

# C A M P A I G N F O R ACCOUNTABILITY

December 17, 2018

**By Fax: (800) 223-8164**

Daniel R. Levinson  
Inspector General  
U.S. Department of Health & Human Services  
PO Box 23489  
Washington, DC 20026

**Re: Request for Investigation of Office of Refugee Resettlement's Handling of Pregnant Unaccompanied Minors**

Dear Mr. Levinson:

Campaign for Accountability (“CfA”) respectfully renews its request for an investigation into the former Director of the Office of Refugee Resettlement (“ORR”), Scott Lloyd,<sup>1</sup> and also requests an investigation of ORR’s current policies and practices regarding access to abortion for pregnant unaccompanied immigrant minors in ORR’s care. CfA’s initial October 20, 2017 complaint described how Mr. Lloyd deliberately misused his position and government resources to violate the law and the constitutional rights of pregnant unaccompanied minors in ORR’s care. Additional documents obtained by CfA appear to further show ORR, at Mr. Lloyd’s direction, improperly impeded a teenage girl’s access to an abortion and encouraged the improper delivery of religious material and counseling to her while in ORR’s custody. For the reasons set out below, CfA believes ORR’s policies as implemented under the direction of Mr. Lloyd violated the law and Mr. Lloyd must be held accountable for his actions. Further, an investigation of ORR’s current policies and practices regarding access to abortion for pregnant unaccompanied immigrant minors is warranted to ensure ORR does not continue to violate the law.

## **Background**

As CfA described in its initial complaint,<sup>2</sup> in March 2017 ORR changed its procedures for handling a request for an abortion by an unaccompanied pregnant minor in ORR’s care. The new policy required the director’s signed authorization before any young woman could access an abortion. As director, Mr. Lloyd forcefully pursued this policy with the goal of denying unaccompanied immigrant minors’ access to abortions.

As reporting and ongoing litigation has revealed, and as was detailed in CfA’s initial complaint, under Mr. Lloyd’s leadership ORR forewent its responsibility to provide reproductive

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<sup>1</sup> While Mr. Lloyd has been removed from his position as ORR Director, he is still a Department of Health and Human Services employee, having been transferred to the Center for Faith and Opportunity Initiatives.

<sup>2</sup> See Exhibit A (Campaign for Accountability Request for Investigation re: Scott Lloyd, Director, Office of Refugee Resettlement (Oct. 20, 2017)), available at <https://www.documentcloud.org/documents/5631842-ORR-IG-Investigation-Complaint-Dec-2018-Exhibit-A.html>.

health services to young persons in its care.<sup>3</sup> Mr. Lloyd personally contacted pregnant minors to discourage them from getting abortions and ordered shelters to only provide “life-affirming options counseling.”<sup>4</sup> Mr. Lloyd also repeatedly directed ORR staff to notify the parents and immigration sponsors of unaccompanied immigrant minors’ pregnancies, even in cases when the minor had requested that the pregnancy remain confidential or expressed concern that informing the parent and/or sponsor might have dangerous repercussions.<sup>5</sup>

On October 20, 2017, CfA filed a complaint requesting that you investigate Mr. Lloyd’s behavior. On December 18, 2017, your office acknowledged receipt of CfA’s complaint,<sup>6</sup> but media reports indicate you declined to initiate an investigation.<sup>7</sup>

CfA recently obtained new emails that describe an additional ORR effort to prevent a pregnant teenager from accessing reproductive healthcare while forcing religious material upon her.<sup>8</sup> These emails show that on January 17, 2018, Mr. Lloyd received an email from Jonathan White, Deputy Director for Children’s Programs at ORR, titled “Update on minor at SWK Campbell requesting TOP.”<sup>9</sup> Mr. White’s email pertained to a sixteen-year-old unaccompanied minor (hereinafter “UAC”) housed at ORR’s SWK Campbell site in Arizona who was pregnant as the result of a rape in her home country.<sup>10</sup>

Mr. White provided information on the “options counseling” UAC received on January 11, 2018 at an HHS-approved CPC called Choices Pregnancy Center.<sup>11</sup> Namely, UAC “was provided with appropriate drawings to color and with Bible verses.”<sup>12</sup> Separately, she “spoke with a pastor from her faith tradition on January 15, 2018.”<sup>13</sup>

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<sup>3</sup> *Id.*; see also Carter Sherman, *How the Trump Administration tries to Stop Undocumented Teens from Getting Abortions*, VICE NEWS (Feb. 28, 2018), available at [https://news.vice.com/en\\_us/article/xw5kvz/exclusive-how-the-trump-administration-tries-to-stop-undocumented-teens-from-getting-abortions](https://news.vice.com/en_us/article/xw5kvz/exclusive-how-the-trump-administration-tries-to-stop-undocumented-teens-from-getting-abortions); see also *Garza v. Hargan*, No. 17-cv-02122 (TSC).

<sup>4</sup> See Exhibit A at 2 (Campaign for Accountability Request for Investigation re: Scott Lloyd, Director, Office of Refugee Resettlement (Oct. 20, 2017)), available at <https://www.documentcloud.org/documents/5628033-ORR-IG-Investigation-Complaint-Dec-2018-Exhibit-A.html>.

<sup>5</sup> *Id.* at 2-3.

<sup>6</sup> See Exhibit B (Letter from Ann C. Wieland to Katie O’Connor acknowledging receipt of CfA’s Request for an Investigation (Dec. 18, 2017)), available at <https://www.documentcloud.org/documents/5628037-ORR-IG-Investigation-Complaint-Dec-2018-Exhibit.html>.

<sup>7</sup> Marcia Coyle, *Ethics Claims Don’t Stick Against Trump HHS Official in Abortion Controversies*, THE NATIONAL LAW JOURNAL (June 1, 2018), available at <https://www.law.com/nationallawjournal/2018/06/01/ethics-claims-dont-stick-against-trump-hhs-official-in-abortion-controversies/?slreturn=20181105103553>.

<sup>8</sup> On November 20, 2018 CfA obtained records from the Department of Health and Human Services in response to a FOIA request filed by CfA on October 27, 2017. Those records contained the relevant communications referenced in this letter, and the subset of relevant records is attached hereto as Exhibit C. The entirety of the November 20, 2018 production is available at: <https://www.documentcloud.org/documents/5628060-2018-11-20-Lloyd-Item-1-10-14-17-8-1-18-Pp-41.html>.

<sup>9</sup> “TOP” stands for “termination of pregnancy.” See Ex. C at <https://www.documentcloud.org/documents/5628038-ORR-IG-Investigation-Complaint-Dec-2018-Exhibit.html> (Jan. 17, 2018 email from Jonathan White to Scott Lloyd and copy to Laura White, Special Assistant to the Director).

<sup>10</sup> *Id.*

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

<sup>12</sup> *Id.* (internal quotations omitted).

<sup>13</sup> See Ex. C at <https://www.documentcloud.org/documents/5628038-ORR-IG-Investigation-Complaint-Dec-2018-Exhibit.html>.

Mr. White further explained that on January 16, 2018, UAC's clinician held two "family sessions" with UAC's parents in her home country.<sup>14</sup> UAC chose to participate in only the first family session, during which the clinician informed UAC's father of his daughter's pregnancy and her request to obtain an abortion.<sup>15</sup> At UAC's request, ORR did not tell her father she had been raped.<sup>16</sup> UAC's father reported that he planned to speak with the girl's mother before deciding whether to accede to her request for an abortion.<sup>17</sup> During the second family session, the UAC's father said that he and UAC's mother supported their daughter's decision to obtain an abortion.<sup>18</sup>

Mr. White summarized the steps taken with respect to UAC's request for an abortion, writing:

All steps outlined by the ORR Director have been completed. Parental notification has been conducted, in which the family expressed support for their daughter to receive the abortion. The minor has received options counseling from an approved provider. The minor has received spiritual counseling from a pastor of her faith group (evangelical Christian). . . . Please advise next steps.<sup>19</sup>

Mr. Lloyd responded by directing Mr. White to ensure that certain additional steps also were taken.<sup>20</sup> Mr. Lloyd ordered Mr. White to inform UAC that "support is readily available" if she "chooses to parent" or "decides to offer the baby for adoption" and that "in some cases, women or minors who have had abortions have expressed regret from having done so, even when pregnancy is the result of sexual assault." He also noted that written examples of such regret could be provided.<sup>21</sup>

These communications, along with those previously reported, reveal that under Mr. Lloyd's direction, ORR sought to prevent unaccompanied minors in its care from accessing reproductive health services, while improperly imposing religious counseling and materials upon them.

### **ORR Failed to Provide Reproductive Health Services**

Abortion is a constitutionally protected reproductive health service,<sup>22</sup> and placing an undue burden on a woman's right to an abortion pre-viability is unconstitutional.<sup>23</sup> The D.C. District Court in *Garza v. Hargan* found that "ORR's policies and practices likely constitute an undue

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

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> See Ex. C at <https://www.documentcloud.org/documents/5628038-ORR-IG-Investigation-Complaint-Dec-2018-Exhibit.html>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See Ex. C at <https://www.documentcloud.org/documents/5628038-ORR-IG-Investigation-Complaint-Dec-2018-Exhibit.html> (Jan. 17, 2018 email from Scott Lloyd to Jonathan White and Laura White).

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

<sup>22</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>23</sup> *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016).

burden on the right of [unaccompanied minors] in ORR custody to make their own reproductive choices.”<sup>24</sup>

ORR’s internal guidelines are in keeping with this, stating that ORR must provide “[a]ppropriate routine medical and dental care, family planning services, including pregnancy tests and comprehensive information about *and access to* medical reproductive health services and emergency contraception” to unaccompanied minors, per the terms of the *Flores* Settlement Agreement.<sup>25</sup> As CfA’s initial complaint explained, the *Flores* settlement’s terms apply to ORR and require ORR’s provision of emergency health care and family planning services.<sup>26</sup>

The documents obtained by CfA demonstrate another instance of Mr. Lloyd violating a pregnant teen’s constitutional rights by attempting to prevent her from accessing an abortion.<sup>27</sup> Further, Mr. Lloyd’s actions in this newly-discovered instance, as well as those previously reported on, clearly violate the *Flores* agreement and the guidelines governing the care that ORR is obligated to provide.

Mr. Lloyd’s most recently discovered interference is particularly egregious as it disregards not only UAC’s decision to have an abortion, but also her parents’ decision to support their daughter’s choice. ORR’s guidelines state that “[c]are providers must comply with all applicable State child welfare laws and regulations and . . . must deliver services in a manner that is sensitive to the age, culture, native language, and needs of each unaccompanied alien child.”<sup>28</sup> Because UAC was housed in Arizona, Arizona law, which provides that a pregnant minor may obtain an abortion with consent from one of her parents, applied.<sup>29</sup> Mr. Lloyd’s continued effort to thwart UAC’s efforts to obtain an abortion—even after her parents explicitly authorized the procedure—is a clear violation of ORR guidelines.

### **ORR Violated the Establishment Clause**

The Establishment Clause of the U.S. Constitution prohibits the federal government from promoting religious teachings or ideas.<sup>30</sup> Nevertheless, Mr. Lloyd and ORR appear to have forced UAC, and likely other young, unaccompanied pregnant immigrant minors to attend meetings with religious leaders and undergo religious so-called health-counseling.

While ORR’s guidelines state that “[i]f an unaccompanied alien child *requests* religious information or other religious items. . . the care provider must provide the applicable materials in

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<sup>24</sup> *Garza v. Hargan*, 304 F. Supp. 3d 145, 164 (D.D.C. 2018), *appeal docketed sub nom., In re Azar*, No. 18-8003 (D.C. Cir. Apr. 12, 2018)

<sup>25</sup> ORR Policy Guide: Alien Children Entering the United States Unaccompanied, Care Provider Required Services, 3.3 (emphasis added), *available at* <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3#3.3>.

<sup>26</sup> See Exhibit A at 5-6 (Campaign for Accountability Request for Investigation re: Scott Lloyd, Director, Office of Refugee Resettlement (Oct. 20, 2017)), *available at* <https://www.documentcloud.org/documents/5628033-ORR-IG-Investigation-Complaint-Dec-2018-Exhibit-A.html>.

<sup>27</sup> See Ex. C at <https://www.documentcloud.org/documents/5628038-ORR-IG-Investigation-Complaint-Dec-2018-Exhibit.html> (Jan. 17, 2018 email from Scott Lloyd to Jonathan White and Laura White).

<sup>28</sup> *Id.*

<sup>29</sup> A.R.S. § 36-2152.

<sup>30</sup> U.S. Const. am. 1.

the unaccompanied alien child's native language,"<sup>31</sup> ORR is not permitted to provide such information or items on its own initiative. Yet, CfA's newly-obtained documents indicate ORR did just that and arranged to transport UAC to Choices Pregnancy Center, whose stated mission is to "turn the hearts of mothers to their children, and the hearts of parents to their Heavenly Father."<sup>32</sup> Then, while there, UAC was handed Bible verses and "appropriate" drawings to color.<sup>33</sup> Further, the documents show Choices Pregnancy Center had been pre-approved by HHS,<sup>34</sup> indicating that ORR sends other young, pregnant unaccompanied minors there—or possibly to other pre-approved, religiously-based CPCs—where they receive counseling and/or materials, possibly beyond what they have requested. ORR's actions appear to violate the Establishment Clause.

Under the Establishment Clause, "one religious denomination cannot be officially preferred over another."<sup>35</sup> A law or act that has no secular purpose and advances religion violates the clause.<sup>36</sup> Neither requiring pregnant immigrant minors to undergo health counseling offered by a religiously-based CPC nor providing these teenagers with Bible verses has any secular purpose.

### Conclusion

In light of the newly obtained evidence, CfA renews its request that the Inspector General investigate Mr. Lloyd's conduct with respect to pregnant young immigrant minors in ORR's care. It appears Mr. Lloyd grossly misused his position as Director of ORR to pursue his own personal and religious agenda, violating constitutional and federal law, and harming the teenage girls his agency is charged with protecting. The fact that Mr. Lloyd has transitioned from his position as ORR Director to a new position in HHS's Center for Faith and Opportunity Initiatives is irrelevant. He must be held accountable for his misconduct and prevented from using his new position to interfere further with the rights of unaccompanied immigrant minors.

CfA also requests an investigation into ORR's current policies and practices to determine whether pregnant unaccompanied immigrant minors still are being subjected to the same tactics employed when Mr. Lloyd served as director. The long and growing wait times for responses from HHS to Freedom of Information Act requests mean that the public will not be able to review documents related to ORR's current treatment of pregnant teens for many months or even years.<sup>37</sup>

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<sup>31</sup> ORR Policy Guide: Alien Children Entering the United States Unaccompanied, Care Provider Required Services, 3.3 (emphasis added), *available at* <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3#3.3>.

<sup>32</sup> *The Heart of CPC: Serving God through Loving and Serving Hurting People*, CPC OF GREATER PHOENIX, *available at* <https://www.cpcphoenix.org/what-we-do/>.

<sup>33</sup> See Ex. C at <https://www.documentcloud.org/documents/5628038-ORR-IG-Investigation-Complaint-Dec-2018-Exhibit.html> (Jan. 17, 2018 email from Jonathan White to Scott Lloyd and copy to Laura White, Special Assistant to the Director).

<sup>34</sup> *Id.*

<sup>35</sup> *Aziz v. Trump*, 234 F. Supp. 3d 724, 733-34 (E.D. Va. 2017) (quoting *Larson v. Valente*, 456 U.S. 228, 244 (1982)).

<sup>36</sup> See *Lemon v. Kurtzman*, 403 U.S. 602 (1971) (state aid to church-related educational institutions violate the Establishment Clause); see also *McCreary County v. ACLU*, 545 U.S. 844 (2005) (displays of the Ten Commandments in county courthouses have primarily religious purposes and therefore violate the Establishment Clause); see also *Santa Fe Indep. Sch. Dist. V. Doe*, 530 U.S. 290 (2000) (student led prayers before football games constitute public speech and therefore violate the Establishment Clause).

<sup>37</sup> See C.J. Ciaramella, *The Sorry State of FOIA: More than 50 Years Later, It Is a Wheezing, Arthritic Artifact of More Optimistic Times*, REASON (Nov. 13, 2018), *available at* <https://reason.com/archives/2018/11/13/the-sorry-state-of-foia>; see also Ted Bridis, *U.S. Sets New Record for Censoring, Withholding Gov't Files*, ASSOCIATED PRESS

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Therefore, the Inspector General should immediately initiate an investigation to ensure that ORR is no longer violating constitutional and federal law.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alice C.C. Huling". The signature is fluid and cursive, with the first name "Alice" being the most prominent part.

Alice C.C. Huling  
Counsel

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(Mar. 12, 2018), *available at* <https://kval.com/news/nation-world/us-sets-new-record-for-censoring-withholding-govt-files>.

# EXHIBIT A

# C A M P A I G N F O R ACCOUNTABILITY

October 20, 2017

**By Fax: (800) 223-8164**

Daniel R. Levinson, Inspector General  
U.S. Department of Health & Human Services  
Office of Inspector General  
330 Independence Avenue SW  
Washington, DC 20201

**Re: Scott Lloyd, Director, Office of Refugee Resettlement**

Dear Mr. Levinson:

Campaign for Accountability (“CfA”) respectfully requests that you open an investigation into the actions of Scott Lloyd, Director of the Office of Refugee Resettlement (“ORR”), in revising and implementing Department policy regarding access to abortion for unaccompanied immigrant minors. For the reasons set forth below, CfA believes that Mr. Lloyd may have violated the law and must be held accountable.

## **Background**

Prior to March of this year, the policy of ORR regarding unaccompanied immigrant minors’ access to abortion was detailed in a March 21, 2008 memorandum from then-Acting Director David Siegel.<sup>1</sup> Under that policy, an ORR grantee was required to notify the Division of Unaccompanied Children’s Services when an unaccompanied immigrant minor sought abortion services, and to respond to requests from the Division as updates became available.<sup>2</sup> Where parental consent was required, the grantee either obtained consent or followed relevant state law in seeking judicial bypass.<sup>3</sup> ORR deferred to “individuals (e.g., parents) and institutions (e.g., state courts) that are required to act in the children’s best interests in cases where serious medical services are involved.”<sup>4</sup> Consequently, according to Robert Carey, former Director of ORR, ORR only got involved in an unaccompanied immigrant minor’s decision to have an abortion when the minor sought federal funding for the procedure.<sup>5</sup> Pursuant to federal law, federal funds may be used only in cases of rape, incest, or when the woman’s life is in danger.<sup>6</sup>

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<sup>1</sup> Memorandum from David Siegel, Acting Director, ORR to DUCS Staff, DUCS funded Shelters, DUCS Service Providers (Mar. 21, 2008), *available at*

[https://www.acf.hhs.gov/sites/default/files/orr/medical\\_services\\_requiring\\_heightened\\_orr\\_involvement.pdf](https://www.acf.hhs.gov/sites/default/files/orr/medical_services_requiring_heightened_orr_involvement.pdf).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

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

<sup>5</sup> 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>.

<sup>6</sup> *Id.*

Soon after President Trump took office, then-Acting Director of ORR Kenneth Tota issued a memorandum on March 4, 2017 amending the policy to state 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.”<sup>7</sup> As such, a signed authorization from the Director of ORR “would be required before taking any next steps (i.e., scheduling appointments, pursuing a judicial bypass, or any other facilitative step)” in the process of facilitating an abortion for an unaccompanied immigrant minor.<sup>8</sup> Notably, one recipient of the email announcing the new policy responded by asking whether the new policy was “contrary to state law” and inquiring whether the policy had been “vetted by [ORR’s] legal department.”<sup>9</sup> In particular, the recipient argued “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[ination] of pregnancy.”<sup>10</sup> Nevertheless, the policy was implemented.

Shortly thereafter, Scott Lloyd became Director of ORR<sup>11</sup> and began forcefully pursuing the new policy to make it difficult, if not impossible for unaccompanied, pregnant immigrant minors to obtain abortions. In fact, it was Mr. Lloyd’s position that ORR grantee shelters “should not be supporting abortion services pre or post-release; only pregnancy services and life-affirming options counseling.”<sup>12</sup> Mr. Lloyd began personally contacting unaccompanied, pregnant immigrant minors in grantee shelters and attempting to coerce them into continuing their pregnancies. On numerous occasions, it is well-documented that Mr. Lloyd visited refugee shelters and spoke directly with unaccompanied, pregnant immigrant minors.<sup>13</sup> Following his visits, Mr. Lloyd instructed grantee shelters to send the pregnant minors to “crisis pregnancy centers,” which offer biased, misleading, and inaccurate information about abortion, and which often proselytize to women and girls in an attempt to dissuade them from having abortions.<sup>14</sup> Mr. Lloyd requested that grantee shelters “keep a close eye”<sup>15</sup> on pregnant minors and keep him personally updated on their status.<sup>16</sup>

Mr. Lloyd frequently directed ORR and grantee shelter staff to notify the parents and immigration sponsors of unaccompanied immigrant minors’ pregnancies,<sup>17</sup> despite the minors’

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<sup>7</sup> Plaintiff’s Memorandum in Support of Her Application for a Temporary Restraining Order and Motion for a Preliminary Injunction, Ex. A at 2, *Garza v. Hargan*, No. 17-02122 (D.D.C. Oct. 14, 2017).

<sup>8</sup> *Id.*, Ex. B at 3, 5.

<sup>9</sup> *Id.*, Ex. B at 4.

<sup>10</sup> *Id.*

<sup>11</sup> *President Appoints New Director of the Office of Refugee Resettlement*, *This Week in Immigration*, Mar. 28, 2017, available at <http://www.thisweekinimmigration.com/all-news/trump-appoints-new-director-of-orr>.

<sup>12</sup> Plaintiff’s Memorandum, *supra* note 7, Ex. C at 1.

<sup>13</sup> *Id.*, Ex. D at 3; Ex. E at 2; Ex. G at 3. *See also* Rayasam, *Politico*, Oct. 16, 2017.

<sup>14</sup> *Id.* Minority Staff of the H. Comm. On Gov’t Reform, False and Misleading Health Information Provided by Federally Funded Pregnancy Resource Centers, 109<sup>th</sup> Cong. 1 (2006), available at <https://www.chsourcebook.com/articles/waxman2.pdf>; National Abortion Federation, Crisis Pregnancy Centers: An Affront to Choice, 2006, available at [https://www.prochoice.org/pubs\\_research/publications/downloads/public\\_policy/cpc\\_report.pdf](https://www.prochoice.org/pubs_research/publications/downloads/public_policy/cpc_report.pdf).

<sup>15</sup> Plaintiff’s Memorandum, *supra* note 7, Ex. D at 3.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*, Ex. G at 3; Ex. H at 3; Ex. I at 2.

requests to keep the information confidential.<sup>18</sup> He did so when a minor had not yet made a decision about her pregnancy,<sup>19</sup> when a minor had decided to have an abortion,<sup>20</sup> and when a minor had already obtained an abortion with judicial authorization.<sup>21</sup> In one case, he even appears to have done so with advance knowledge that it might jeopardize an unaccompanied immigrant minor's placement with her adult brother living in the United States.<sup>22</sup>

In addition to becoming personally involved in the decision-making of unaccompanied, pregnant immigrant minors, and divulging confidential information to their parents and sponsors against their will, Mr. Lloyd interjected in other questionable ways. In at least one case, Mr. Lloyd explicitly instructed a shelter to deny an unaccompanied immigrant minor access to legal counsel.<sup>23</sup> In another, Mr. Lloyd suggested that he knew "a few good families with a heart for these situations who would take [a pregnant, unaccompanied immigrant minor] in a heartbeat and see her through her pregnancy and beyond."<sup>24</sup> The minor in question apparently was going to live with an aunt in the United States, but Mr. Lloyd suggested alternative sponsorship if "things can't work out with her aunt soon."<sup>25</sup> Finally, in the case of J.D., a 17-year-old unaccompanied, pregnant immigrant minor in Texas, Mr. Lloyd sought to categorically deny her access to an abortion after she had procured funding, travel, and a judicial bypass for the procedure.<sup>26</sup> In response to a lawsuit filed by the American Civil Liberties Union on the young woman's behalf, a Washington, D.C. federal court ordered ORR to allow her to obtain an abortion.<sup>27</sup> The administration appealed to the D.C. Circuit Court, which stayed the lower court's order and scheduled the matter for oral argument on October 20, 2017.<sup>28</sup>

## **Legal Violations**

### *Misuse of Position and Government Resources*

By statute, the duties of the director of ORR are to "fund and administer" the programs of ORR.<sup>29</sup> Specifically, the director makes grants to public and private nonprofit agencies and assists and reimburses the states in providing initial resettlement, English instruction, job training, employment services, health and social services, foster care, placement, and cash

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<sup>18</sup> *Id.* at 8; Ex. I at 2.

<sup>19</sup> *Id.* at 8.

<sup>20</sup> *Id.* at 8; Ex. G at 3.

<sup>21</sup> *Id.*, Ex. H at 3; Ex. I at 2.

<sup>22</sup> *Id.*, Ex. I at 2.

<sup>23</sup> *Id.*, Ex. G at 3.

<sup>24</sup> *Id.*, Ex. D at 3.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 1-2.

<sup>27</sup> Maria Sacchetti, *U.S. Judge Orders Trump Administration to Allow Abortion for Undocumented Teen*, *Washington Post*, Oct. 18, 2017, available at [https://www.washingtonpost.com/local/immigration/judge-trump-administration-cannot-block-abortion-for-pregnant-undocumented-teen/2017/10/18/82348e08-b406-11e7-be94-fabb0f1e9ffb\\_story.html](https://www.washingtonpost.com/local/immigration/judge-trump-administration-cannot-block-abortion-for-pregnant-undocumented-teen/2017/10/18/82348e08-b406-11e7-be94-fabb0f1e9ffb_story.html).

<sup>28</sup> *Garza v. Hargan*, No. 17-5236, Order (D.C. Cir. Oct. 19, 2017) (per curiam) available at <http://www.politico.com/f/?id=0000015f-3509-d77a-a35f-f5698b000002>.

<sup>29</sup> 8 U.S.C. § 1521.

assistance for refugees.<sup>30</sup> A federal employee is required to “use official time in an honest effort to perform official duties.”<sup>31</sup> A failure to do so is considered a misuse of position.<sup>32</sup> A federal employee must also “protect and conserve Government property” and may not use such property for unauthorized purposes.<sup>33</sup>

In personally visiting unaccompanied immigrant minors, pressuring them regarding personal healthcare decisions, and providing individualized, detailed, and at times illegal direction to grantee shelters regarding their care, Mr. Lloyd acted outside of his statutory duties. He used his position and the federal government’s resources to attempt to coerce unaccompanied immigrant minors facing unintended and unwanted pregnancies into making medical decisions in accordance with his personal views. In doing so, Mr. Lloyd misused his position and misused government funds in violation of the law.

### *Anti-deficiency Act*

The Anti-deficiency Act is part of a statutory scheme that limits the ability of federal agencies to spend and obligate money. Specifically, the act provides that an “officer or employee of the United States Government” may not: (1) “make or authorize an expenditure or obligation exceeding the amount available in an appropriation or fund for the expenditure or obligation”; or (2) “involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.”<sup>34</sup> The Anti-deficiency Act can be violated by making an expenditure for which no appropriation was authorized.<sup>35</sup>

A government officer or employee who violates the act “shall be subject to” administrative discipline, including suspension from duty without pay or removal from office.<sup>36</sup> An officer or employee who “knowingly and willfully” violates these provisions “shall be fined not more than \$ 5,000, imprisoned for not more than 2 years, or both.”<sup>37</sup> In addition, when an Anti-deficiency Act violation occurs, the head of the agency must immediately report the violation, all relevant facts, and a statement of actions taken to the President and Congress, and forward a copy of the report to the Comptroller General.<sup>38</sup>

By traveling to visit and otherwise using federal resources to coerce unaccompanied, pregnant immigrant minors not to have abortions, by using federal resources to arrange for these minors to be subjected to “counseling” at crisis pregnancy centers, and by using federal resources to deny pregnant minor immigrants their right to counsel, Mr. Lloyd appears to have violated the Anti-deficiency Act.

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<sup>30</sup> 8 U.S.C. § 1522.

<sup>31</sup> 5 C.F.R. § 2635.705(a).

<sup>32</sup> *Id.*

<sup>33</sup> 5 C.F.R. § 2635.704(a).

<sup>34</sup> 31 U.S.C. § 1341(a)(1)(A-B). *See also* 2 U.S. Gov’t Accountability Office, *Principles of Federal Appropriations Law*, 6-36 (3d ed. 2010).

<sup>35</sup> *Id.*, 6-41.

<sup>36</sup> 31 U.S.C. § 1349(a).

<sup>37</sup> 31 U.S.C. § 1350.

<sup>38</sup> 31 U.S.C. § 1351.

### *Violation of Constitutional Rights*

The Supreme Court recently restated and reaffirmed that a woman has a right to an abortion prior to viability of the fetus and held that placing an undue burden on that right violates the U.S. Constitution.<sup>39</sup> The right to an abortion includes the ability of a minor to seek and receive judicial bypass of parental notification laws in some circumstances.<sup>40</sup> Where a minor has received judicial bypass of a parental notification law in order to obtain an abortion, the government no longer has any legitimate interest in notifying the minor's parents about her pregnancy and/or intent to terminate that pregnancy.<sup>41</sup> As such, notifying the parents after judicial authorization is a violation of the minor's constitutional rights.<sup>42</sup>

There is no question that Mr. Lloyd, in seeking to impose an absolute bar against J.D.'s access to abortion, violated her constitutional rights. Moreover, when Mr. Lloyd directed ORR and grantee shelter staff to notify the parents and sponsors of unaccompanied immigrant minors that these minors were pregnant or had obtained an abortion, he violated their constitutional rights as well.

### *Violations of the Flores Settlement Agreement*

Many of the rights afforded to unaccompanied immigrant minors flow from the 1997 settlement in *Flores v. Reno*.<sup>43</sup> In that case, four unaccompanied immigrant minors challenged the conditions of their detention and the policies regarding their release by the Immigration and Naturalization Service.<sup>44</sup> The parties reached a settlement agreement in 1997, and that agreement has been applied to ORR since the Immigration and Naturalization Service dissolved.<sup>45</sup> Among other things, the *Flores* settlement requires ORR to provide proper food, shelter, clothing, and appropriate medical care, education, and counseling.<sup>46</sup> Most pertinently, the *Flores* settlement specifically requires emergency health care and family planning services.<sup>47</sup> In addition, ORR must provide unaccompanied immigrant minors with a "reasonable right to privacy" and "legal services information."<sup>48</sup> The *Flores* settlement also mandates that ORR release minors "without unnecessary delay," and prioritizes placement with family members.<sup>49</sup>

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<sup>39</sup> *Whole Woman's Health v. Hellerstedt*, 136 S.Ct. 2292 (2016).

<sup>40</sup> *Bellotti v. Baird*, 443 U.S. 622, 647 (1979).

<sup>41</sup> *Planned Parenthood v. Wasden*, 376 F. Supp. 2d 1012, 1019 (D. Idaho 2005).

<sup>42</sup> *Id.* at 1022.

<sup>43</sup> Stipulated Settlement Agreement, *Flores v. Reno*, No. 85-4544 (C.D. Cal. Jan 17, 1997), available at <https://www.aclu.org/legal-document/flores-v-meese-stipulated-settlement-agreement-plus-extension-settlement>.

<sup>44</sup> *Reno v. Flores*, 507 U.S. 292, 296 (1993).

<sup>45</sup> Lutheran Immigration and Refugee Service, Women's Refugee Commission, Kids in Need of Defense, *Flores Settlement Agreement & DHS Custody*, available at <https://lirs.org/wp-content/uploads/2014/12/Flores-Family-Detention-Backgrounder-LIRS-WRC-KIND-FINAL1.pdf>.

<sup>46</sup> Stipulated Settlement Agreement, *supra* note 43, Ex. 1 at 1-2.

<sup>47</sup> *Id.*, Ex. 1 at 1.

<sup>48</sup> *Id.*, Ex. 1 at 3.

<sup>49</sup> *Id.*, Ex. 2 at 2.

Mr. Lloyd appears to have violated the *Flores* settlement in a number of ways. He withheld family planning services from J.D., who was blocked from obtaining an abortion for weeks as Mr. Lloyd directed the grantee shelter to refuse to let her leave for her scheduled appointments. He has blocked at least one unaccompanied immigrant minor from seeking and receiving legal assistance. He has suggested circumventing the placement priorities of the *Flores* agreement in an apparent attempt to prioritize ideological opposition to abortion over the goal of placing unaccompanied immigrant minors with their family members. He has also potentially deprived unaccompanied immigrant minors of their reasonable right to privacy by notifying their parents or sponsors of their pregnancies, and has forced them to undergo “counseling” at crisis pregnancy centers. Mr. Lloyd’s actions appear to violate the terms of the *Flores* settlement.

### *Right to Counsel*

Unaccompanied immigrant minors are also guaranteed access to legal counsel by statute. 8 U.S.C. § 1232(c)(5) states that “[t]he Secretary of Health and Human Services shall ensure... that all unaccompanied alien children who are or have been in the custody of the Secretary or the Secretary of Homeland Security... have counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking.”

In denying at least one unaccompanied minor access to an attorney, Mr. Lloyd appears to have violated the minor’s statutory right to counsel.

### *Contempt of Court*

Texas law clearly provides a method for minors to seek and obtain an abortion without notification to and consent from a parent. Pursuant to Tex. Fam. Code § 33.003(a), a minor may file an application for “a court order authorizing the minor to consent to the performance of an abortion without notification to and consent of a parent.” When such an application is filed, the court appoints a guardian ad litem to represent the best interest of the minor.<sup>50</sup> After a hearing regarding the matter, the judge may issue an order authorizing the minor to consent to an abortion without parental notification upon a finding that (1) the minor is capable of making the decision to have an abortion without parental notification; and (2) seeking parental consent would not be in the best interest of the minor.<sup>51</sup> Whether the judge issues an order or not, the court may not notify the parent that the minor is pregnant, and the court records are kept confidential and privileged.<sup>52</sup>

Under Tex. Gov. Code § 21.001(a), a court “has all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders.” Contempt of court is punishable by “a fine of not more than \$500 or confinement in the county jail for not more than six months, or both.”<sup>53</sup>

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<sup>50</sup> Tex. Fam. Code § 33.003(e).

<sup>51</sup> Tex. Fam. Code § 33.003(i-3).

<sup>52</sup> Tex. Fam. Code § 33.033(k).

<sup>53</sup> Tex. Gov. Code § 21.002(b).

In directing ORR and grantee staff to notify the parents of the unaccompanied immigrant minor who had been appointed a guardian ad litem and sought and obtained judicial authorization to consent to an abortion without parental notification, Mr. Lloyd willfully disregarded the authority of the court and the rights granted to the minor by the court's order, Mr. Lloyd appears to have committed contempt.

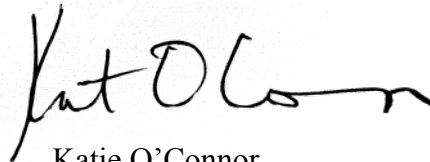
### Conclusion

Litigation is currently pending in two federal courts challenging ORR's policy regarding access to abortion for unauthorized immigrant minors.<sup>54</sup> At the moment, it is unclear whether J.D. will finally be able to access the care that has been wrongfully withheld from her for weeks.<sup>55</sup> Should she prevail, ORR will be required to comply with the U.S. Constitution, the *Flores* settlement, and relevant laws and regulations in providing access to abortion for unauthorized immigrant minors.

Regardless of the outcome of the litigation, however, Mr. Lloyd appears to have deliberately misused his position and government resources to violate constitutional and federal law, harming unaccompanied immigrant minors in his agency's care. Absent intervention, he may continue to do so.

Therefore, CfA requests an immediate investigation into Mr. Lloyd's actions pertaining to unaccompanied immigrant minors' access to abortion services. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Katie O'Connor", with a stylized, cursive script.

Katie O'Connor  
Legal Counsel  
Campaign for Accountability

cc: The Honorable John Cornyn  
The Honorable Richard J. Durbin  
Senate Subcommittee on Immigration and the National Interest

The Honorable Raul Labrador  
The Honorable Zoe Lofgren  
House Subcommittee on Immigration and Border Security

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<sup>54</sup> *American Civil Liberties Union of Northern California v. Burwell*, No. 16-3539 (N.D. Cal. June 24, 2016); *Garza v. Hargan*, No. 17-02122 (D.D.C. filed Oct. 14, 2017).

<sup>55</sup> Sacchetti, *Washington Post*, Oct. 18, 2017.

# **EXHIBIT B**



DEPARTMENT OF HEALTH AND HUMAN SERVICES

## OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



December 18, 2017

Ms. Katie O'Connor  
Campaign for Accountability  
611 Pennsylvania Avenue, SE  
Washington, DC 20003

Dear Ms. O'Connor:

The Office of Inspector General (OIG) received your correspondence dated October 20, 2017. OIG is deeply committed to fighting fraud, waste, and abuse in programs of the Department of Health and Human Services.

Your correspondence has been forwarded for review and appropriate action. Because of the high volume of incoming correspondence, you will hear from us again only if we need to ask you for more information.

For more information about OIG Hotline Operations, visit  
<https://forms.oig.hhs.gov/hotlineoperations/index.aspx>.

Sincerely,

Ann C. Wieland

Director

Executive Secretariat

# **EXHIBIT C**

<b>To:</b>	"White, Jonathan (ACF) </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e9b5fe526f1d4ba0a6cc8dde8ec4d87-Jonathan Wh>"
<b>CC:</b>	"White, Laura (ACF) </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2e7ff3f1d0ba483990c0f80827410056-Gregg, Laur>"
<b>Subject:</b>	RE: Update on minor at SWK Campbell requesting TOP
<b>Date:</b>	2018/01/18 07:32:53
<b>Priority:</b>	Normal
<b>Type:</b>	Note

Jonathan,

Thank you. Two things:

- 1) (b)(5)
- 2) Please have the program / federal staff evaluate whether it has been made clear to her that support is readily available if she chooses to parent the child, or if she decides to offer the baby for adoption. Sometimes adoption is an option that is not well-developed, even in some pregnancy resource settings. If the clinician feels that there has been adequate treatment of these options, no follow up is necessary on that front.
- 3) Please

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**From:** White, Jonathan (ACF)  
**Sent:** Wednesday, January 17, 2018 12:01 PM  
**To:** Lloyd, Scott (ACF)  
**Cc:** White, Laura (ACF)  
**Subject:** Update on minor at SWK Campbell requesting TOP  
**Importance:** High

Update on minor at SWK Campbell in Arizona who is requesting abortion to terminate pregnancy resulting from rape in home country:

- The minor is 16 years of age. She turned 16 on (b)(6) 17.

- The minor is pregnant as a result of rape in home country by a group of unknown men. She reports being approached by unknown men in country of origin, who covered her mouth with a piece of cloth, and then then lost consciousness. She woke up later in an unknown location with her clothes off. She was 15 years old at the time of the rape. She denies having had other sexual experiences.
- The minor was evaluated by OB/GYN services on January 10, 2018, without concerns.
- Gestational development: Based on ultrasound conducted on January 10, the minor was then 10 weeks 1 day. Based on this measurement, gestational age is today **11 weeks 1 day**.
- ORR has not received any report that there is a medically indicated necessity for abortion for the life of the minor.
- The next routine medical appointment is scheduled in two weeks.
- On January 11, the minor attended options counseling at Choices Pregnancy Center (CPC), a crisis pregnancy center from the HHS approved list. The minor was provided with information and reported that her questions were all answered. The minor was provided with “appropriate drawings to color and with Bible verses,” per the SIR.
- On January 16, a family session was conducted, disclosing to the minor’s parents in home country her pregnancy and her decision to pursue TOP. The minor’s clinician was involved. The minor requested that the notification not include the information that that the pregnancy was a result of rape.
- The minor spoke with a pastor from her faith tradition on January 15, 2018.
- On January 16, two family sessions were conducted, disclosing to the minor’s parents in home country her pregnancy and her decision to pursue TOP. The minor’s clinician was involved. A first family session was held with the minor, and the second session the minor asked not to participate. The minor requested that her parents not be informed that the pregnancy is a result of rape, but the family reported that their daughter may have been raped. The minor’s father advised that the parents “agreed to end the pregnancy” and expressed that “if minor is requesting to end the pregnancy they supported her.”
- The SIR addendum for the family notification explains: **“On 1/16/2018 at approximately 3:30 p.m., clinician (b)(6) completed a family session with minor and her father. Minor requested that clinician inform her parents she was pregnant and that she was requesting to end her pregnancy. Minor requested that**

**clinician not disclose how minor became pregnant. Furthermore, clinician informed minor’s father that minor was pregnant and requesting**

to end the pregnancy. Minor's father was notified that minor was taken to the doctor and it was confirmed she is approximately 10 weeks

pregnant. Minor's father appeared calm and asked clinician if minor could be reunified with his older daughter. Minor's father requested

time to speak to his wife before making a decision on minor's request to end her pregnancy. On 1/16/2018 at approximately 5 p.m., clinician

(b)(6) completed a family session with minor's parents. Minor requested not to be present for the second family session.

Clinician spoke to minor's father who conveyed he had spoken to his wife and decided that they agreed to end the pregnancy. Clinician asked

minor's father to clarify what he agreed to. Minor's father stated he and his wife spoke and consider that minor may have been raped on her

way to school. Minor's father shared that in their home town if a woman is raped, the expectation is that she will marry the man that raped

her. Minor's father stated that he and his wife are not sure that the pregnancy was a result of minor's choices or of a rape. Minor stated that

if minor is requesting to end the pregnancy they supported her. Minor's father also shared that minor is young and still a child herself to be raising a child of her own. Minor's father appeared calm and was respectful as he shared the aforementioned."

- At this time the minor continues her request for TOP "due to the pregnancy being a result of sexual abuse."
- All steps outlined by the ORR Director have been completed. Parental notification has been conducted, in which the family expressed support for their daughter to receive the abortion. The minor has received options counseling from an approved provider. The minor has received spiritual counseling from a pastor of her faith group (evangelical Christian).
- Please advise next steps.

Jonathan

Jonathan D. White  
Commander, U.S. Public Health Service  
Deputy Director for Children's Programs  
Office of Refugee Resettlement  
Administration for Children and Families  
U.S. Department of Health and Human Services  
330 C Street SW  
(202) 690-6984  
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<b>Recipient:</b>	"White, Jonathan (ACF) </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e9b5fe526f1d4ba0a6cc8ddee8ec4d87-Jonathan Wh>"; "White, Laura (ACF) </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2e7ff3f1d0ba483990c0f80827410056-Gregg, Laur>"
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<b>Subject:</b>	RE: Update on minor at SWK Campbell requesting TOP
<b>Date:</b>	2018/01/18 16:05:29
<b>Priority:</b>	Normal
<b>Type:</b>	Note

Jonathan,

- 1) (b)(5)
- 2) Please have the program / federal staff evaluate whether the following information has been made adequately clear to the youth, and if not, ask that they offer her the option of receiving more information on these subjects, if they feel they can do so consistent with her mental well being:
  - a. that support is readily available if she chooses to parent the child;
  - b. that support is readily available if she decides to offer the baby for adoption, and that she has been given the opportunity to discuss adoption in depth if she chooses;
  - c. that in some cases, women or minors who have had abortions have expressed regret from having done so, even when pregnancy is the result of sexual assault, and that if she chooses the program can provide for her some written examples of the personal testimony of such women.

---

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**Cc:** White, Laura (ACF)  
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**to end the pregnancy. Minor's father was notified that minor was taken to the doctor and it was confirmed she is approximately 10 weeks**

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**time to speak to his wife before making a decision on minor's request to end her pregnancy. On 1/16/2018 at approximately 5 p.m., clinician**

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**minor's father to clarify what he agreed to. Minor's father stated he and his wife spoke and consider that minor may have been raped on her**

**way to school. Minor's father shared that in their home town if a woman is raped, the expectation is that she will marry the man that raped**

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- At this time the minor continues her request for TOP "due to the pregnancy being a result of sexual abuse."
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- Please advise next steps.

Jonathan

Jonathan D. White

Commander, U.S. Public Health Service

Deputy Director for Children's Programs

Office of Refugee Resettlement

Administration for Children and Families

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