

United States Senate
WASHINGTON, DC 20510

October 19, 2017

The Honorable Eric D. Hargan
Acting Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Acting Secretary Hargan,

We write to ask you to immediately cease all undue and improper interference in the health care decisions of young women who have been identified as Unaccompanied Alien Children (“UAC”) or who are otherwise undocumented and in the physical custody of the federal government. These young women often face unimaginable trauma and danger in coming to this country and fleeing violent situations in their home countries. The United States has a moral and legal obligation to ensure that these youth are protected from harm and treated humanely. Reports that the Office of Refugee Resettlement (“ORR”), within the Department of Health and Human Services (“the Department”), is interfering with these young women’s ability to obtain legal health care are deeply disturbing.

According to recent press reports, federal officials within ORR have repeatedly tried to intervene to prevent young women in ORR custody from making their own reproductive health care decisions.¹ A young woman in Texas, Jane Doe, currently in the physical custody of ORR, was prevented from obtaining an abortion, despite having obtained a judicial waiver as required by state law, and securing her own funding and transportation for the care.

While Jane Doe’s case is being considered, we understand her treatment by your agency was not an isolated incident. Since the beginning of the Trump Administration, two ORR directors have tried on multiple occasions to stop young women from obtaining abortions.² ORR Deputy Director Kenneth Tota, who served as the Office’s Acting Director prior to Lloyd’s appointment, reportedly tried to stop a medication abortion already in progress.³

Current ORR Director Scott Lloyd, who was appointed to the position in late March 2017 and has no medical background, has personally intervened to dissuade young women from having abortions.⁴ Press reports indicate Mr. Lloyd personally ordered ORR staff to prevent a young

¹ Sarah McMammon, *Undocumented Teen Held In Texas Is At The Heart Of An Abortion Fight*, NPR, Oct. 13, 2017, available at <http://www.npr.org/sections/thetwo-way/2017/10/13/557621415/undocumented-teen-held-in-texas-is-at-the-heart-an-abortion-fight>

² Renuka Rayasam, *Trump official halts abortions among undocumented, pregnant teens*, Politico, Oct. 16, 2017, available at <http://www.politico.com/story/2017/10/16/undocumented-pregnant-girl-trump-abortion-texas-243844>

³ *Id.*

⁴ Maria Sacchetti and Sandhya Somashekhar, *An undocumented teen is pregnant and in custody. Can the U.S. stop her from getting an abortion?*, Wash. Post, Oct. 17, 2017, available at

woman from speaking with her attorneys and has threatened to withdraw funding from shelters that fail to comply with his directives.⁵ Allegedly, Mr. Lloyd also directly advised shelter staff that he could get involved in placing a pregnant young woman with a different family than her relative sponsor if things got “dicey” with her continuing the pregnancy.⁶

ORR is charged with the care of unaccompanied children under federal law and must comply with the legal obligations under the *Flores* Agreement. The use of these coercive tactics is unacceptable and raises significant concerns about whether the federal government is unlawfully blocking pregnant youth from obtaining legal reproductive health care services in violation of the *Flores* Agreement and possibly the Fourth Amendment.

Additionally, the lack of transparency and accountability in carrying out a change in headquarters and field operations is startling. These actions appear to completely flout the Department’s current written practices and give the appearance that the Department is violating federal law. For instance, *ORR Guide: Children Entering the United States Unaccompanied* (“ORR Guide”), states, “ORR has developed its health care policies with the goals of ensuring the children’s physical and mental well-being.”⁷ Specifically, the ORR Guide states the program provides the following services: “Family planning services, including pregnancy tests and comprehensive information about and access to medical reproductive health services and emergency contraception.” Moreover, reports that federal officials are actively blocking young women from leaving facilities in order to obtain health care, preventing them from speaking with attorneys, and interfering with access to medication are particularly disturbing in light of the high rates of violence, sexual assault, and human trafficking that they experience in the countries they are fleeing,⁸ as well as during the dangerous journey to the U.S.⁹

In order to ensure your agency is complying with all applicable federal law and the United States Constitution, we request an immediate briefing on the concerns raised in this letter. Please also provide the following documents prior to that briefing by no later than October 31, 2017:

https://www.washingtonpost.com/local/immigration/an-undocumented-teen-is-pregnant-and-in-custody-can-the-us-stop-her-from-getting-an-abortion/2017/10/17/6b548cda-b34b-11e7-9e58-e6288544af98_story.html?utm_term=.10e6d7d21314 (quoting an HHS official: “When there’s a child in the program who is pregnant, he has been reaching out to her and trying to help as much as possible with life-affirming options.”).

⁵ Renuka Rayasam, *Trump official halts abortions among undocumented, pregnant teens*, Politico, Oct. 16, 2017, available at <http://www.politico.com/story/2017/10/16/undocumented-pregnant-girl-trump-abortion-texas-243844>

⁶ Id.

⁷ *ORR Guide: Children Entering the United States Unaccompanied*, Office of Refugee Resettlement, Office of the Administration of Children & Families, Department of Health and Human Services, Jan. 30, 2015, available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied>

⁸ Ioan Grillo, *A tough road north for Central American children*, UNHCR, Dec. 9, 2016, available at <http://www.unhcr.org/afr/news/latest/2016/12/583ee5ee4/tough-road-north-central-american-children.html>; Testimony of Scott Lloyd stating that 95 percent of Unaccompanied Immigrant Minors arriving in the United States in FY2016 are from Guatemala, Honduras or El Salvador, <https://www.judiciary.senate.gov/imo/media/doc/06-21-17%20Lloyd%20Testimony.pdf>

⁹ Valeria Luiselli, *Riding ‘the beast’: children migrants reveal full horror of their journeys to America*, The Guardian, Oct. 5, 2017, available at <https://www.theguardian.com/inequality/2017/oct/05/riding-the-beast-child-migrants-reveal-full-horror-of-their-journeys-to-us>

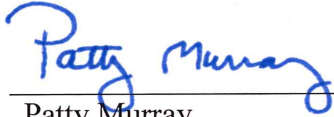
1. The current ORR policy regarding the provision of medical services, including abortion access, to minors in ORR custody, including any changes since January 20, 2017 to Section 3.4: Medical Services in the ORR Guide for Children Entering the United States Unaccompanied, and any other section pertaining to medical care for minors in ORR custody.
2. Memoranda, guidance, and all documents assessing the legality of any changes since January 20, 2017, which affect the provision of medical services, including abortion access, to minors in ORR custody.
3. The current ORR policy regarding informing parents or guardians of UACs of pregnancy or a decision to seek an abortion.
4. The current ORR policy regarding counseling services for UACs who are seeking abortion care, including the criteria for selecting counseling providers, any directive from ORR regarding the content of counseling, and, specifically, any policy requiring mandatory visits to so-called “crisis pregnancy centers.”
5. All correspondence to and from former Acting ORR Director Kenneth Tota and ORR Director Scott Lloyd with ORR staff, and shelter provider staff regarding pregnancy, reproductive health, emergency contraception, or related medical care for UACs within ORR custody, including correspondence in which Mr. Tota or Mr. Lloyd inquired about or directed health care decisions for individual patients.
6. All current memoranda, guidance, and documents assessing the compliance of all ORR facilities housing UACs with federal law requiring emergency health care services.
7. All current memoranda, guidance, and documents assessing ORR’s compliance with the *Flores v. Reno* settlement agreement, including its obligation to provide family planning services.
8. All current memoranda, guidance, and documents assessing ORR’s compliance with the 2014 interim final rule on “Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children.”

Rather than personally interfering with health care decisions, ORR facilities and staff should be facilitating access to health care for those in the government’s custody, including any UAC that has experienced sexual assault, and ensuring these children have access to all emergency medical treatment, including emergency contraception and sexually transmitted infections prophylaxis.¹⁰ Forcing a young woman, especially one who has been sexually assaulted, to continue a pregnancy against her will exacerbates the trauma she has already experienced.

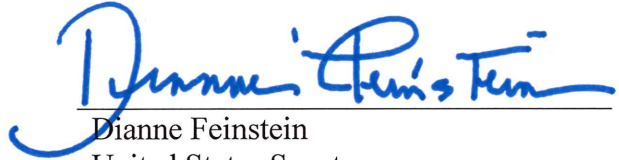
¹⁰ 45 CFR 411.92(a)

Thank you in advance for your prompt attention to this critical matter. If you have any questions, or would like to further discuss compliance with this request, please contact HELP Committee Ranking Member Murray's counsel, Laurel Sakai, at 202-224-7675 and Judiciary Committee Ranking Member Feinstein's immigration counsel, Jenn Piatt, at 202-224-9480.

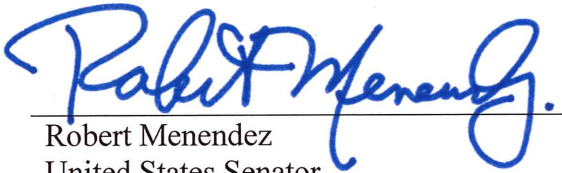
Sincerely,



Patty Murray
United States Senator



Dianne Feinstein
United States Senator



Robert Menendez
United States Senator



Richard Blumenthal
United States Senator