, 2017, giving her the legal right to consent to the procedure.

4. J.D. had an appointment scheduled for counseling and a medical examination on September 28, 2017, and an appointment for the abortion on September 29, 2017. Defendants, through their counsel, announced on September 27, 2017 that they were prohibiting J.D. from keeping her appointments on September 28 or September 29. Defendants refused – and are continuing to refuse – to transport J.D., and are refusing to allow anyone to transport J.D. to the abortion facility.

5. On September 28, 2017, I contacted Defendants’ counsel to clarify Defendants’ position about J.D.’s access to abortion. Defendants’ counsel told me that Defendants would not allow J.D. access to abortion. I indicated that Plaintiff would likely seek to challenge Defendants’ blatantly unconstitutional actions in court.

6. Given Defendants’ continued refusal to transport or permit J.D. to be transported to the abortion facility, J.D. sought to obtain emergency relief on October 5, 2017, by joining as a named plaintiff in *American Civil Liberties Union of Northern California v. Burwell*, No. 3:16-cv-03539-LB (N.D. Cal), a case arising from other Office of Refugee Resettlement (“ORR”) practices that interfere with the ability of unaccompanied immigrant minors’ ability to access to abortion care, proceeding against the same Defendants in the U.S. District Court for the Northern District of California.

7. On October 11, 2017, after expedited briefing, Magistrate Judge Beeler issued an order denying Plaintiffs leave to amend the complaint in that case to add J.D. as a named plaintiff, finding that venue and joinder would be improper. In that ruling, however, the court noted that had it granted leave to amend, it would have granted the TRO and ordered the requested relief, as the government has “no justification for restricting [J.D.]’s access.” *See American Civil Liberties Union of Northern California v. Burwell*, No. 3:16-cv-03539-LB (N.D.



Cal), October 11, 2017 Order Denying Motions for Leave to Amend and a TRO (attached hereto as Exhibit J).<sup>1</sup>

9. In support of Plaintiff's Application for a Temporary Restraining Order and Motion for a Preliminary Injunction, Plaintiff relies upon documents that the ACLU of Northern California received from Defendants in discovery in *American Civil Liberties Union of Northern California v. Burwell, et. al.* and from advocates working with unaccompanied immigrant minors. The documents that the ACLU of Northern California received in discovery have been redacted pursuant to the parties' protective order and further agreements in that case. These documents are attached to and referenced in Plaintiff's Memorandum in Support of Plaintiff's Application for a Temporary Restraining Order and Motion for a Preliminary Injunction as follows:

7. **Exhibit A:** March 4, 2017 Memorandum from Kenneth Tota, Acting Director, Office of Refugee Resettlement, Re: ORR custodial decisions to preserve the health of a pregnant UAC, PRICE\_PROD\_00005146.

8. **Exhibit B:** March 3, 2017 Email from Acting ORR Director Ken Tota to Staff Re: Heightened Medical Procedures Guidance; March 10, 2017 Email Re: ORR Guidance for Pregnant UC, PRICE\_PROD\_00004528-32.

9. **Exhibit C:** March Email Exchanges between ORR Director Scott Lloyd and Senior Management Regarding UC Pregnancy Termination Policies, Including Director Lloyd's Instructions that "Grantees Should Not Be Supporting Abortion Services Pre or Post-Release; Only Pregnancy Services and Life-Affirming Options Counseling", PRICE\_PROD\_00010706.

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<sup>1</sup> J.D., with the assistance of her guardian and attorney ad litem, also initiated a confidential and sealed state court proceeding, under state law, against the shelter where she currently resides for abuse and neglect for failure to ensure that her medical care needs are met. Although that case raises no federal question, the Department of Justice is now representing the shelter, has removed the state case to federal court, and is seeking its dismissal.

10. **Exhibit D:** March 14, 2017 Email from S. Lloyd Re: Personal Meeting with UAC in San Antonio, Texas and Discussion Regarding Her Pregnancy Decision, PRICE\_PROD\_00010950-52.

11. **Exhibit E:** April 1 – 4, 2017 Email Exchange Regarding Scott Lloyd’s Discussion with UAC in Arizona, PRICE\_PROD\_00010616.

12. **Exhibit F:** ORR’s “Trusted Providers in HHS Cities” Excel Spreadsheet (Reformatted as PDF).

13. **Exhibit G:** March 24, 2017 Email from S. Lloyd Re: CPC Counseling, PRICE\_PROD\_00010709-10.

14. **Exhibit H:** March 29 – April 3, 2017 Internal ORR Email Exchange Regarding Informing UAC’s Mother and Sponsor about Abortion Procedure, PRICE\_PROD\_00010866-67.

15. **Exhibit I:** March 31, 2017 Email to ORR’s J. De La Cruz Re Directions to Notify Mother of UAC Despite UAC’s Desire Not To, PRICE\_PROD\_00010623.

16. **Exhibit J:** October 11, 2017, Judge Beeler Order

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed October 13, 2017, in New York, New York.

By: /s/ Brigitte Amiri  
Brigitte Amiri

# **Exhibit A**



ADMINISTRATION FOR  
**CHILDREN & FAMILIES**

To: Whom It May Concern

From: Kenneth Tota  
Acting Director, Office of Refugee Resettlement

Date: March 4, 2017

Re: ORR custodial decisions to preserve the health of a pregnant UAC

Under section 462 of the Homeland Security Act of 2002 and section 235 of the Trafficking Victims Protection Reauthorization Act of 2008, the Department of Health and Human Services, through the Director of the Office of Refugee Resettlement (ORR), is entrusted with the care and custody of unaccompanied alien children in the United States. This means that the Director of ORR is empowered by Congress to make all medical decisions for the unaccompanied alien child (UAC) in place of the child's parents.

As set forth in the March 21, 2008 memorandum, "Medical Services Requiring Heightened ORR Involvement" (attached here), serious medical services, including significant surgical or medical procedures, abortions (whether surgical or medical), and services that may threaten the life of a UAC, require heightened ORR involvement and limited decision-making by grantees. With the exception of emergency medical situations, when a UAC may be involved in an abortion, grantees must immediately inform the director of the Division of Unaccompanied Children's Services (DUCS or DCS) in ORR of the situation, must respond to DUCS' requests for information, and are prohibited from taking any action that facilitates an abortion without direction and approval from the Director of ORR.

ORR has received information that on Friday afternoon, March 3, 2017, an unaccompanied alien child at ORR grantee Southwest Key Casa Blanca began but did not complete the process of an abortion administered by a series of medications. The medication abortion protocol proceeded against the recommendation of ORR medical officers. As of Saturday morning, March 4, 2017, the health status of the UAC's unborn child is undetermined. The abortion protocol involves a second medication to be administered before Sunday afternoon, March 5, 2017.

This memorandum directs ORR to bring the UAC to the emergency room of a local hospital in order to determine the health status of the UAC and her unborn child. If steps can be taken to preserve the life of the UAC and her unborn child, those steps should be taken. If it is confirmed that the unborn child has already expired due to the beginning of the abortion procedure, steps can be taken to safely remove the body of the unborn child. In any event, the health and safety of the UAC must be preserved.

# **Exhibit B**

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**From:** Wynne, Maggie (HHS/IOS)  
**Sent:** Saturday, March 04, 2017 1:47 PM  
**To:** Leggitt, Lance (HHS/IOS); Skrzycki, Kristin (HHS/IOS); Stannard, Paula (HHS/IOS); [REDACTED]; Murphy, Ryan (HHS/IOS)  
**Cc:** Bowman, Matthew (HHS/IOS); Flick, Heather (HHS/IOS); Lloyd, Scott E. (ACF)  
**Subject:** FW: Heightened Medical Procedures Guidance  
**Attachments:** medical\_services\_requiring\_heightened\_orr\_involvement.pdf  
  
**Importance:** High

All,

Here is a directive that the career Acting Director of the ACF Office of Refugee Resettlement (ORR), Ken Tota, sent last night to all ORR staff.

I will also send you in a separate email a similar communication to all ORR grantees caring for unaccompanied alien children (UACs or UCs).

[REDACTED] and Ryan, [REDACTED]  
[REDACTED]

[REDACTED] the last few days have revealed that ORR-funded grantees have taken action in violation of the attached policy to procure abortions for minors in the ORR Director's care and custody without his authorization.

Maggie

---

**From:** [REDACTED]  
**Sent:** Friday, March 03, 2017 11:24 PM  
**To:** Wynne, Maggie (HHS/IOS); Barlow, Amanda (ACF); Tota, Kenneth (ACF); White, Jonathan (ACF); Lloyd, Scott E. (ACF)  
**Subject:** FW: Heightened Medical Procedures Guidance  
**Importance:** High

Good evening,

For your records, below is the email sent to ORR staff.

Kindly,  
[REDACTED]

---

**From:** ORR Director (ACF)  
**Sent:** Friday, March 03, 2017 11:17 PM  
**Subject:** Heightened Medical Procedures Guidance  
**Importance:** High

Dear Colleagues,

I am writing to reinforce the importance of ORR policies and procedures related to Heightened Medical Procedures, including “significant medical or surgical procedures, abortions, and services that may threaten the life of a UAC.”

Per the policy, “Grantees are prohibited from taking any actions in these cases without direction and approval from ORR.” Approval for such procedures would be provided in the form of a signed authorization from the Director of ORR. To restate and reinforce the existing policy, ***grantees may not perform Heightened Medical Procedures without written authorization from the ORR Director***, except in emergency medical situations (as described in Emergency Medical Services, 3.05). Grantees should not conduct procedures, or take any steps that facilitate future procedures such as scheduling appointments, transportation, or other arrangements without signed written authorization from the ORR Director. Note that the requirement for written authorization by the ORR Director applies whether the procedure will be paid for with Federal funds or by other means.

In your role, please ensure close adherence and understanding of the policy. It is important that your discussions or correspondence in no way confer or imply approval. Approval can only be authorized by the ORR Director in writing.

The policy on Heightened Medical Procedures is attached. If there are questions or concerns, please do not hesitate to write.

Sincerely,  
Ken Tota  
Acting Director





| Age Group  | Percentage Vaccinated |
|------------|-----------------------|
| 18-24      | 25%                   |
| 25-34      | 35%                   |
| 35-44      | 85%                   |
| 45-54      | 25%                   |
| 55-64      | 35%                   |
| 65-74      | 85%                   |
| 75-84      | 35%                   |
| 85+        | 35%                   |
| Don't know | 35%                   |

\_\_\_\_\_

**From:** [REDACTED]  
**Sent:** Wednesday, March 22, 2017 4:47 PM  
**To:** [REDACTED]  
**Subject:** RE: ORR Guidance for Pregnant UC

\_\_\_\_\_.

Hope this email finds you well. I have a follow up question for you. In your email below, you state we cannot take a client to get a judicial bypass on a termination of pregnancy unless the ORR Director approves us to do so first. Isn't that contrary to state law? My understanding is that the judicial bypass was created specifically so that the young lady does not need approval from her guardian (in our case the Director of ORR) to move forward with a term of pregnancy. Has this policy been vetted by your legal department? I anticipate there would be legal challenges to this policy by advocacy groups that have historically represented our minors in these cases. Can you give me any feedback on this issue? Thanks.

[REDACTED]

[REDACTED]



[illegible][illegible]

**Importance:** High

2

Per the policy, "Grantees are prohibited from taking any actions in these cases without direction and approval from ORR." Approval for such procedures would be provided in the form of a signed authorization from the Director of ORR. To restate and reinforce the existing policy, grantees may not perform Heightened Medical Procedures without written authorization from the ORR Director, except in emergency medical situations (as described in Emergency Medical Services). Grantees should not conduct procedures, or take any steps that facilitate future appointments without signed written authorization from the ORR Director. Note that the requirement for written authorization by the ORR Director applies whether the procedure will be paid for with Federal funds or by other means.

Please ensure close adherence and understanding of the policy. Approval for such procedures can only be authorized by the ORR Director in writing. Failure to adhere to this policy will be a significant issue of non-compliance.

If there are questions or concerns, please do not hesitate to contact your assigned Federal Field Staff for clarification.

Thank you!

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

# **Exhibit C**

From: White, Jonathan (ACF)  
Sent: Thursday, March 30, 2017 3:39:33 PM  
To: [REDACTED]  
Cc: De LA Cruz, James (ACF); Sualog, Jallyn (ACF)  
Subject: FW: UC requesting pregnancy termination

[REDACTED],

Please see Scott's email below with regard to the UC at SWK Las Palmas who is ready for discharge and has previously requested pregnancy termination.

ORR previously provided the grantee with specific direction regarding the type of services the UC should be connected with. Please see his direction that the program "should not be supporting abortion services pre or post-release; only pregnancy services and life-affirming options counseling."

If we can reinforce this to the provider and ask them to clarify that the discharge plan is consistent with that direction, that will enable us to proceed with next steps for release for the UC.

Thanks for all your hard work on this case.

Jonathan

From: Lloyd, Scott (ACF)  
Sent: Thursday, March 30, 2017 6:26 PM  
To: White, Jonathan (ACF)  
Subject: RE: UC requesting pregnancy termination

Jonathan,

It's unclear what they mean here. Not sure what they mean by "services" and "abortion counseling." Please ask them to explain clearly, because if I recall, we were very clear about what they were to do.

Grantees should not be supporting abortion services pre or post-release; only pregnancy services and life-affirming options counseling.

Thank you,  
Scott

---

[REDACTED],

(I am looping in [REDACTED] cc'ing Jim for clarity in communications.)

Just spoke with Scott. The UC should proceed to discharge; we concur with the program's recommendation that neurology follow-up can be part of the plan for the minor's discharge rather than delaying it.

A couple things:

- Can we confirm that the minor has received options counseling for the pregnancy as discussed?
- Can we confirm that the sponsor and the minor's parents have been notified of the pregnancy?

# **Exhibit D**

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**From:** Lloyd, Scott (ACF)  
**Sent:** Friday, March 17, 2017 4:43 PM  
**To:** [REDACTED]  
**Cc:** White, Jonathan (ACF); De LA Cruz, James (ACF)  
**Subject:** RE: Quick thoughts Message from Mr. Scott Lloyd

[REDACTED]

This is just a quick note to find out whether there are any updates on [REDACTED] placement, as there was an indication at the beginning of the week that we may be close. I am just checking, not looking to rush things.

In related news, [REDACTED]  
[REDACTED]

I hope you had a good rest of the week.

Thank you,  
Scott

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**From:** [REDACTED]  
**Sent:** Tuesday, March 14, 2017 6:22 PM  
**To:** Lloyd, Scott (ACF)  
**Cc:** White, Jonathan (ACF); De LA Cruz, James (ACF)  
**Subject:** RE: Quick thoughts Message from Mr. Scott Lloyd

Sir all requests have been sent to local FFS and providers. i don't foresee any issues with these requests, but I do have a question and a comment about these bullets.

- [REDACTED] I got her pre-release plan with a list of resources to assist with pregnancy. I asked them to firm up plan a bit and will send for your review if you would like to see it. I have also attached the resources close to her house that will assist with her post release services and are close to her future address of, [REDACTED] Again this is still tentative and any additional resources you have are welcome sir.
- If things get dicey with [REDACTED] sponsor, I know a few good families with a heart for these situations who would take her in in a heartbeat and see her through her pregnancy and beyond. [REDACTED] said she would accept this if things can't work out with her aunt soon. [REDACTED]
  - Potential foster care is identified by approved providers after referral for this level of care by program and approved by FFS. these houses are homes that have been awarded a grant to house UAC by ACF-ORR. they have to be licensed to accept our kiddos.

Thank you again for your trip, I learned from you and I hope you take your experience here in San Antonio and we have set the bar high. I always push my teams to be the best and our providers to provide best services in the nation, so what you saw is SOP on a daily basis.



Safe travels sir, and it was pleasure to have met you. I look forward to working for you at ORR! please feel free to reach out to me if you should have any questions concerning any UC in the Central Texas or Chicago AOR.

PS: I have included my immediate Supervisor Mr. James De La Cruz on email as he is that al knowing all seeing UAC Oracle... LOL. He can also assist with any questions when it comes to our kiddos and level of care to you in DC. He is an amazing man that has steered this ship overseeing more than 175,000 kiddos in the last five years...

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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**From:** Lloyd, Scott (ACF)  
**Sent:** Tuesday, March 14, 2017 1:51 PM  
**To:** [REDACTED]  
**Subject:** Quick thoughts

[REDACTED],

Just a few things, while they are fresh in my mind:

- 1) [REDACTED] said she preferred the food at Seton—that it wasn't Honduran enough at BCFS (she mentioned bananas, which I thought BCFS has, and soup). If there is a way to accommodate at BCFS with any food requests, please find a way. She's feeling very nauseous because of the pregnancy.
- 2) She also says she has pain in her arms and legs at night and thinks it might be the mattress. This is one to keep in mind, if there is an extra mattress laying around, maybe plywood instead of the planks underneath as you were saying at the extended care facility, maybe foam or something on top of the mattress. Something to look into.
- 3) [REDACTED]-please have her clinician keep a close eye on her. As I've said, often these girls start to regret abortion, and if this comes up, we need to connect her with resources for psychological and / or religious counseling. It's not going to affect some girls right away or at all. If there are any additional updates on her case, I'd like to know.
- 4) If things get dicey with [REDACTED] sponsor, I know a few good families with a heart for these situations who would take her in in a heartbeat and see her through her pregnancy and beyond [REDACTED] said she would accept this if things can't work out with her aunt soon. [REDACTED]

That's all I can think of right now. Thanks again for everything, and for the hard work and dedication of you and your team.

Scott

\*\*\*

E. Scott Lloyd  
U.S. Department of Health and Human Services  
(202) 260-7387  
(202) 868-9192 (cell)

[scott.lloyd@acf.hhs.gov](mailto:scott.lloyd@acf.hhs.gov)



# **Exhibit E**

**Cc:** [REDACTED]  
**Subject:** RE: Heads up: UC requesting pregnancy termination

Great, I will let the staff asking me know. Thank you for the prompt reply.

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**From:** Lloyd, Scott (ACF)  
**Sent:** Tuesday, April 04, 2017 4:31 PM  
**To:** White, Jonathan (ACF)  
**Cc:** [REDACTED]  
**Subject:** Re: Heads up: UC requesting pregnancy termination

Yes-- they were going to a CPC site today and we're going to proceed to discharge according to my understanding.

Thank you,  
Scott

---

On: 04 April 2017 16:06, "White, Jonathan (ACF)" <[Jonathan.White@ACF.hhs.gov](mailto:Jonathan.White@ACF.hhs.gov)> wrote:  
Scott,

Were you able to speak with the pregnant girl at the SWK site (KAMM)? And if so, [REDACTED]  
[REDACTED]

Jonathan

---

**From:** Lloyd, Scott (ACF)  
**Sent:** Saturday, April 01, 2017 8:48 PM  
**To:** White, Jonathan (ACF)  
**Cc:** [REDACTED]  
**Subject:** Re: Heads up: UC requesting pregnancy termination

Thx Jonathan. I'll be in the office Monday and half of Tuesday.

---

On: 01 April 2017 16:47, "White, Jonathan (ACF)" <[Jonathan.White@ACF.hhs.gov](mailto:Jonathan.White@ACF.hhs.gov)> wrote:  
Scott,

[REDACTED]

Jonathan

CDR Jonathan White  
Deputy Director for Children's Programs  
Office of Refugee Resettlement  
Administration for Children and Families

# **Exhibit F**

| Organization Name                           | Address                         | HHS City                                | City         | State | Zip   | Business Phone | Phone        | Email                               |
|---|---------------------------------|---|--------------|-------|-------|----------------|--------------|-------------------------------------|
| First Way Pregnancy Center                  | 3501 N 16th St                  | Phoenix                                 | Phoenix      | AZ    | 85016 |                | 602-261-7522 | bethany@1stway.net                  |
| Reachout Women's Center                     | 2648 N Campbell Ave             | Tucson                                  | Tucson       | AZ    | 85719 |                | 520-321-4300 | director@reachoutwomenscenter.com   |
| International Life Services                 | 2606 1/2 W 8th St               | Los Angeles                             | Los Angeles  | CA    | 90057 | 213-382-2156   | 213-382-2156 | lifeservices@juno.com               |
| Sacramento Life Center                      | 2316 Bell Executive Lane        | Sacramento                              | Sacramento   | CA    | 95825 | 916-451-4357   | 916-451-2273 | info@saclife.org                    |
| Alternatives Pregnancy Resource Ctr         | 1111 Howe Ave Suite 610         | Sacramento                              | Sacramento   | CA    | 95825 | 916-880-4040   | 916-880-4040 | jennifer@alternativespc.org         |
| Pregnancy Support Group of Woodland         | 324 Lincoln Ave                 | Woodland                                | Woodland     | CA    | 95695 |                | 530-661-6333 | psgofwoodland@yahoo.com             |
| Aid for Women, Inc.                         | 8 S Michigan Ave, Ste 812       | Chicago                                 | Chicago      | IL    | 60603 | 312-621-1107   | 312-621-1107 | info@aidforwomen.org                |
| The Women's Center                          | 5116 N Cicero Ave               | Chicago                                 | Chicago      | IL    | 60630 | 773-794-1313   | 773-794-1313 | mstrom@gotwc.org                    |
| The Women's Center                          | 2720 S River Rd, #234           | Des Plaines                             | Des Plaines  | IL    | 60018 |                | 847-803-9620 | cyi@womens-center.org               |
| Pregnancy Center West                       | 5411 Old Frederick Road Suite 1 | Baltimore                               | Baltimore    | MD    | 21229 | 410-788-4434   | 410-788-4433 | pregcenterwest@gmail.com            |
| Pregnancy Center North                      | 6805 York Rd                    | Baltimore                               | Baltimore    | MD    | 21212 |                | 410-377-2871 | cindi@pcnorth.org                   |
| Center for Pregnancy Concerns               | 528 East 22nd Street            | Baltimore                               | Baltimore    | MD    | 21218 | 410-342-6020   | 410-342-6020 | joan@centerforpregnancyconcerns.org |
| HELP Pregnancy Crisis Aid, Inc.             | 705 Bridge St NW                | Grand Rapids                            | Grand Rapids | MI    | 49504 |                | 616-459-9139 | info@helppregnancy.org              |
| Pregnancy Resource Center                   | 415 Cherry Street SE            | Grand Rapids                            | Grand Rapids | MI    | 49503 | 616-259-1500   | 616-456-6873 | james.sprague@prcgr.org             |
| Daybreak Crisis Pregnancy Center            | PO Box 2302                     | Columbia                                | Columbia     | SC    | 29202 |                | 803-771-6634 | life1999@dayspringministries.com    |
| Gladney Center for Adoption                 | 6300 John Ryan Dr               | Fort Worth                              | Fort Worth   | TX    | 76132 | 817-922-6000   | 800-GLADNEY  | karin.matula@gladney.org            |
| Pregnancy Lifeline                          | 4747 S Hulen St, Ste 103        | Fort Worth                              | Fort Worth   | TX    | 76132 | 817-292-6449   | 817-292-6449 | life103@swbell.net                  |
| Pregnancy Help Center                       | 7700-A Camp Bowie West          | Fort Worth                              | Fort Worth   | TX    | 76116 | 817-560-2226   | 817-560-2226 | phcfwtx@att.net                     |
| Care Net PC of Houston - Champions          | 14530 Wunderlich                | Houston                                 | Houston      | TX    | 77069 | 281-444-8554   | 281-766-8554 | nandakirkpatrick@carenetnw.com      |
| Choices Pregnancy Centers                   | 10555 N 58th Dr                 | Glendale                                | Glendale     | AZ    | 85302 |                | 623-486-5232 | lrobbins@cpccphoenix.org            |
| Choices Pregnancy Centers                   | 1818 E Southern Avenue Ste 13A  | Mesa                                    | Mesa         | AZ    | 85204 | 480-733-2740   | 480-733-2740 | sparks@cpccphoenix.org              |
| Maggie's Place                              | PO Box 1102                     | Phoenix                                 | Phoenix      | AZ    | 85001 | 602-262-5555   | 602-262-5555 | cstern@maggiesplace.org             |
| Life Choices Women's Clinic                 | 9303 N. 7th Street, Suite #4    | Phoenix                                 | Phoenix      | AZ    | 85020 | 602-305-5100   | 602-305-5100 | info@lcwcaz.org                     |
| Hope Ultrasound Mobile Unit, Inc.           | 4633 N 54th St Suite 8          | Phoenix                                 | Phoenix      | AZ    | 85018 |                | 602-826-8858 | info@hopeultrasound.org             |
| Life Choices Women's Clinic                 | 3516 W McDowell Rd              | Phoenix                                 | Phoenix      | AZ    | 85009 | 602-305-5100   | 602-305-5100 | info@lcwcaz.org                     |
| The Magdalene House                         | PO Box 1102                     | Phoenix                                 | Phoenix      | AZ    | 85001 |                | 602-257-4648 | themagdalenehouse@maggiesplace.org  |
| The Elizabeth House                         | PO Box 1102                     | Phoenix                                 | Phoenix      | AZ    | 85001 |                | 480-491-0446 | email@maggiesplace.org              |
| The Michael House                           | PO Box 1102                     | Phoenix                                 | Phoenix      | AZ    | 85001 |                | 623-842-1000 | themichaelhouse@maggiesplace.org    |
| The Fiat House                              | PO Box 1102                     | Phoenix                                 | Phoenix      | AZ    | 85001 |                | 602-262-5555 | email@maggiesplace.org              |
| Maggie's Thrift                             | 1517 E McDowell Rd              | Phoenix                                 | Phoenix      | AZ    | 85006 |                | 602-252-1178 | thrift@maggiesplace.org             |
| Pregnancy Resource Clinic of Arizona        | 21050 N Tatum Blvd Suite 200    | Phoenix                                 | Phoenix      | AZ    | 85050 | 480-515-6276   | 480-694-5746 | dgladstone@prcaz.org                |
| New Life Pregnancy Center - Phoenix Central | 3100 W Camelback Rd             | Phoenix                                 | Phoenix      | AZ    | 85017 | 602-515-3526   | 602-515-3526 | info@newlifepregnancy.com           |
| The Hannah House                            | PO Box 1102                     | Phoenix                                 | Phoenix      | AZ    | 85001 |                | 480-292-7240 |                                     |
| New Life Pregnancy Center - Phoenix Metro   | 2632 W Augusta Ave              | Phoenix                                 | Phoenix      | AZ    | 85051 |                | 602-346-2300 | info@newlifepregnancy.com           |
| New Life Pregnancy Center - Phoenix South   | 1431 E Southern Ave             | Phoenix                                 | Phoenix      | AZ    | 85040 |                | 602-243-1614 | info@newlifepregnancy.com           |
| New Life Pregnancy Centers                  | 1779 N. Alvernon Way            | Tucson                                  | Tucson       | AZ    | 85712 |                | 520-795-7541 | info@newlifepregnancy.com           |
| New Life Pregnancy Center - Tucson          | 1779 N. Alvernon Way            | Tucson                                  | Tucson       | AZ    | 85712 |                | 520-795-7541 | info@newlifepregnancy.com           |
| Sac Valley Mobile Medical Clinic            |                                 | Sacramento                              | Sacramento   | CA    | 95816 |                | 916-451-4357 | michelleg@saclife.org               |
| Kendall Pregnancy Help Medical Clinic       | 10100 SW 107 Court              | Near Cutler Bay - Closest for Homestead | Kendall      | FL    | 33176 | 305-274-5105   | 305-274-5105 | jpernia@heartbeatofmiami.org        |
| Aid for Women                               | 1510 N Claremont                | Chicago                                 | Chicago      | IL    | 60622 |                | 773-897-0080 |                                     |
| Aid for Women                               | 5013 S Hermitage                | Chicago                                 | Chicago      | IL    | 60609 |                | 773-432-8230 |                                     |
| Monica's House (Aid for Women)              | 3954 N. Meade Ave               | Chicago                                 | Chicago      | IL    | 64814 |                |              | info@aidforwomen.org                |
| Heather's House (Aid for Women)             | 1150 North River Rd             | Des Plaines                             | Des Plaines  | IL    | 60016 |                | 847-795-3700 | b.ryan@aidforwomen.org              |
| Alpha Women's Center of Grand Rapids        | 1725 Division Ave S             | Grand Rapids                            | Grand Rapids | MI    | 49507 | 616-742-0242   | 616-459-9955 | cgeisel@alphawc.org                 |
| Good Counsel                                | 1157 Fulton Ave                 | Bronx                                   | Bronx        | NY    | 10456 |                | 800-723-8331 |                                     |
| Life Center of Long Island                  | 1767 Deer Park Ave              | Near Syosset                            | Deer Park    | NY    | 11729 |                | 631-243-0066 | lifecenterdp@lifecenterli.org       |
| Bethany Christian Services                  | 1115 Broadway, 10th Fl Ste 1028 | New York                                | New York     | NY    | 10010 |                | 212-714-3550 | bcsmanhattan@bethany.org            |
| Pregnancy Help, Inc.                        | 229 West 14th St                | New York                                | New York     | NY    | 10011 | 212-243-0970   | 212-243-7119 | cathyphi@aol.com                    |
| Gladney Center for Adoption                 | 850 Seventh Ave Suite 801       | New York                                | New York     | NY    | 10019 |                | 212-868-3434 | gongzhan.wu@gladney.org             |
| Bethany Christian Services                  | 6975 SW Sandburg St Ste 155     | Portland                                | Portland     | OR    | 97223 | 503-533-2002   | 503-200-5748 | bcsportland@bethany.org             |
| Bright Hope Pregnancy Support Centers       | 541 E Broad St                  | Bethlehem                               | Bethlehem    | PA    | 18018 |                | 610-821-4000 |                                     |
| House of Hope                               | 1204 Montana Ave                | El Paso                                 | El Paso      | TX    | 79902 | 915-544-9600   | 915-544-9600 | olga@houseofhope-elp.org            |
| Women's Choice Resource Center              | 324 S Rand St                   | Fort Worth                              | Fort Worth   | TX    | 76103 |                | 817-534-9947 | laurileecampbell@gmail.com          |
| LifeHouse of Houston                        | PO Box 27127                    | Houston                                 | Houston      | TX    | 77227 | 713-623-2120   | 713-623-2120 | sue.baumgarten@lifehousehouston.org |
| Gladney Center for Adoption                 | 14530 Wunderlich Dr Suite 201   | Houston                                 | Houston      | TX    | 77069 |                | 281-580-1202 | amy.shore@gladney.org               |
| The Life Center                             | 2101 W. Wall St.                | Closest for Clint                       | Midland      | TX    | 79701 |                | 432-683-6072 | judy@midlandlifecenter.org          |
| Gladney Center for Adoption                 | 410 W Ohio St, Ste 203          | Closest for Clint                       | Midland      | TX    | 79701 |                | 432-563-3344 | elizabeth.garza@gladney.org         |
| Pregnancy Care Center                       | 7210 Louis Pasteur Ste 100      | San Antonio                             | San Antonio  | TX    | 78229 | 210-614-5433   | 210-614-4124 | centerdirector@sapregnancy.org      |
| Life Choices Medical Clinic                 | 3234 Northwestern Dr            | San Antonio                             | San Antonio  | TX    | 78238 | 210-543-7200   | 210-543-7200 | info@lifechoices-sa.com             |
| Any Woman Can                               | 109 Gallery Circle, Ste. 115    | San Antonio                             | San Antonio  | TX    | 78258 |                | 210-370-3939 | info@anywomancansa.com              |

# **Exhibit G**

- 4.) If the UC has not had her ultrasound yet, she should do so at the following place: <http://www.cpcphoenix.org/> If she has had it, she does not need an additional ultrasound, but the grantee / field staff should set up a session of options counseling there.
- 5.) After the options counseling, if the UC still desires the abortion, and it is still within the window for a legal abortion, the UC must obtain parental consent, which will necessitate options counseling with them, plus signed, notarized declaration of consent.
- 6.) The UC should not be meeting with an attorney regarding her termination or otherwise pursuing judicial bypass at this point.

Please continue to update us as the stated guidance is being followed.

If you have any questions please feel free to contact [REDACTED] or me.

| Age Group | Should Take Action (%) | Should Not Take Action (%) |
|-----------|------------------------|----------------------------|
| 18-29     | 85                     | 15                         |
| 30-49     | 85                     | 15                         |
| 50-69     | 85                     | 15                         |
| 70+       | 85                     | 15                         |

From: White, Jonathan (ACF)

Sent: Friday, March 24, 2017 12:04 PM

To: [REDACTED]

Cc: [REDACTED] De LA Cruz, James (ACF); Sualog, Jallyn (ACF); Swartz, Tricia (ACF); [REDACTED]

Subject: FW: Heads up: UC requesting pregnancy termination

\_\_\_\_\_

I am writing to provide follow-up guidance from HHS Policy Team on the UC at SWK Casa Las Palmas who has requested abortion services [REDACTED]

Please see guidance below from Scott Lloyd. It covers next steps. Please let me know if you have any questions but please communicate with the medical provider and management of the shelter regarding these next steps. Don't hesitate to let me know any questions and please have SWK continue to update as plan elements are implemented. It sounds like gestational age is the next big question.

Thank you.

Jonathan

From: Lloyd, Scott (ACF)

Sent: Friday, March 24, 2017 11:21 AM

To: White, Jonathan (ACF)  
Cc: Tota, Kenneth (ACF); Bowman, Matthew (HHS/OGC)  
Subject: RE: Heads up: UC requesting pregnancy termination

Jonathan,

As things stand now, the unborn child is a child our care, so the medical team should continue with standard prenatal care, as I believe is already the procedure.

It looks like there are issues in addition to the pregnancy, as she mentioned suicide and the clinician describes her demeanor as "obnoxious" and "sad." Clinician should work to identify any pressures that might be leading her to desire termination (does she feel pressure to get to work, is there emotional abuse, etc.) and what is leading to her sadness and anger. I am sure some of this work has already commenced, but it bears mention.

Along these same lines, let's make sure that she is aware of the option of having spiritual counseling that is sensitive to her religious preference.

Additionally, if she has not had her ultrasound yet, she should do so at the following place: <http://www.cpcphoenix.org/> If she has had it, she does not need an additional ultrasound, but the grantee / field staff should set up a session of options counseling there.

Once we know the gestational age, that will be material, as it may already be too late to legally obtain an abortion.

After the options counseling, if she still desires the abortion, and it is still within the window for a legal abortion, she must obtain parental consent, which will necessitate options counseling with them, plus signed, notarized declaration of consent.

She should not be meeting with an attorney regarding her termination or otherwise pursuing judicial bypass at this point.

We'll work on formalizing these procedures, but we'll have to do it ad hoc for now.

Thank you,  
Scott

\*\*\*

E. Scott Lloyd  
U.S. Department of Health and Human Services  
(202) 260-7387  
(202) 868-9192 (cell)  
[scott.lloyd@acf.hhs.gov](mailto:scott.lloyd@acf.hhs.gov)

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

# **Exhibit H**



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**From:** De LA Cruz, James (ACF)  
**Sent:** Monday, April 03, 2017 6:01 PM  
**To:** White, Jonathan (ACF)  
**Cc:** Sualog, Jallyn (ACF)  
**Subject:** RE: Kokopelli Client  
**Attachments:** FW: [REDACTED]

Hello Jonathan,

As of this afternoon the program has informed the UC mother and sponsor about the procedure which terminated [REDACTED] pregnancy. The FFS has approved the release and the program is working to transport the girl to her sponsor\brother. I asked the FFS to schedule the transport no sooner than 48 hours from now in the event that Senior Management has another request prior to discharge.

Please also see the attachments sent by the FFS last Friday and today.

James S. De La Cruz  
DHHS/ACF/ORR/DCS  
Senior Federal Field Specialist Supervisor  
Office of Refugee Resettlement  
Division of Children's Services  
Mary E. Switzer Building, 5th Floor (Room: 5223)  
330 C Street SW  
Washington, DC 20201  
Office: 202-690-8477  
Cell: 202-680-9355  
Fax: 202-401-1022  
<http://www.acf.hhs.gov/programs/orr/programs/ucs>

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**From:** White, Jonathan (ACF)  
**Sent:** Thursday, March 30, 2017 1:17 PM  
**To:** De LA Cruz, James (ACF)  
**Cc:** Sualog, Jallyn (ACF)  
**Subject:** Fw: Kokopelli Client

Jim,

Please provide Scott's direction, below, through FFS team to program, re UC pending release at Kokopelli.

Let me know if there are any questions.

Jonathan

CDR Jonathan White  
Deputy Director for Children's Programs  
Office of Refugee Resettlement

Administration for Children and Families  
Incident Commander, Unaccompanied Children Influx Response  
(202) 690-6984 (office)  
(202) 570-8916 (blackberry)  
[Jonathan.white@acf.hhs.gov](mailto:Jonathan.white@acf.hhs.gov)

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**From:** Lloyd, Scott (ACF)  
**Sent:** Thursday, March 30, 2017 1:11:29 PM  
**To:** White, Jonathan (ACF)  
**Subject:** RE: Kokopelli Client

Thank you—the grantee or the federal field staff must notify her parents of the termination in this case.

This should happen alongside of resources to the UAC for post-abortion counseling as part of post-release care.

Please let me know there are any questions.

Scott

---

**From:** White, Jonathan (ACF)  
**Sent:** Wednesday, March 29, 2017 10:07 PM  
**To:** Lloyd, Scott (ACF)  
**Subject:** Fw: Kokopelli Client

On the UC you asked me about today, [REDACTED] she is still physically in our care while her travel arrangements are finalized.

CDR Jonathan White  
Deputy Director for Children's Programs  
Office of Refugee Resettlement  
Administration for Children and Families  
Incident Commander, Unaccompanied Children Influx Response  
(202) 690-6984 (office)  
(202) 570-8916 (blackberry)  
[Jonathan.white@acf.hhs.gov](mailto:Jonathan.white@acf.hhs.gov)

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**From:** De LA Cruz, James (ACF)  
**Sent:** Wednesday, March 29, 2017 9:57:54 PM  
**To:** White, Jonathan (ACF)  
**Subject:** Fw: Kokopelli Client

[REDACTED] informed me the program is still making travel arrangements. She is still physically at the program.

Jsd

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**From:** De LA Cruz, James (ACF)  
**Sent:** Wednesday, March 29, 2017 1:04:10 PM  
**To:** [REDACTED] (ACF)  
**Subject:** RE: Kokopelli - [REDACTED]

Can you find out if she has physically left. If not does she have a travel date.

# **Exhibit I**

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**From:** [REDACTED]  
**Sent:** Friday, March 31, 2017 8:03 PM  
**To:** De LA Cruz, James (ACF)  
**Cc:** [REDACTED]  
**Subject:** FW: [REDACTED]  
**Attachments:** Best Interests Recommendation for [REDACTED] Termination of pregnancy

Mr. De La Cruz,

I have attached the emails forwarded by the program, SWK Kokopelli, and by the assigned UC Child Advocate outlining their concerns in regards to the directives provided by ORR Headquarters in this case. I have reviewed the information and advised that I would be elevating the concerns.

Based on our staffing today, the review of the directives, and to provide clarity to said directives, the program and myself are being directed to:

- (1) Immediately advise the UC that her mother will be notified and provided with information that; UC was impregnated in COO, UC terminated said pregnancy in the United States while in ORR Care despite the UC's affirmative declaration to keep said personal health information confidential.
- (2) Immediately reevaluate the psychological state of UC after said disclosures and assess whether the UC is still willing to pursue placement with the current UC Sponsor, the UC's biological brother.
  - a. If the UC desires to proceed with stated placement, the UC will be advised that the UC Sponsor, the UC's biological brother, will also be advised that; UC was impregnated in COO and further that the UC terminated said pregnancy in the United States while in ORR Care, despite the UC's affirmative declaration to keep said personal health information confidential.
  - b. If the UC refuses to continue with stated placement, the program is to proceed with the disclosures noted in paragraph one and pursue contingent planning for the UC's placement with an alternate sponsor or for UC to continue in ORR care.

[REDACTED]

Thanks for your attention on this matter.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

# **Exhibit J**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

San Francisco Division

AMERICAN CIVIL LIBERTIES UNION  
OF NORTHERN CALIFORNIA,

Plaintiff,

v.

SYLVIA MATHEWS BURWELL, et al.,  
Defendants.

Case No. 16-cv-03539-LB

**ORDER DENYING MOTIONS FOR  
LEAVE TO AMEND AND A  
TEMPORARY RESTRAINING ORDER**

**INTRODUCTION**

The ACLU of Northern California filed a lawsuit — based on taxpayer standing — challenging federal grants to religious organizations for the care of unaccompanied immigrant minors and trafficking victims.<sup>1</sup> Its claim initially was that the Office of Refugee Resettlement (“ORR”) violates the Establishment Clause by its grants to religious groups that refuse to provide unaccompanied minors and trafficking victims with “information about, access to, or referrals for contraception and abortion” services.<sup>2</sup> To challenge the grants, it sued — in their official capacities — the Secretary of Health and Human Services (“HHS”), the Acting Assistant

<sup>1</sup> See generally First Amended Compl. (“FAC”) – ECF No. 57. Record citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

<sup>2</sup> *Id.* at 2–3 (¶¶ 4, 7), 16–19 (¶¶ 56–69).



Secretary of the HHS subdivision called the Administration for Children and Families (“ACF”), and the Director of ORR, which is a subdivision of the ACF.<sup>3</sup>

The ACLU now moves to amend its complaint to add (1) Jane Doe as class representative for a nationwide class of pregnant unaccompanied minors and (2) class claims challenging the government’s obstruction of access to abortion, compelled counseling, and compelled disclosure of the abortion decision to crisis pregnancy centers, parents, and immigration sponsors.<sup>4</sup> The claims are based on the government’s new policies promulgated in March 2017 that prevent shelters from taking any actions facilitating access to abortions — including transportation to medical appointments — without signed approval from the Director of ORR.<sup>5</sup> The government also allegedly forces counseling at anti-abortion crisis pregnancy centers and compels minors to disclose their identities and abortion decisions to those centers, their parents, and their immigration sponsors.<sup>6</sup> The proposed class claims — which seek only injunctive relief — allege violations of the minors’ Fifth Amendment right to privacy and liberty and First Amendment right to be free from compelled speech (by being forced to discuss their decision to have an abortion with a crisis pregnancy center).<sup>7</sup> The proposed amended complaint keeps the earlier Establishment Clause challenge to the federal government’s expenditure of funds but recasts it slightly as a claim by all plaintiffs (as opposed to the earlier claim by the ACLU based on taxpayer standing).<sup>8</sup>

The named plaintiff Jane Doe is a pregnant minor in a federally funded shelter in Texas.<sup>9</sup> It is not a religious shelter.<sup>10</sup> In addition to her claims on behalf of a similarly situated class, she brings a *Bivens* claim against the Acting Assistant Secretary for the ACF and the Director of the ORR,

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<sup>3</sup> *Id.* at 6 (¶¶ 18–20).

<sup>4</sup> *See* Motion for Leave to Amend – ECF No. 82; Proposed Second Amended Compl. (“SAC”) – ECF No. 82-2.

<sup>5</sup> Proposed Second Amended Complaint (“SAC”) – ECF No. 82-2 at 12 (¶¶ 37–38).

<sup>6</sup> *E.g., id.* at 13–14 (¶¶ 43–44).

<sup>7</sup> *Id.* at 27–28 (¶¶ 96–102).

<sup>8</sup> *Id.* at 28–29 (¶¶ 107–114).

<sup>9</sup> *Id.* at 7 (¶ 22).

<sup>10</sup> White Decl. – ECF No. 92-1 at 2 (¶ 4).

claiming that they are blocking her right to an abortion, obstructing that right (for example, by forcing her to visit a crisis pregnancy center, telling her mother about her pregnancy, and trying to force her to talk with her mother about her pregnancy and planned abortion), all in violation of the First and Fifth Amendments.<sup>11</sup> The government impeded Ms. Doe’s initial efforts to obtain an abortion, but ultimately it allowed her to pursue a judicial bypass in lieu of obtaining parental consent for the abortion (as required by Texas law).<sup>12</sup> Thereafter, a Texas state court issued a court order allowing her to obtain an abortion without parental consent.<sup>13</sup> The government will not transport her or allow anyone to transport her for (1) the mandatory pre-counseling that Texas law requires before an abortion or (2) the abortion procedure itself.<sup>14</sup> Ms. Doe thus seeks compensatory and punitive damages and an injunction to allow the mandatory counseling and the abortion and to stop the forced counseling and compelled speech.<sup>15</sup>

The ACLU also moves for a temporary restraining order (“TRO”) (1) directing the federal defendants to transport Ms. Doe — or if Ms. Doe prefers, to allow her guardian or attorney ad litem to transport her — to the abortion provider closest to her shelter to obtain (a) counseling (required by state law) on October 12, 2017, and (b) the abortion procedure on October 13, 2017; (2) temporarily restraining the federal defendants from interfering with or obstructing Ms. Doe’s access to abortion; and (3) temporarily restraining the federal defendants from further forcing Ms. Doe to reveal her abortion decision to anyone, or revealing it to anyone themselves.<sup>16</sup> The government asks the court to deny the motion to amend the complaint on several grounds, including lack of venue and improper joinder, and it asks the court to deny the motion for a TRO.<sup>17</sup>

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<sup>11</sup> SAC – ECF No. 82-2 at 28 (¶¶ 103–106).

<sup>12</sup> *Id.* at 7 (¶ 22).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 28 (¶ 105).

<sup>16</sup> Motion for TRO – ECF No. 84.

<sup>17</sup> Opposition to Motion for Leave to Amend – ECF No. 92; Opposition to Motion for TRO – ECF No. 94.



The court denies the motion for leave to file an amended complaint. The Doe plaintiff is not in this district. The wrongful acts for the new claims did not take place in this district. The new claims are not “closely related” to the venued Establishment Clause claim, and concerns of judicial economy and fairness do not support pendent venue. For similar reasons, permissive joinder is not appropriate under Rule 20(a). Finally, discovery is closed, the deadline to amend the pleadings has passed, and the proposed amended complaint transforms the case at a late date to add new claims and new theories of recovery. The case is better brought as a new lawsuit.

Because the court denies leave to amend, the court denies Ms. Doe’s motion for a TRO without prejudice to her bringing it in a different lawsuit.

### OTHER RELEVANT CONTEXT

The ACLU filed its complaint in June 2016 and challenged the ORR’s funding of religious organizations that care for “unaccompanied immigrant children.”<sup>18</sup> *See* 8 U.S.C. § 1232(b)(1); *see also* 6 U.S.C. § 279(b). The care includes, among other things, routine medical care, family-planning services, and emergency health services.<sup>19</sup> In cases of sexually abused minors, ORR must provide “unimpeded access to emergency medical treatment, crisis intervention services, emergency contraception, and sexually transmitted infections prophylaxis.”<sup>20</sup> 45 C.F.R. § 411.92(a). And if pregnancy results from sexual abuse, the victim must “receive[ ] timely and comprehensive information about all lawful pregnancy-related medical services . . . .”<sup>21</sup> *Id.* § 411.93(d).

ORR provides these services through a network of facilities and shelters.<sup>22</sup> It grants funds to private entities — including religious organizations — to care for the children.<sup>23</sup>

<sup>18</sup> Compl. – ECF No. 1 at 6–7 (¶¶ 20–22).

<sup>19</sup> *Id.* at 8 (¶ 27).

<sup>20</sup> *Id.* at 8 (¶ 28).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 7 (¶ 24).

<sup>23</sup> *Id.* at 2 (¶ 3).

1 In February 2017, the ACLU amended its complaint to add a similar Establishment Clause  
2 challenge to ORR’s funding of religious organizations providing services to victims of human  
3 trafficking.<sup>24</sup>

4 Thus, the lawsuit, as the ACLU framed it in the complaint and the first amended complaint  
5 (“FAC”), was about the religious organizations. The charge was that ORR — in granting funds —  
6 authorized grantees to impose religiously based restrictions on access to reproductive-health care  
7 that the young women were entitled to receive by law.<sup>25</sup> United States Conference of Catholic  
8 Bishops (“USCCB”) is one such religious organization that receives ORR funding and “issues  
9 subgrants to Catholic Charities.”<sup>26</sup> (The court allowed permissive intervention to the USCCB.<sup>27</sup>)  
10 The ACLU sought an injunction ordering the defendants to issue grants “without the imposition of  
11 religiously based restrictions.”<sup>28</sup>

12 The proposed second amended complaint (“SAC”) adds class claims and an individual claim  
13 by Jane Doe that are predicated on the following change to government policy in March 2017:

14 Effective immediately, ORR is requiring grantees to notify ORR through their  
15 assigned Federal Field Staff immediately of any request or interest on any girl’s  
16 part in terminating her pregnancy. A response from ORR Director would be  
17 required before taking any next steps (i.e., scheduling appointments, pursuing a  
18 judicial bypass, or any other facilitative step).

19 Per the policy, “Grantees are prohibited from taking any actions in these cases  
20 without direction and approval from ORR.” Approval for such procedures would  
21 be provided in the form of a signed authorization from the Director of ORR. To  
22 restate and reinforce the existing policy, grantees may not perform Heightened  
23 Medical Procedures without written authorization from the ORR Director, except in  
24 emergency medical situations (as described in Emergency Medical Services).  
25 Grantees should not conduct procedures, or take any steps that facilitate future  
26 appointments without signed written authorization from the ORR Director. Note  
27 that the requirement for written authorization by the ORR Director applies whether  
28 the procedure will be paid for with Federal funds or by other means.

<sup>24</sup> FAC – ECF No. 57 at 16–19 (¶¶ 56–69).

<sup>25</sup> *Id.* at 3 (¶ 7); *see also* Compl. – ECF No. 1 at 3 (¶ 7).

<sup>26</sup> FAC – ECF No. 57 at 3 (¶ 7).

<sup>27</sup> Order Allowing Intervention – ECF No. 58 at 3.

<sup>28</sup> FAC – ECF No. 57 at 22 (Prayer, ¶ 2).

Please ensure close adherence and understanding of the policy. Approval for such procedures can only be authorized by the ORR Director in writing. Failure to adhere to this policy will be a significant issue of non-compliance.<sup>29</sup>

The proposed SAC adds the following class-action claims: (1) the government exerts a veto power over abortion in violation of the Fifth Amendment right to privacy and liberty; (2) compelled counseling violates the First Amendment right against compelled speech (in the form of the minors' disclosing their identities and abortion decisions); and (3) compelled disclosure of this information violates the Fifth Amendment right to informational privacy.<sup>30</sup> It retains the Establishment Clause challenge (slightly recast as a claim brought by all plaintiffs, meaning, the ACLU, Jane Doe, and Jane Doe on behalf of the class).<sup>31</sup> And it adds Jane Doe's *Bivens* claim for damages and injunctive relief.<sup>32</sup>

## ANALYSIS

### 1. Leave to Amend

The main issue is whether the court should grant leave to amend the complaint. The court does not grant leave to amend.

First, venue does not exist here for the new claims under 28 U.S.C. § 1391(e).

In an official-capacity lawsuit against a federal agency, venue is proper in any judicial district:

in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action.

28 U.S.C. § 1391(e).

No defendant resides here. No events or omissions took place here. Jane Doe is in Texas. A "substantial part" of the defendants' allegedly wrongful activities relating to the new claims did not occur here: they occurred in Texas. There are no material acts bearing a "close nexus" to the new claims — so that they can be considered substantial for venue purposes — in the Northern

<sup>29</sup> Amiri Decl., Ex. B – ECF No. 84-3 at 5–6 (ORR Email, March 10, 2017).

<sup>30</sup> SAC – ECF No. 82-2 at 27–28 (¶¶ 96–102).

<sup>31</sup> *Id.* at 28–29 (¶¶ 107–114).

<sup>32</sup> *Id.* at 28 (¶¶ 103–106).

District. *See Martensen v. Koch*, 942 F. Supp. 2d 983, 997 (N.D. Cal. Apr. 30, 2013), *on reconsideration in part*, No. 12-CV-5257-JSC, 2013 WL 4734000 (N.D. Cal. Sept. 3, 2013).

The ACLU contends that the ORR policies apply to all grantees, and two grantee shelters are in the Northern District: Southwest Key Pleasant Hill of Contra Costa County, California, and Catholic Charities of Santa Clara County, CA.<sup>33</sup> Documents show that these shelters have housed pregnant unaccompanied children in the past, and they presumably will in the future.<sup>34</sup> But Jane Doe — the class representative — has no nexus to this district. She suffered no harm here, and no named plaintiff has in this district for the class claims. It is the plaintiffs’ burden to establish venue, and they have not. *Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979); *Kaia Foods, Inc. v. Bellafigiore*, 70 F. Supp. 3d 1178, 1183 (N.D. Cal. 2014).

The next issue is whether the court in its discretion should exercise pendent venue. The court does not find pendent venue.

Venue is proper for the ACLU’s Establishment Clause claim based on its taxpayer standing. If venue is proper as to one claim, a court may exercise pendent venue over the claims that do not have venue if the claims are “closely related” to the venued claim. *See, e.g., United Tactical Sys. LLC v. Real Action Paintball, Inc.*, 108 F. Supp. 3d 733, 753 (N.D. Cal. 2015).

The ACLU argues that the new claims are closely related to the venued claim.<sup>35</sup> But the parties, proof, and theories of liability are different, the common facts do not result in “closely related” claims, and concerns about judicial economy and fairness do not favor adjudicating all claims in one lawsuit.

The ACLU’s best counter-argument is that the new policies inform the Establishment Clause analysis too. The original challenge to the previous administration’s policies for religious grantees changes — from a proof perspective — if the previous administration’s work-around to those grantees no longer exists, and instead, a revised ORR policy precludes any grantee from taking

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<sup>33</sup> Reply – ECF No. 98 at 4–5.

<sup>34</sup> *Id.* at 5 (citing Amiri Decl. in Supp. of Class Certif. Motion, Ex. C-3 – ECF No. 83-6 at 6, Bates No. PRICE\_PROD\_00009730).

<sup>35</sup> Reply – ECF No. 98 at 5.

any facilitative steps — without written approval from the ORR Director — for a minor who wants to end her pregnancy. But that common evidence does not change the court’s conclusion that the new claims are not closely related to the existing Establishment Clause claim.

Another consideration is that the court’s discretionary pendent-venue analysis considers principles of judicial economy, convenience, avoidance of piecemeal litigation, and fairness to the litigants. *See Martensen*, 942 F. Supp. 2d at 998. Venue for the earlier complaints was built entirely on the ACLU’s taxpayer standing. And while the ACLU’s ties here were sufficient for the court to deny the government’s motion to transfer the case to the District of Columbia, the analysis changes with the new claims.<sup>36</sup> In a case where operative facts have not occurred in the forum, a plaintiff’s choice of forum can be given only minimal deference.<sup>37</sup> That consideration in a transfer analysis is similar to the fairness inquiry for pendent venue. Here, it supports not exercising pendent venue over the new claims. The plaintiffs also advance judicial economy and avoiding piecemeal litigation, but when the claims are different, there is limited efficiency to adjudicating all claims here, even if there may be some overlap in evidence and witnesses.

The cases that the ACLU cites in support of pendent venue do not change this outcome. In *United Tactical*, for example, the court found pendent venue over abuse-of-process and malicious prosecution claims (based on events in Illinois) because a conspiracy claim was properly venued here, and the claims were closely related. 108 F. Supp. 3d at 738–39, 755. And in *Martensen v. Koch*, the court found pendent venue over a section 1983 claim involving the same defendant and many of the same events as the venued false-imprisonment claim. 942 F. Supp. 2d. at 998. Again, the claims were closely related. *Id.*

By contrast, here, the new claims are not closely related to the Establishment Clause challenge to ORR’s funding to religious grantees and instead transform the case to a class-action First and Fifth Amendment challenge to ORR’s new policy instructing all grantee shelters to restrict minors’ access to abortion and related health-care services. This is not a case involving a single

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<sup>36</sup> Order – ECF No. 76 at 4–12.

<sup>37</sup> *Id.* at 4.

wrong, common issues of proof, and similar witnesses such that pendent venue advances the interests of judicial economy and fairness.

Also, the pendent-venue cases in this district involve venued claims under 28 U.S.C. § 1391(b). *See Martensen*, 942 F. Supp. 2d at 998. By contrast, the case here involves a venued claim against the government under § 1391(e). § 1391(e) “is designed to permit an action which is essentially against the United States to be brought locally rather than in the District of Columbia as would normally be required if Washington, D.C., is the official residence of the agency sued.” *Gilbert v. DaGrossa*, 756 F.2d 1455, 1460 (9th Cir. 1985) (citing *Stafford v. Briggs*, 444 U.S. 527, 539–40 (1980)). Pendent venue for new and different claims against the government — based only on the venued ACLU claim — arguably is not appropriate procedurally in the way that it might be for related claims in the § 1391(b) cases. And only district courts, and not the Ninth Circuit, have addressed the pendent-venue doctrine. *See Martensen*, 942 F. Supp. 2d at 998 (“While the Ninth Circuit does not appear to have addressed the issue, courts in this District have applied the pendent venue doctrine. . . .”).

Second, permissive joinder is not appropriate either. Persons may join in one action as plaintiffs if:

(A) They assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action.

Fed. R. Civ. P. 20(a).

The ACLU’s argument is similar to its argument for pendent venue: the case involves actions by the same defendants permitting or authorizing shelters to violate a minor’s right to access abortion care and related health services.<sup>38</sup> And it contends that that the case involves just two plaintiffs with substantially similar legal claims that arise from the same factual allegations made against the same defendants.<sup>39</sup> For the reasons that inform the pendent-venue analysis, the court

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<sup>38</sup> Reply – ECF No. 98 at 7–8.

<sup>39</sup> *Id.* at 9.

disagrees. The new claims form a substantially different case that does not have common questions of law and fact with the Establishment clause claim. And while courts construe Rule 20 liberally to “promote trial convenience and expedite the final determination of disputes,” *League to Save Lake Tahoe v. Tahoe Reg’l Planning Agency*, 558 F.2d 914, 917 (9th Cir. 1977), when the new and old claims are based on different facts and different legal theories, joinder does not promote trial convenience or judicial economy.

In sum, the proposed SAC transforms the case by adding new class claims, advancing new theories of liability and recovery, naming individual defendants (in their individual capacity), and adding a representative plaintiff who suffered harm only in Texas. *See Briggs v. United States*, No. 07-CV-5760-WHA, 2009 WL 113387, at \*5 (N.D. Cal. Jan. 16, 2009) (“courts generally hold that the named plaintiffs must satisfy the applicable venue requirements but that *unnamed* plaintiffs need not satisfy those requirements”) (citing *Dukes v. Wal-Mart Stores, Inc.*, No. 01-CV-1902806-MJJ, 2001 WL 1902806, at \*3 (N.D. Cal. Dec. 3, 2001). The Ninth Circuit disfavors amendment when it alters the course of the litigation at a late hour. *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990).

The court recognizes that leave to amend generally is liberally granted. It does not doubt the ACLU’s diligence: these are late-arising claims that it could not have discovered earlier. For this reason, the parties confine their analysis — as they should — to Federal Rule of Civil Procedure 15(a), and not Rule 16(b). Moreover, the court would have no problem allowing an amendment to conform the complaint to the evidence regarding the Establishment Clause claim, even though the deadline to amend the pleadings was in February 2017<sup>40</sup> and fact discovery ended on October 10, 2017.<sup>41</sup> But at this late date, the court does not grant leave to file an amended complaint to add the new claims.

In reaching this conclusion, the court does not rely on the government’s first-to-file argument. The doctrine is discretionary and involves the doctrine of federal comity. *Alltrade, Inc. v. Uniweld*

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<sup>40</sup> Order – ECF No. 41 at 2.

<sup>41</sup> Stipulation – ECF No. 78 at 3.



*Prod., Inc.*, 946 F.2d 622, 623, 628 (9th Cir. 1991); *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94 (9th Cir. 1982); *Ward v. Follett Corp.*, 158 F.R.D. 645, 648 (N.D. Cal. 1994). The one-hour difference in filing times in different venues is negligible. *See Selection Mgmt. Sys., Inc. v. Torus Speciality Ins. Co.*, No. 15-CV-05445-YGR, 2016 WL 304781, at \*3 (N.D. Cal. Jan. 26, 2016). The court does not apply the doctrine.

The *Flores* settlement also does not bar the relief. The government contends only that the settlement agreement provides that Jane Doe can seek relief under the agreement.<sup>42</sup> The ACLU counters persuasively that Jane Doe does not seek to enforce the *Flores* consent decree and instead makes claims under the First and Fifth Amendments.<sup>43</sup>

## 2. The TRO

The court's decision moots the motion for a TRO.

A temporary restraining order preserves the status quo and prevents irreparable harm until a hearing can be held on a preliminary-injunction application. *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 429 (1974). A temporary restraining order is an "extraordinary remedy" that the court should award only when a plaintiff makes a clear showing that it is entitled to such relief. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A temporary restraining order may be issued without providing the opposing party an opportunity to be heard only if "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1)(A).

The standards for a temporary restraining order and a preliminary injunction are the same. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A movant must demonstrate (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm that would result if an injunction were not issued, (3) the balance of equities tips in favor of

<sup>42</sup> Opposition – ECF No. 92 at 10.

<sup>43</sup> Reply – ECF No. 98 at 1.



the plaintiff, and (4) an injunction is in the public interest. *Winter*, 555 U.S. at 22–24. The irreparable injury must be both likely and immediate. *Id.* at 20–21. “[A] plaintiff must demonstrate immediate threatened injury as a prerequisite to preliminary injunctive relief.” *Caribbean Marine Serv. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988).

Before *Winter*, the Ninth Circuit employed a “sliding scale” test that allowed a plaintiff to prove either “(1) a likelihood of success on the merits and the possibility of irreparable injury; or (2) [ ] serious questions going to the merits were raised and the balance of hardships tips sharply in its favor.” *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 731 (9th Cir. 1999) (citation omitted). In this continuum, “the greater the relative hardship to [a movant], the less probability of success must be shown.” *Id.* After *Winter*, the Ninth Circuit held that although the Supreme Court invalidated the sliding scale approach, the “serious questions” prong of the sliding scale survived so long as the movant satisfied the other elements for preliminary relief. *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–32 (9th Cir. 2011). Thus, a preliminary injunction may be appropriate when a movant raises “serious questions going to the merits” and the “balance of hardships tips sharply in the plaintiff’s favor,” provided that the other elements for relief also are satisfied. *Id.* at 1134–35.

Here, the court denied leave to amend the complaint (based on venue, permissive joinder, and timing). Jane Doe is not a plaintiff, and the court thus denies the motion for a TRO without prejudice to Ms. Doe’s asserting it in a different lawsuit.

If the court had granted leave to amend, however, the analysis would be different, and the court would grant the TRO and (1) order the government to transport Ms. Doe — or allow her guardian or attorney ad litem to transport her — to the abortion provider closest to her shelter to obtain (a) counseling (required by state law) on October 12, 2017, and (b) the abortion procedure on October 13, 2017; and (2) temporarily restrain the government from interfering with or obstructing Ms. Doe’s access to abortion. (The court would defer until a preliminary-injunction hearing the third issue: whether to restrain the federal defendants from further forcing Ms. Doe to reveal her abortion decision to anyone, or revealing it to anyone themselves.) The government’s legitimate interest cannot justify actively preventing a woman from getting an abortion. *Planned*

*Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 877 (1992) (“the means chosen by the State to further the interest in potential life must be calculated to inform the woman’s free choice, not hinder it”). Its argument that Ms. Doe — unlike a prisoner — can exit custody, depart the United States, and thereafter pursue an elective abortion<sup>44</sup> — is speculative and unpersuasive. The government concedes, as it must, that prisoners are entitled to abortions.<sup>45</sup> Similarly, those detained by Immigration and Customs Enforcement have a legal right to an abortion. 28 C.F.R. § 551.23. The government may not want to facilitate abortion,<sup>46</sup> but it cannot block it. It is doing that here. Standing aside — and not any facilitative step — is all that is required of the government and its grantees because her guardian or attorney ad litem can transport Ms. Doe.<sup>47</sup> There is no justification for restricting Ms. Doe’s access. “There is a basic difference between direct state interference with a protected activity and state encouragement of an alternative activity consonant with legislative policy.” *Maier v. Roe*, 432 U.S. 464, 475 (1977).

### CONCLUSION

The court denies the motion for leave to amend and denies the motion for a TRO without prejudice to Jane Doe’s asserting it in a different lawsuit. This disposes of ECF Nos. 82 and 84. The court denies the motion for class certification at ECF No. 83 as moot. The court grants the motion at ECF No. 96 for leave to file an amicus brief.

**IT IS SO ORDERED.**

Dated: October 11, 2017




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LAUREL BEELER  
United States Magistrate Judge

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<sup>44</sup> Opposition – ECF No. 94 at 6.

<sup>45</sup> *Id.* at 9.

<sup>46</sup> *Id.* at 11.

<sup>47</sup> Reply – ECF No. 97 at 10.

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

|   |   |            |
|---|---|------------|
| ROCHELLE GARZA, as guardian ad litem to | ) |            |
| unaccompanied minor J.D., on behalf of  | ) |            |
| herself and others similarly situated,  | ) |            |
|   | ) | No. 17-cv- |
| Plaintiff,                              | ) |            |
|   | ) |            |
| v.                                      | ) |            |
|   | ) |            |
| ERIC D. HARGAN, <i>et al.</i> ,         | ) |            |
|   | ) |            |
| Defendants.                             | ) |            |
|   | ) |            |

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**[PROPOSED]  
TEMPORARY RESTRAINING ORDER**

Upon consideration Plaintiff's application for a temporary restraining order, and any opposition, reply, and further pleadings and argument submitted in support thereof, or in opposition thereto;

It appearing to the Court that Plaintiff is likely to succeed on the merits of her action, that unaccompanied minor J.D. will suffer the irreparable injury of violation of her First and Fifth Amendment rights and, at a minimum, increased risk to her health, and perhaps the permanent inability to obtain a desired abortion to which she is legally entitled, if Defendants are not immediately restrained from preventing her from being transported to the abortion facility, otherwise interfering with or obstructing her access to abortion, forcing her to disclose her abortion decision against her will or disclosing her decision themselves, forcing her to obtain pre- and/or post-abortion counseling from an anti-abortion entity, and/or retaliating against her for her abortion decision, that the Defendants will not be harmed if such an order is issued, and that the public interest favors the entry of such an order, it is, therefore,

ORDERED that Plaintiff's application for a temporary restraining order is hereby GRANTED; and Defendants Eric Hargan, Steven Wagner, and Scott Lloyd (along with their

respective successors in office, officers, agents, servants, employees, attorneys and anyone acting in concert with them) are, for fourteen days from the date and time shown below, hereby:

1. Required to transport J.D. to an abortion provider closest to J.D.'s shelter to obtain counseling required by state law on October 19, 2017, and the abortion procedure on October 20, 2017 and/or October 21, 2017, as dictated by the abortion providers' availability and what is medically required. If J.D. prefers to be transported to either or both appointments by her guardian or attorney ad litem, Defendants are ordered to permit J.D. to depart the shelter with such person(s) for that purpose on those dates. If transportation to the nearest abortion provider requires J.D. to travel past a border patrol checkpoint, Defendants are restrained from interfering with her ability to do so and are ordered to provide any documentation necessary for her to do so;

2. Temporarily restrained from interfering with or obstructing J.D.'s access to abortion counseling or abortion;

3. Temporarily restrained from further forcing J.D. to reveal her abortion decision to anyone, or revealing it to anyone themselves;

4. Temporarily restrained from retaliating against J.D. based on her decision to have an abortion;

5. Temporarily restrained from retaliating or threatening to retaliate against the contractor that operates the shelter where J.D. currently resides for any actions it has taken or may take in facilitating J.D.'s ability to access abortion counseling and abortion; and it is further

ORDERED that Plaintiff shall not be required to furnish security for costs.

Entered on October \_\_\_\_, 2017 at \_\_\_\_\_ a.m./p.m.

By: \_\_\_\_\_  
United States District Judge

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

|   |   |            |
|---|---|------------|
| ROCHELLE GARZA, as guardian ad litem to | ) |            |
| unaccompanied minor J.D., on behalf of  | ) |            |
| herself and others similarly situated,  | ) |            |
|   | ) | No. 17-cv- |
| Plaintiff,                              | ) |            |
|   | ) |            |
| v.                                      | ) |            |
|   | ) |            |
| ERIC D. HARGAN, <i>et al.</i> ,         | ) |            |
|   | ) |            |
| Defendants.                             | ) |            |
|   | ) |            |

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**[PROPOSED] PRELIMINARY INJUNCTION**

Upon consideration of the moving papers submitted by Plaintiff, on behalf of herself and the Plaintiff Class, in support of her motion for a preliminary injunction, and any opposition, reply, and further pleadings and argument submitted in support thereof, or in opposition thereto;

It appearing to the Court that Plaintiff is likely to succeed on the merits of her action, that J.D. and other members of the Plaintiff Class will suffer the irreparable injury of violation of their First and Fifth Amendment rights if Defendants are not immediately enjoined from obstructing or interfering with her and Plaintiff Class members' access to abortion, forcing them to disclose their abortion decision against their will or disclosing the decision themselves, forcing them to obtain pre- and/or post-abortion counseling from an anti-abortion entity, and/or retaliating against them for their abortion decision, Defendants will not be harmed if such an order is issued, and that the public interest favors the entry of such an order, it is, therefore,

ORDERED that Plaintiff's motion for a preliminary injunction is hereby GRANTED; and the Defendants Eric Hargan, Steven Wagner, and Scott Lloyd (along with their respective successors in office, officers, agents, servants, employees, attorneys and anyone acting in concert with them) are, until further order of the Court, hereby:

1. Enjoined from interfering with, obstructing, or preventing J.D. and/or any other pregnant unaccompanied minor in federal custody from accessing pregnancy related care,

including but not limited to accessing non-directive options counseling, accessing medical appointments related to pregnancy dating, attempting to obtain a judicial bypass, or accessing an abortion procedure;

2. Enjoined from forcing, coercing, or requiring J.D. and/or any other pregnant unaccompanied minor in federal custody, or upon release from federal custody, to obtain “counseling” from an anti-abortion entity, including a crisis pregnancy center or “pregnancy resource center” either before or after the abortion;

3. Enjoined from forcing, coercing, or requiring J.D. and/or any other pregnant unaccompanied minor in federal custody, or upon release from federal custody, to notify anyone of their abortion decision, either before or after the abortion, and from disclosing J.D.’s and/or any other pregnant unaccompanied minor’s abortion decision, either before or after the abortion, to the minor’s family or immigration sponsor;

4. Enjoined from individually coercing or attempting to “persuade” J.D. and/or any other pregnant unaccompanied immigrant minor in federal custody to carry a pregnancy to term;

9. Enjoined from retaliating against J.D. and/or any other pregnant unaccompanied immigrant minor in federal custody based on her decision to have an abortion;

10. Enjoined from retaliating or threatening to retaliate against any contractor that operates a shelter where members of the Plaintiff Class reside for any actions they have taken or may take in facilitating a class member’s ability to access abortion counseling and abortion; and it is further

ORDERED that Plaintiff shall not be required to furnish security for costs.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
United States District Judge

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

|   |   |                  |
|---|---|------------------|
| ROCHELLE GARZA, as guardian ad litem to     | ) |                  |
| unaccompanied minor J.D., on behalf of J.D. | ) |                  |
| and others similarly situated,              | ) | Civil No. 17-cv- |
|   | ) |                  |
| Plaintiff,                                  | ) |                  |
|   | ) |                  |
| v.  | ) |                  |
|   | ) |                  |
| ERIC D. HARGAN, <i>et al.</i> ,             | ) |                  |
|   | ) |                  |
| Defendants.                                 | ) |                  |
|   | ) |                  |

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**CERTIFICATE OF COUNSEL REQUIRED BY LOCAL RULE 65.1(a)**

Pursuant to Local Rule 65.1(a), the undersigned counsel for Plaintiff hereby certifies as follows:

(1) Copies of all pleadings and papers filed in this action to date, or to be presented to the Court at the hearing on the application for a Temporary Restraining Order, have been delivered to Defendants by email addressed to Peter J. Phipps, Senior Trial Counsel, United States Department of Justice, Civil Division, Federal Programs Branch, and Daniel VanHorn, Chief, Civil Division, United States Attorney's Office for the District of Columbia, at approximately 12:11 p.m. on October 13, 2017. A copy of the summons and file-stamped papers will be hand-delivered to the United States Attorney's Office promptly after receiving summonses from the Clerk of Court.

(2) The attorneys listed above have been notified that the time of presenting the application for the temporary restraining order to the Court has not yet been set by the Court; the attorneys listed above will be notified as soon as it is.

DATED: October 13, 2017

Respectfully submitted,

/s/ Arthur B. Spitzer

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*\*Admission for pro hac vice forthcoming  
Attorneys for Plaintiff*

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [ACLU Class Action Takes on Government's Block on Abortions for Unaccompanied Immigrant Minors](#)

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