

Congress of the United States
Washington, DC 20515

October 16, 2017

Eric Hargan
Acting Secretary
Health and Human Services
200 Independence Ave SW
Washington, D.C. 20201

Dear Acting Secretary Hargan,

We demand that the Department of Health and Human Services, and specifically its Office of Refugee Resettlement (ORR), immediately abide by the Constitution and state child welfare law, and allow unaccompanied immigrant children (UACs) to obtain critical healthcare services. We understand that ORR has denied UACs the opportunity to obtain comprehensive reproductive health services (including abortions) and has overruled guardian ad litem conclusions that these services are in the “best interest of the child.”

ORR’s actions are in violation of the federal government’s legal obligations under the *Flores v. Reno* Settlement Agreement. Pursuant to that Agreement, the federal government must provide “appropriate routine medical...care,” including “family planning services[] and emergency health care services.” However, according to a March 2017 memo from the then Acting ORR Director, ORR prohibits federally funded shelters from taking “any action that facilitates” abortion access for unaccompanied minors without “direction and approval from the Director of ORR.” We understand that ORR has gone beyond this anti-facilitation policy and actively blocked UACs from obtaining legal reproductive health care services. Moreover, ORR appears to have implemented a practice in violation of *Flores* requiring UACs that have requested abortion services to meet with an HHS-approved site, of which many are “anti-abortion crisis pregnancy centers” [that] “do not provide information about pregnancy options in a neutral way.”¹ ORR cannot veto anyone’s decision to have an abortion and must comply with the Constitution.

There are several reported cases of ORR preventing UACs access to reproductive healthcare. In one troubling case, a 17-year-old UAC in Texas (“Ms. Jane Doe”) has acquired a judicial bypass, in accordance with Texas state law, to waive parental consent so as to not involve her abusive parents, and yet ORR has reportedly “refused to transport, or allow Ms. Doe to be transported by anyone, to the health center.” Instead, ORR “forced Ms. Doe to visit an anti-abortion crisis pregnancy center where she was forced to undergo an ultrasound for no medical purpose.” There are reports that ORR Director, Scott Lloyd, “has personally contacted unaccompanied immigrant minors...and discussed with them their decision to have an abortion.” Mr. Lloyd is not a physician and does not appear to have any relevant medical training that would make it appropriate for him to provide health-related counseling to an individual. In another case, a UAC who obtained a judicial bypass started her medication abortion but ORR reportedly intervened

¹ *ACLU of Northern California, Jane Doe, on behalf of herself and others similarly situated v. Don Wright, Acting Secretary of Health and Human Services, et al., v. U.S. Conference of Catholic Bishops*

and “forced her to go to an emergency room” to stop the procedure, an act that would put her at risk of sepsis and endanger her health.²

It is troubling to consider that this Administration is imposing its ideological agenda on girls, even when a court heard its appointed guardian ad litem’s recommendation and ruled that she is capable of deciding to have an abortion and that involving her abusive parents is not in her best interest. We do not know Ms. Doe’s particular circumstances, but this is not something that should be legislated or decided by Administration bureaucrats. To force a girl to carry an unwanted pregnancy to term against her expressed will — even after she received approval from a state court and obtained private funding — is wrong and unlawful.

Regardless of this Administration’s views on abortion, the Constitution protects abortion access and it remains the law of the land. This Administration cannot circumvent the Constitution and deny young girls access to their Constitutionally protected rights to health care, including abortion. This violates basic child welfare principles and the law.

We demand that you allow UACs full access to healthcare in line with the findings of appointed guardian ad litem who are trained to make decisions that are in the best interest of the child.

We also ask that you respond to the following questions of inquiry:

1. How many UACs have been denied access to comprehensive reproductive healthcare from January 20, 2017 to present?
2. What is ORR’s legal basis for overruling a judicial bypass and a state appointed guardian ad litem who has intimate knowledge of the child’s situation and has made decisions in line with accepted child welfare principles?
3. Please provide ORR’s current policy regarding UACs and abortion access. From where does ORR derive this authority, particularly given current policy to provide family planning services under *Flores v. Reno*?
4. Is it ORR policy that UACs who have directly requested or expressed interest in obtaining abortion care be required to receive counseling at an HHS-approved site? If so, what is the legal basis for sending these minors to crisis pregnancy centers? Do youth have a choice to attend these sessions with the counselor, and can they refuse to go? What are the criteria for selecting “counseling” providers? How are pregnant UACs notified about reproductive health options?
5. What is ORR’s policy regarding informing parents or requiring sponsors to inform parents of a UAC pregnancy or decision to have an abortion?
6. Many female UACs have been victims of sexual assault or sex trafficking. What are ORR’s policies regarding UACs that report their pregnancy is a result of sexual assault, rape, sex trafficking, or trading sex for food, shelter or other survival needs (survival sex)? Are UACs that are victims of sexual assault, trafficking, or have engaged in survival sex required to receive pregnancy counseling services or “counseling” from the ORR Director?
7. Is the ORR director, Scott Lloyd, offering individualized reproductive healthcare counseling to UACs? Have previous ORR directors engaged in similar levels of

² Ibid.

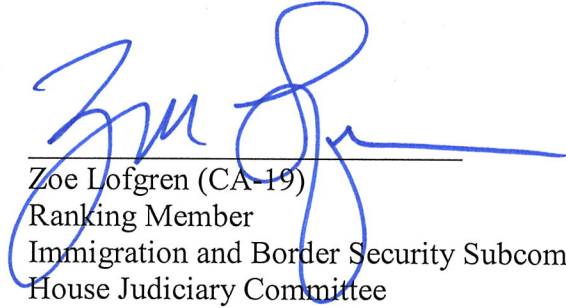
intensive, personal, one-on-one counseling with UACs? If Mr. Lloyd is providing such counseling, what training and qualifications does Mr. Lloyd have in the area of child welfare, child psychology, child trauma (including sexual assault) and reproductive healthcare? Does he offer medical advice? What are his qualifications to provide medical advice? How is this medical advice not a violation of medical licensing standards?

We look forward to your prompt response to this urgent matter.

Sincerely,



Beto O'Rourke (TX-16)
Member of Congress



Zoe Lofgren (CA-19)
Ranking Member
Immigration and Border Security Subcommittee
House Judiciary Committee