

United States Senate

WASHINGTON, DC 20510

November 10, 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 remain concerned by the actions of the Office of Refugee Resettlement (ORR) to attempt to prevent unaccompanied minors from obtaining legal health care while in the custody of the federal government. Last month, the D.C. Court of Appeals ruled that ORR may not interfere with the ability of Jane Doe, a 17-year-old girl in Brownsville, TX, to get an abortion. While the Court ensured Jane was able to make her own health care decisions, the circumstances surrounding her care are unfortunately not unique. We continue to be concerned that ORR's implementation of policies and procedures regarding care for minors in the federal government's custody is inconsistent with federal law and best practices to provide for the care of minors.

We are extremely disturbed by the continued reports of intervention in the medical care of minors in ORR custody by ORR Director Scott Lloyd and other Trump Administration officials. ORR has indicated that Lloyd is personally reviewing the request of any minor seeking an abortion. This system enables Lloyd to impose his own extreme views, which include arguing that the use of contraception leads to abortion and suggesting that women should have to sign a pledge to never have an abortion before receiving birth control from a Title X-funded clinic, on all minors in ORR custody.¹ In one case, Director Lloyd emailed his staff insisting that a young woman receive an ultrasound at a particular crisis pregnancy center (CPC),² whose mission is "to turn the hearts of mothers to their children, and the hearts of parents to their Heavenly Father."³ CPCs provide false and misleading information to pregnant women to dissuade them from exercising their legal reproductive rights, sometimes denying them information about abortion providers or even about birth control.⁴ Lloyd also directed staff to interfere with a young woman's access to legal counsel, writing to his staff that she "should not be meeting with an attorney regarding her termination or otherwise pursuing judicial bypass."⁵ Troublingly, Lloyd was intervening in cases several weeks before he was named as head of the Office.⁶ There is no reason for political appointees, including Director Lloyd, to be involved in those decisions.

¹ <https://ethikapolitika.org/2011/04/04/facts-on-abortion-why-you-cant-be-pro-life-and-pro-contraception/>;
http://www.ncregister.com/site/article/bailing_out_abortionists

² E-mail from Scott Lloyd (ACF) to Jonathan White (ACF), Subject: FW: Heads up: UC requesting pregnancy termination (Mar. 24, 2017).

³ <http://www.cpcphoenix.org/what-we-do/>

⁴ <https://www.chsourcebook.com/articles/waxman2.pdf>

⁵ See note 2.

⁶ E-mail from Scott Lloyd (ACF) to [Redacted], Subject: Quick Thoughts (Mar. 14, 2017).

ORR has defended Director Lloyd's actions, stating, "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. ... He by law has custody of these children, and just like a foster parent, he knows that that's a lot of responsibility and he is going to make choices that he thinks are best for both the mother and the child."⁷ This is, without a doubt, an abuse of the role of the ORR Director. The responsibilities of the Director are defined in statute, which makes clear that the ORR Director's role is in coordinating and implementing the Unaccompanied Alien Children (UAC) Program.⁸ The law in no way suggests that minors in the UAC Program are in the custody of the ORR Director or should be denied access to an attorney representing the child.

We also have serious concerns about whether ORR is taking adequate measures to maintain the privacy of minors in their custody. The ORR Policy Guide states, "In order to ensure the privacy and security of the children in its care, ORR and its grantees do not discuss specific cases or individuals with members of the media or others."⁹ We have seen several instances in which Administration officials have failed to take the appropriate care in protecting minors' privacy, including by providing details of individual cases in widely circulated memos. The Jane Doe case is another unfortunate example, in which the media had information about the young woman's whereabouts, the dates of her arrival in the United States, and the dates of her court appearances. Given this information, a trafficker could conceivably have identified Jane Doe. ORR has also been contacting parents or guardians in their home countries against the will of the young women in ORR custody. On at least two separate occasions, ORR staff or grantees (at the direction of ORR leadership) notified parents of their daughters' plans for an abortion, after the young women had obtained judicial bypass in order to avoid notifying their parents.¹⁰

Finally, we are concerned that ORR is violating the *Flores v. Reno* agreement when matching minors to sponsors, delaying access to medical care, and suggesting UACs should not be meeting with an attorney, particularly in instances where Administration officials are attempting to identify potential anti-choice sponsors. In an email, Director Lloyd wrote, "If things get dicey with [her] 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."¹¹ The email notes that the young woman's aunt has already been identified as a potential sponsor. The 1997 *Flores* agreement was the result of litigation over detention policies for UACs and established national standards regarding the detention, release, and treatment of UACs.¹² The *Flores* agreement and subsequent regulations clearly dictate the order of preference in which a UAC should be placed with a sponsor: (1) Parent; (2) Legal guardian; (3) Adult relative (brother, sister, aunt, uncle or grandparent); (4) An adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being through a declaration.¹³ It is only in cases where none of the above individuals can be identified that ORR may look to other individuals,

⁷ https://www.washingtonpost.com/news/post-nation/wp/2017/10/26/the-trump-official-who-tried-to-stop-a-detained-immigrant-from-getting-an-abortion/?utm_term=.48ba825e9ec2

⁸ 8 USC 1522; 6 USC 279.

⁹ <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-5#5.1.1>

¹⁰ https://www.aclu.org/sites/default/files/field_document/10.13.17_doc_1-12_memo_iso_tro_pi.pdf

¹¹ E-mail from Scott Lloyd (ACF) to [Redacted], Subject: Quick Thoughts (Mar. 14, 2017).

¹² <https://lirs.org/wp-content/uploads/2014/12/Flores-Family-Detention-Backgrounder-LIRS-WRC-KIND-FINAL1.pdf>

¹³ *Flores v. Reno*, 1997; 8 CFR 236.3

entities, or licensed programs willing to accept legal custody. The apparent willingness of the ORR Director to disregard a legally binding agreement and substitute his own misguided and ill-informed judgement is troubling.

The UAC Program is tasked with providing a safe and appropriate environment to minors in its custody, providing for their medical care, and complying with the law. ORR is failing at this mission by denying access to legal health care, undermining privacy, denying access to attorneys, and potentially identifying sponsors in violation of the law. We therefore reiterate our request for a briefing and for the following documents:

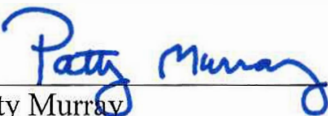
1. The current ORR policy regarding the provision of medical services, including abortion access, to minors in ORR custody, including any changes since January 20, 2017 to Section 3.4: Medical Services in the ORR Guide for Children Entering the United States Unaccompanied, and any other section pertaining 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. 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."
4. 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.
5. All current memoranda, guidance, and documents assessing the compliance of all ORR facilities housing UACs with federal law requiring emergency health care services.
6. All current memoranda, guidance, and documents assessing ORR's compliance with the *Flores* settlement agreement, including its obligation to provide family planning services.
7. 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."

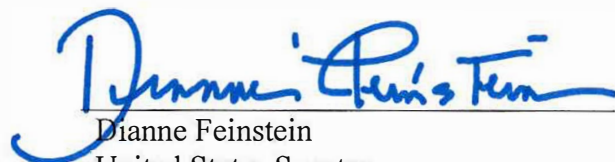
In addition, please provide the following documents by no later than November 25, 2017:

8. In regards to questions 1 through 4 above, any procedures, including identifying any changes to such procedures since January 20, 2017, that ORR is currently using relating to matters for which ORR policies were requested in our prior correspondence.
9. The current ORR policy and procedures, including any changes since January 20, 2017, regarding the privacy of minors in ORR custody and minors placed with a sponsor.
10. The current ORR policy and procedures, including any changes since January 20, 2017, regarding identification of sponsors for minors in ORR custody, particularly for pregnant UACs.
11. An explanation of why ORR is informing parents or guardians of a UAC's pregnancy instead of placing the UAC with the parent or guardian as a sponsor, consistent with the *Flores* settlement agreement.
12. All correspondence with ORR grantees regarding policies and procedures on:
 - a. the provision of medical services, including abortion access and contraception, to minors in ORR custody;
 - b. informing parents or guardians of UACs of pregnancy or a decision to seek an abortion;
 - c. counseling services for UACs who are seeking abortion care, including the criteria for selecting counseling providers, the content of counseling, and, specifically, and mandatory visits to so-called "crisis pregnancy centers;"
 - d. ensuring the privacy of minors in ORR custody, including steps to prevent disclosing the identity of UACs to traffickers and human smugglers; and
 - e. identifying sponsors for minors in ORR custody, particularly for pregnant young women.
13. All current memoranda, guidance, and documents assessing ORR's compliance with its obligation to provide access to counsel under the *Flores* settlement agreement and subsequent litigation to enforce the agreement.

Thank you in advance for your attention to this critical matter. If you have any questions, or would like to further discuss compliance with this request, please contact Laurel Sakai with Senator Murray's HELP Committee Staff at 202-224-7675.

Sincerely,


Patty Murray
United States Senator

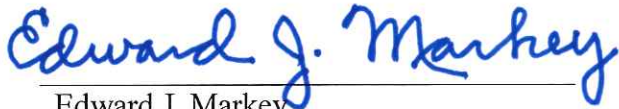

Dianne Feinstein
United States Senator



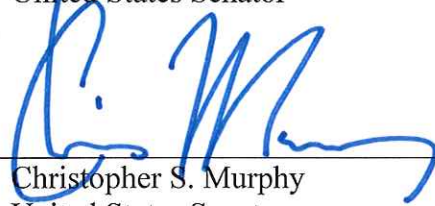
Richard Blumenthal
United States Senator



Al Franken
United States Senator



Edward J. Markey
United States Senator



Christopher S. Murphy
United States Senator



Elizabeth Warren
United States Senator



Kirsten Gillibrand
United States Senator



Sherrod Brown
United States Senator



Margaret Wood Hassan
United States Senator



Brian Schatz
United States Senator




Mazie K. Hirono
United States Senator



Bernard Sanders
United States Senator



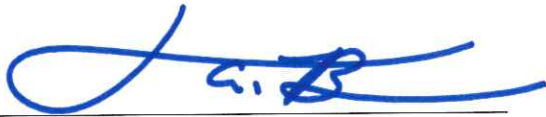
Benjamin L. Cardin
United States Senator



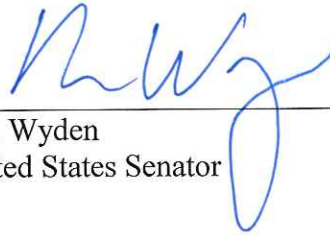
Kamala D. Harris
United States Senator



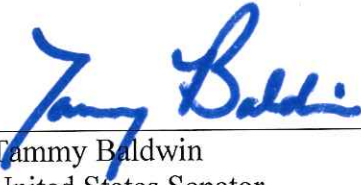
Robert Menendez
United States Senator



Cory A. Booker
United States Senator



Ron Wyden
United States Senator



Tammy Baldwin
United States Senator