

C A M P A I G N F O R

ACCOUNTABILITY

March 20, 2019

BY Email

The Honorable Jerrold Nadler, Chair
The Honorable Doug Collins, Ranking Member
House Committee on the Judiciary
2138 Rayburn HOB
Washington, DC 20515

Re: Referral of Scott Lloyd for Potential False Statements Violations

Campaign for Accountability respectfully requests that the House Committee on the Judiciary refer Scott Lloyd to the Department of Justice for investigation into whether Mr. Lloyd deliberately provided false testimony to the committee during a February 26, 2019 hearing.

Background

Scott Lloyd served as the Director of the Office of Refugee Resettlement within the Department of Health and Human Services (“HHS”) until December 2018 when he left to serve as Senior Advisor to the HHS Center for Faith and Opportunity Initiatives.¹

During the course of the hearing, Rep. Madeleine Dean (D-Penn.), engaged in a colloquy with Mr. Lloyd in which she asked whether ORR tracked the menstrual cycles of any of the girls in the office’s care:

DEAN: --And then did not speak up against the policy or speak up about the problems for the children. Something you did take an initiative on, isn't it true that you tracked the menstrual cycles of young girls, young women in your custody?

LLOYD: That's not an accurate characterization of what occurred. I am not sure what exactly you're referring to.

DEAN: I believe in a deposition you actually admitted to that. So, you're now saying you did not track the menstrual cycles or you did not have your staff track the menstrual cycles?

LLOYD: The best—

DEAN: --It's a yes or no. Did you track--did you create any kind of tracking mechanism—

¹ House Committee on the Judiciary, *Hearing on Trump Administration’s Family Separation Policy, Testimony of Scott Lloyd*, p. 11, February 26, 2019 (“Lloyd Testimony”) (attached as Exhibit 1).

LLOYD: --Well, I don't have a yes or no answer for the question, but the best guess as to what I--as what you're referring to is is (*sic*) a list that included pregnant women and it would have mentioned their last menstrual period, which is a way of tracking the amount of time that they've been pregnant.

DEAN: So, you are now denying that you tracked the menstrual cycles of young women in your custody? You're denying that?

LLOYD: I'm denying that I tracked menstrual cycles of women in my custody.

DEAN: We'll be able to compare your deposition.²

In fact, however, during his deposition testimony in the case of *ACLU v. Hargan*, when asked whether he received “reports on a regular basis about all pregnant unaccompanied minors in ORR custody” Mr. Lloyd replied that he received a “spreadsheet” with information, including “estimated gestational age.”³

Further, on *MSNBC's* Rachel Maddow Show, Ms. Maddow shared the spreadsheet with viewers, and read aloud and enlarged for viewers one of its column headings: “Last mensral (*sic*) cycle 3/2.”⁴

Therefore, it is clear that, in contrast to Mr. Lloyd's response to the committee, Mr. Lloyd and the ORR were, in fact, keeping track of the menstrual cycles of unaccompanied minor immigrants in ORR's custody.

Rep. Dean continued her questioning:

DEAN: Isn't it true that you personally visited pregnant minors to pressure them to continue their pregnancies?

LLOYD: No, that's not true.

DEAN: That is not true?

LLOYD: No.⁵

Yet a March 14, 2017 email shows that Mr. Lloyd did, in fact, visit a pregnant unaccompanied minor. Mr. Lloyd wrote:

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

² *Id.* at 55.

³ Deposition of Scott Lloyd at 162, *ACLU v. Hargan*, Case No. 3:16-cv-3539 (N.D. Cal. Dec. 18, 2017), available at <https://www.aclu.org/legal-document/garza-v-hargan-scott-lloyd-deposition>.

⁴ *Rachel Maddow Show* at 10:40-13:20, March 15, 2019, available at <https://www.msnbc.com/rachel-maddow/watch/trump-admin-tracked-individual-migrant-girls-pregnancies-1459294787849>.

⁵ Lloyd Testimony at 56.

1) (*redacted*) said she preferred the food at Seton – that it wasn't Honduran enough at BCFS . . . 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.** (*emphasis added*).

2) She also says she has pain in her arms and legs at night . . .

3) 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. . .⁶

Later, on April 4, 2017, HHS employee Jonathan White sent an email to Mr. Lloyd asking "Were you able to speak with the pregnant girl at the SWK site (KAMM)? And if so, (*redacted*)."

Soon thereafter, Mr. Lloyd replied, "Yes – they were going to a CPC site today and we're going to proceed to discharge according to my understanding. Thank you, Scott."⁷

A "CPC" is a crisis pregnancy center. It is well documented that CPCs seek to intercept women and girls with unintended pregnancies who might be considering abortion and persuade them that parenting, or adoption, is a better option. The owners and employees of these organizations prioritize their religious anti-abortion ideology over the health and well-being of the pregnant women and girls.⁸ Despite telling Rep. Dean that he had not visited pregnant teens to pressure them to pursue their pregnancies, Mr. Lloyd's own emails indicate that he did exactly that.

Legal Violation

As you know, it is a federal crime to make a materially false, fictitious, or fraudulent statement or representation in response to any investigation or hearing conducted pursuant to the authority of any committee of Congress.⁹

Based on the conflicts between Mr. Lloyd's responses to Rep. Dean, made under oath during his congressional testimony, and his deposition testimony, the spreadsheet obtained by Ms. Maddow, and Mr. Lloyd's own emails, it seems apparent that Mr. Lloyd provided false testimony to Congress. First, Mr. Lloyd and ORR did, indeed, track the menstrual cycles of unaccompanied minors in ORR's care. Second, Mr. Lloyd did, in fact, visit pregnant minors in ORR's care to discuss their pregnancies, and obtain psychological and religious counseling to prevent them from exercising their constitutional right to seek an abortion.

⁶ Email from Scott Lloyd to Redacted, March 14, 2017 (attached as Exhibit 2).

⁷ Email exchange between Jonathan White and Scott Lloyd, April 4, 2017 (attached as Exhibit 3).

⁸ Amy G. Bryant, MD, MSCR and Jonas J. Swartz, MD, MPH, [Why Crisis Pregnancy Centers are Legal but Unethical](https://journalofethics.ama-assn.org/article/why-crisis-pregnancy-centers-are-legal-unethical/2018-03), *AMA Journal of Ethics*, March 2018, available at <https://journalofethics.ama-assn.org/article/why-crisis-pregnancy-centers-are-legal-unethical/2018-03>.

⁹ 18 U.S.C. § 1001.

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Mr. Lloyd's statements indicate a deliberate attempt to mislead the committee about the truth of his efforts to prevent young unaccompanied minors from obtaining abortions in violation of the prohibition against making false statements to Congress.

Conclusion

Americans have the right to expect high-ranking government officials to testify truthfully and accurately under oath when Congress exercises its oversight jurisdiction. Lying to Congress undermines our democratic form of government. Therefore, the Committee on the Judiciary should refer this matter to the Department of Justice for investigation into whether and the extent to which he provided false testimony.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alice C.C. Huling".

Alice C.C. Huling
Counsel

cc: The Honorable Rod Rosenstein
Deputy Attorney General

EXHIBIT 1

1 of 1 DOCUMENT

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House Judiciary Committee Holds Hearing on Trump Administration's Family Separation Policy

February 26, 2019 Tuesday

TEXT:

House Judiciary Committee Holds Hearing On Trump Administration'S Family Separation Policy
February 26, 2019 10:00 A.M.

SPEAKERS:

REP. JERROLD NADLER (D-N.Y.), CHAIRMAN

REP. ZOE LOFGREN (D-CALIF.)

REP. SHEILA JACKSON LEE (D-TEXAS)

REP. STEVE COHEN (D-TENN.)

REP. HANK JOHNSON (D-GA.)

REP. TED DEUTCH (D-FLA.)

REP. KAREN BASS (D-CALIF.)

REP. CEDRIC L. RICHMOND (D-LA.)

REP. HAKEEM JEFFRIES (D-N.Y.)

REP. DAVID CICILLINE (D-R.I.)

REP. ERIC SWALWELL (D-CALIF.)

REP. TED LIEU (D-CALIF.)

REP. JAMIE RASKIN (D-MD.)

REP. PRAMILA JAYAPAL (D-WASH.)

REP. VAL B. DEMINGS (D-FLA.)

REP. LOU CORREA (D-CALIF.)

REP. MARY GAY SCANLON (D-PA.)

REP. SYLVIA R. GARCIA (D-TEXAS)

REP. JOE NEGUSE (D-COLO.)

LLOYD: Chairman Nadler and Ranking Member Collins, thank you for the opportunity to speak to you today regarding my past efforts as Director of Office of Refugee Resettlement. It is an honor to appear before you today. ORR is a program office within the administration for children and families within the U.S. Department of Health and Human Services.

While I was Director of ORR, I coordinated refugee resettlement efforts for HHS and oversaw the unaccompanied alien children program. I left ORR in December 2018 to take a position with the HHS Center for Faith and Opportunity Initiatives as a Senior Advisor. My testimony today focuses on how ORR cares for UAC and places them with sponsors as well as how ORR reunifies children separated from their parents.

The UAC program provides care, food, shelter, and services to alien children who are in ORR custody before release to a suitable sponsor, usually a parent or a close relative. ORR does not enforce immigration laws or apprehend families or children who cross the border illegally. Rather ORR assumes care and custody of alien children who are referred to ORR care by other federal agencies.

HHS does not separate alien children from their adult parents. HHS makes no recommendations and is not consulted by DHS as it makes its decisions to enforce the law. ORR did not under my direction separate a child from his or her adult parent for any purpose. ORR can receive referrals of alien children from DHS and other federal agencies under a variety of circumstances.

Most alien children referred to ORR were encountered by DHS when entering the country illegally without a parent. DHS may separate a child from a parent who is too ill to care for that child. DHS may also separate a parent and a child if the parent has criminal history or if there is evidence that the parent is unfit or dangerous. A child who enters the United States illegally with an adult may be referred to ORR if DHS doubts that the adult was the parent. A child may also be referred to ORR care if the US Department of Justice prosecutes the parent for violating immigration laws.

In cases where an alien child is separated from his or her parent knowing the identity of that parent may be important for a case planning purposes especially since the parent may be unavailable or unable to take custody. Moreover, the facts of the separation may be important factors in determining the child's individual needs which are then incorporated into service planning for the child. In fact, the child's best interest in some cases is placement with another relative who is not the parent.

DHS's Border Patrol and U.S. Immigration and Customs Enforcement are responsible for the majority of UAC referrals to ORR. In the summer of 2018, ORR added a checkbox to the referral page to indicate whether a child has been separated from his or her parent. This checkbox offers a consistent format for DHS to provide information on the status separated or non-separated of each referral case. The referral page also has a notes section where Border Patrol and ICE can type in the name of other--and other information of a separated family member including their alien number. Additionally Border Patrol and ICE can enter this information to the parent relative information section of the referral. HHS can also learn of a parent's separation after the child's admission to an ORR care provider facility.

Prior to the summer of 2018, there was no automatic--automated means for aggregating the indicators of separation in the records for the children through the ORR portal. This is not the same as saying there is no information about separations in UAC case files. This is just to say that before the summer of 2018 in order to create a comprehensive record of cases where a separation occurred it is necessary to go into each case file and retrieve that information case-by-case.

ORR treats all alien children referred to its care including children separated from their parents in accordance with its policies and procedures. This includes placing a child in the least restrictive setting and of finding suitable and finding a suitable sponsor to whom ORR could safely release a child.

On April 6, 2018, DOJ announced a zero-tolerance policy of the crime of improper entry. At the direction of the Secretary of Homeland Security, the U.S. Border Patrol referred parents who entered the country illegally to DOJ for prosecution and the parents were incarcerated during their criminal proceedings. DHS transferred their children to HHS.

On June 20, 2018, President Trump issued an executive order and that and the decision in the case of Ms. L versus ICE changed the operational picture for HHS considerably. HHS Secretary Azar tasked the Incident

JEFFRIES: Okay. In June of 2018 when asked if the zero tolerance policy would be a deterrent, then Attorney General Jeff Sessions said yes, hopefully people will get the message, close quote. Does anyone disagree with that statement on the panel?

Apparently not. Commander White, does that strike you at deterrent was the objective of family separation that was taking place at the border?

WHITE: I apologize. I can't speak to what the intention was. The effect on children is my area concern and that effect was negative.

JEFFRIES: Now, with respect to the acting Assistant Secretary for Children and Families, Steven Wagner mentioned that the new zero tolerance policy will result in a deterrent effect. Is that correct?

WHITE: I'm aware that he made that statement.

JEFFRIES: And you believe that that was the policy of the administration?

WHITE: I did not participate in the discussions around the formulation of the final zero tolerance policy. The earlier discussions, which occurred in February and March of 2017, did discuss this as a deterrence intervention.

JEFFRIES: And do you believe that the zero tolerance policy is a policy consistent with the values of the American people or is it an unconscionable effort to try to deter individuals who are fleeing violent conditions in Central America from trying to apply, under law, for refugee status? Sir, yes?

WHITE: As I've previously testified, neither I nor any career staff person at ORR, would have recommended or supported a--any policy which would have the effect of separating children from their parents as that would be inconsistent with the best interest of the child.

JEFFRIES: Okay, I thank each and every one of you for your testimony.

SCANLON: Thank you.

JEFFRIES: I would just ask that you continue to make yourselves available as we try to come to some understanding as to how such a policy could ever have been implemented in the great United States of America. I yield back.

SCANLON: I recognize my colleague from Pennsylvania.

DEAN: Thank you, Madame Chair. I, too, come at this as a mother and as a grandmother. I will not disguise in any way my belief that what has happened with the zero tolerance policy and the family separation that took place before that and after that is inhumane and un-American. I make no apologies for that, but I am happy that we are doing the important work of identifying what the heck happened and what we can do to repair the damage if it is at all possible. And, ultimately, that we not let this ever, ever, ever happen again. I thank you, Commander White, for voicing your concerns for the children, for voicing your concerns about the policy. I wish others had as well.

I want to examine the Office of Refugee Resettlement. And so, Mr. Lloyd, I'm gonna read to you from the website what we do. And this is what you did. The Office of Refugee Resettlement provides new populations with the opportunity to achieve their full potential in the United States. Our programs provide people in need with critical resources to assist them in becoming integrated members of the American society. Would you agree that is the mission of ORR?

LLOYD: I do agree, yes.

DEAN: And tell when did--were you brought on at ORR?

LLOYD: My first official day was March 24, 2017.

DEAN: And your final day?

LLOYD: December 1, 2018.

DEAN: Okay, so March '17 to December of '18, roughly the entire period of time when we are now aware that children were being separated. How many children were in your custody at any one time?

LLOYD: That would--that fluctuated during my tenure. I think the--at a low point it was between 5,000 and 6,000. At the high point it was over 15,000.

DEAN: And, describe for us your expertise in working with children in displaced populations?

LLOYD: I came to the Office of Refugee Resettlement after having spent time with the Knights of Columbus, among displaced populations in Iraq and not physically, but also in Syria, to investigate the harms and the crimes that they had experienced at the hands of ISIS and to advocate on behalf of their interests and rights. I also have some experience as a teacher, which I think spoke to the unaccompanied alien children program.

DEAN: And you told us that you did hear from Commander White his concerns. I don't think you have any degree in trauma to children or any medical degree is that correct?

LLOYD: That's correct, I do not.

DEAN: It's too bad you didn't avail yourself of the greater expertise of Commander White.

LLOYD: That's not true. I did listen very closely to my advisors, including child welfare experts, medical experts--

DEAN: --And then did not speak up against the policy or speak up about the problems for the children. Something you did take an initiative on, isn't it true that you tracked the menstrual cycles of young girls, young women in your custody?

LLOYD: That's not an accurate characterization of what occurred. I am not sure what exactly you're referring to.

DEAN: I believe in a deposition you actually admitted to that. So, you're now saying you did not track the menstrual cycles or you did not have your staff track the menstrual cycles?

LLOYD: The best--

DEAN: --It's a yes or no. Did you track--did you create any kind of tracking mechanism--

LLOYD: --Well, I don't have a yes or no answer for the question, but the best guess as to what I--as what you're referring to is is a list that included pregnant women and it would have mentioned their last menstrual period, which is a way of tracking the amount of time that they've been pregnant.

DEAN: So, you are now denying that you tracked the menstrual cycles of young women in your custody? You're denying that?

LLOYD: I'm denying that I tracked menstrual cycles of women in my custody.

DEAN: We'll be able to compare your deposition.

LLOYD: Okay.

DEAN: Isn't it true that you personally visited pregnant minors to pressure them to continue their pregnancies?

LLOYD: No, that's not true.

DEAN: That is not true?

LLOYD: No.

DEAN: Okay. Isn't it true you instructed your staff to prevent minors seeking abortion from meeting with attorneys?

LLOYD: Can you--I'm sorry, can you repeat the question?

DEAN: Certainly. Isn't it true you instructed your staff to prevent minors seeking abortion from meeting with attorneys, lawyers, to get advice?

LLOYD: Okay, the--so, there is one instance where we said that there was a brief period--

DEAN: --So, it's a yes.

LLOYD: --In one instance we said for a brief period of time it would be not--because it wouldn't be appropriate to meet with an attorney at that point regarding--

DEAN: --And you would determine whether or not it was appropriate. And you have the expertise, medical and otherwise, to determine that?

LLOYD: Ma'am, all of the children in our--

DEAN: --Isn't it true you--

LLOYD: --All of the children in our care receive--they receive legal screening and access to an attorney. I never finally blocked access to attorney for anybody.

DEAN: Not finally, but when--

LLOYD: --Anybody.

DEAN: --When a minor is pregnant, any blocking of legal advice might be critical to that person.

LLOYD: It was--I did not block--

DEAN: --Isn't it true, I have very little time left.

LLOYD: Yes, okay.

DEAN: And I want to use the language that we have been talking about here.

SCANLON: The gentlewoman's time has expired. The witness may answer the final question there.

LLOYD: I didn't hear the end of the question.

DEAN: My--my question is this. When you took the initiative to track menstrual cycles, which your deposition reveals.

LLOYD: I did not do that.

DEAN: And to try to guide young women or block them from getting legal advice, did you also take the initiative and is this initiative underway to assess the mental health of the children in your custody. Did you take that initiative?

LLOYD: We do assess the mental health of every child in our custody within 24 hours of them coming into our custody. They receive both group and individualized mental health care.

DEAN: Hopefully my colleagues will ask the--

SCANLON: Okay, thank you.

DEAN: --Ongoing, the 24-hour first impression is one thing. But, we're talking about the trauma created from separation.

LLOYD: It's ongoing throughout the care in ORR.

SCANLON: Okay, the chair recognizes the gentlewoman from Texas.

ESCOBAR: Thank you, Madame Chair. And thank you to the panel. Thank you for your service. Thank you for being here. I am from the safe, secure and vibrant U.S. Mexico border community of El Paso, Texas. Where, unfortunately, we have the dubious distinction of being the testing ground for the Trump Administration's family separation policy.

Chief Provost, I have a couple questions for you as follow-ups to what some of my colleagues asked you. You acknowledged earlier that you do not know how many children were separated beginning with the time that the policy was implemented in El Paso in July 2017 and when the policy was officially announced on April 6, 2018, is that correct?

PROVOST: I don't have that number with me. It is a number that I can get.

ESCOBAR: Okay, but, okay, so then you do know how many children exactly were separated during that testing period?

EXHIBIT 2

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]

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)

EXHIBIT 3

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.

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> 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> wrote:
Scott,

[REDACTED]
Jonathan

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