UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROCHELLE GARZA, as guardian ad litem to unaccompanied minor J.D., on behalf of herself and others similarly situated; JANE ROE on behalf of herself and others similarly situated; and JANE POE,	)	
Plaintiffs,	)	No. 17-cv-02122-TSC
v.	)	
ERIC D. HARGAN, *et al.*,	)	
Defendants.	)	

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION[1]

This Court should decline Plaintiffs Jane Roe's ("Ms. Roe") and Jane Poe's ("Ms. Poe") (collectively referred to as "Plaintiffs") requests for an order directing the government to affirmatively facilitate their decisions to have an elective abortion because the facts in each of their respective situations do not meet the requirements for a temporary restraining order.

First, Plaintiffs have not demonstrated a likelihood of success on their claims for injunctive relief. Plaintiffs contend that as in the case of Ms. Jane Doe, the government is "once again violating binding Supreme Court precedent here by . . . exercising their veto power over Ms. Roe's

[1] Because this opposition addresses only the Plaintiffs' request for equitable relief, and because government officials may not be sued in an individual capacity for equitable relief relating to their performance of official duties, this brief is filed on behalf of the Defendants solely in their official, not individual, capacities. *See, e.g.*, *Auleta v. United States Dep't of Justice*, No. 11-cv-2131 (RWR), 2015 WL 738040, at *4 (D.D.C. Feb. 20, 2015).

and Ms. Poe's constitutionally protected abortion decisions by refusing to allow them to access an abortion." Plaintiffs' Memorandum ISO App. for TRO at 5. But the *en banc* D.C. Circuit never held that any period during which the Department of Health and Human Services ("HHS") can seek sponsorship is *per se* unconstitutional. As Judge Millett wrote for the *en banc* court, the fact-bound issue in Ms. Doe's case was that the government did not argue the delay there was "the type of short-term burden that could plausibly pass muster under Supreme Court precedent to bar an abortion[,]" implying that a short delay in certain circumstances would *not* impose such a burden. *Garza v. Hargan*, 874 F.3d 735, 739 (D.C. Cir. October 24, 2017) (*en banc*). And the *en banc* court acknowledged that in some circumstances, the government does not impose an undue burden because the alien should return to her home country. *Id*. at 740. Moreover, unlike in Ms. Doe's case where she obtained a judicial bypass from a Texas state court, there has been no judicial determination that either Ms. Roe or Ms. Poe, both 17 year old minors, are sufficiently mature to make their abortion decision. Nor has Ms. Poe shown that the same test applied by the *en banc* court applies to her later-stage pregnancy. The facts presented here therefore are distinguishable and do not similarly establish a likelihood of success on the merits.

Second, Plaintiffs cannot establish irreparable injury. Ms. Roe's sponsorship process is near completion, as a potential sponsor has already been identified, who "is a family member, a U.S. citizen, and [who] has submitted an application[,]" and who is only awaiting an expedited background check, with an estimated completion time of two weeks. White Decl. ¶ 4. It is undisputed that Ms. Roe has several weeks remaining pre-viability in which an abortion would be legally permissible, so it is unnecessary for her to obtain emergency judicial relief this week to vindicate the right to abortion that she invokes. In Ms. Poe's case, she decided as recently as December 4, 2017 that she did not want an abortion, and only last week changed her mind. White

Decl. ¶ 5; Jane Poe Decl. ¶ 5. Given these facts, and Plaintiffs' ability to seek voluntary departure or a qualified sponsor, the government is forcing neither Ms. Roe nor Ms. Poe to carry their pregnancy to term against their will. In both cases, granting immediate relief would disrupt the status quo and would irreversibly harm the government's interests without an opportunity for a full adjudication on the merits.

Finally, the balance of hardships and public interest weigh strongly against the relief that Ms. Roe and Ms. Poe have requested. The government has strong and constitutionally legitimate interests in promoting its interest in life, in refusing to facilitate abortion, and in not providing incentives for pregnant minors to illegally cross the border to obtain elective abortions while in federal custody. Those interests would be irreparably undercut if Ms. Roe and Ms. Poe were granted the relief they seek.

However this Court rules on the motion, it should do so in a way that preserves the right—of both sides—to seek appellate review. In particular, given the magnitude of the interests in play—including the irreversible nature of abortion—any ruling by this Court on the motion should be stayed pending appeal with respect to both minors. If the Court is not willing to enter a stay pending appeal for both minors, because Ms. Roe is only 10 weeks pregnant and is very likely to have a sponsor soon, the Court should grant a stay of 2 weeks with respect to Ms. Roe. At a minimum, the Court should grant a stay of 24 hours to allow the government an opportunity to seek emergency relief from the D.C. Circuit and the Supreme Court.

BACKGROUND

Ms. Roe is a 17 year old unaccompanied minor in the custody of the Office of Refugee Resettlement ("ORR"), who learned she was pregnant during a medical examination on November 21, 2017. Jane Roe Decl. ¶ 5. She is "approximately 10 weeks pregnant." Jane Roe Decl. ¶ 7.

Shortly upon her arrival into ORR custody, Ms. Roe "identified a potential sponsor" who "is a family member, and U.S. citizen, and [who] has submitted an application." White Decl. ¶ 4. ORR acknowledges that "[a]lthough additional documents, fingerprint results, and a home study are required," ORR states that "if the background checks and home visits return favorable results, [ORR] estimate[s] the process of reunification would be completed within two week." *Id.* Moreover, "ORR has not notified [Ms. Roe's] parents of her pregnancy and does not plan to notify them." *Id.* ORR has not made a final determination on whether she would be released to obtain an abortion, largely in light of the prospects of her sponsorship process, nor has she indicated that anyone is willing to assist her in scheduling or paying for an abortion absent assistance from ORR and its grantee.

Ms. Poe is a 17 year old unaccompanied minor in ORR custody who "is approximately 22 weeks pregnant." White Decl. ¶ 4. She arrived in ORR "custody less than a month ago" and "was estimated to be approximately 9 weeks pregnant." White Decl. ¶ 5. Ms. Poe "was subsequently determined to be significantly further along in her pregnancy." Ms. Poe herself "informed her parents of her pregnancy and of her contemplation of abortion." *Id.* After she spoke with her parents, Ms. Poe indicated to ORR on December 4, 2017 that "she no longer requested an abortion." *Id.* Only last week did Ms. Poe change her mind again, indicating that she wanted an abortion. Jane Poe Decl. ¶ 5. Ms. Poe has not indicated that anyone is willing to assist her in scheduling or paying for an abortion absent assistance from ORR and its grantee.

ARGUMENT

The Court should deny Plaintiffs Jane Roe's and Jane Poe's request for a TRO. To obtain a TRO, Plaintiffs must establish that they are "likely to succeed on the merits," that they are "likely to suffer irreparable harm in the absence of preliminary relief" that "the balance of equities tips in

[her] favor," and that "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008); *In re Navy Chaplaincy*, 697 F.3d 1171 (D.C. Cir. 2012). Plaintiffs cannot satisfy any of those requirements, and thus, their request for a TRO should be denied.

I. Plaintiffs' Request for a TRO Should be Denied Because They Cannot Show a Likelihood of Success on the Merits.

Plaintiffs' request for relief fails at the first step because they are not likely to succeed on the merits of their claims.

A. Plaintiffs Have Failed to Demonstrate a Likelihood of Success on the Merits of Their Fifth Amendment Undue-Burden Claim.

Under the framework of *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), the government may pursue its interest in protecting life before fetal viability provided it does not do so in a manner that imposes an undue burden on the mother. After viability, the government may regulate or even proscribe abortion. *Id*. at 879. The government does not violate the rights outlined in *Casey* by declining to facilitate an abortion in circumstances like those Plaintiffs present. Importantly, Plaintiffs' claim that ORR's policies violate the Fifth Amendment—and instead that the Constitution in every factual circumstance requires the type of facilitation that would enable them to enter the United States for an elective abortion—is incorrect. First, under the D.C. Circuit's *en banc* decision in *Garza*, the cases here are distinguishable and no undue burden has been imposed by the Government. Second, while we understand this Court is bound by *Garza*, we preserve the argument that Garza was wrongly decided for purposes of appeal.

1. Under *Garza*, Plaintiffs Have Not Shown an Undue Burden

Applying the *Garza* decision, neither minor has shown that the government has imposed an undue burden. Judge Millett, for the *en banc* court, recognized that the ability to find a sponsor

in a timely manner played an important role in determining whether there was a right to court ordered facilitation of the abortion by the government. *See Garza*, 874 F.3d at 738-39 ("centerpiece of the panel order" is the expeditious search for a sponsor and accepting that it is possible some "type[s] of short-term burden . . . could plausibly pass muster under Supreme Court precedent"); *see id. at 739* (identifying five factual issues relating to promptly finding a sponsor that may be relevant to the right to court-ordered relief). In weighing these factors, what most troubled the *en banc* court in Ms. Doe's case was that the government did not allege that "there was any prospect of finding a sponsor at all," particularly "since no family member has been approved as a sponsor" or that "a non-family member could be identified, vetted, and take custody of J.D. within [the requested] eleven days." *Id.* Adding to that factor was the long period of time that had passed since Ms. Doe made the decision to obtain an abortion and the length of the sponsorship search. *See id*. at 739, 741 ("J.D. is already into the second trimester of her pregnancy" and while "sponsorship . . . might be more optimal in the policy sense" for a child to make a difficult decision, the search for a sponsor had lasted "almost seven weeks" without a sponsor). This combination of factors, the Court held, rendered any further delay an undue burden.

In contrast, Ms. Roe has already "identified a potential sponsor" who "is a family member, and U.S. citizen, and [who] has submitted an application" to sponsor her. White Decl. ¶ 4. Moreover, ORR "estimate[s] the process of reunification would be completed within two weeks." *Id.* And she is only ten weeks pregnant, meaning that there is time to complete the sponsorship process. In these circumstances, the government does not impose an undue burden in awaiting the completion of the sponsorship process to avoid the need to facilitate the termination of Ms. Roe's pregnancy.

In Ms. Poe's case, she has equivocated on whether she wants an abortion and decided only last week that she would like to obtain one. Jane Poe Decl. ¶ 5. As recently as December 4, 2017, she determined that she wanted to keep the baby. White Decl. ¶ 5. She is 22 weeks pregnant, *id.*, and she has not made any further factual showing.

Importantly, nobody has determined that Ms. Poe is making a considered and informed decision here. As the Supreme Court has long recognized, "during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them." *Bellottti v. Baird*, 443 U.S. 622, 635 (1979). Unlike Ms. Doe, Ms. Poe does not have a guardian at litem to assure the Court that her interests are being pursued in this litigation. *See* Fed. R. Civ. P. 17(b) & (c).[2] And ORR, her current guardian and the only appropriate entity capable of acting on her behalf, *see* Fed. R. Civ. P. 17(a), has not made a best interest determination because Ms. Poe changed her mind so recently and immediately sought judicial relief.

Because of Ms. Poe's equivocation, she is now approaching the point of viability, if she is not already there. In *Casey*, the Court held that the undue-burden framework applies only before a fetus is viable, regardless of "whether viability occurs at approximately 28 weeks, as was usual at the time of *Roe*, at 23 to 24 weeks, as it sometimes does today [in 1993], or at some moment even slightly earlier in pregnancy, as it may if fetal respiratory capacity can somehow be enhanced in the future." *Id*. at 860. "The time when viability is achieved may vary with each pregnancy," *Webster v. Reprod. Health Servs.*, 492 U.S. 490, 516–17 (1989); *id.* at 527 (O'Connor, J., concurring) (same), and here Ms. Poe does not meet her burden regarding whether viability has been reached in her pregnancy, which is at 22 weeks. *See* M. Rysavy et al., Between-Hospital

[2] Ms. Roe is also appearing in this Court without a guardian at litem.

Variation in Treatment and Outcomes in Extremely Preterm Infants, 372 N. Engl J Med 1801 (2015) (23% of fetuses born at 22 weeks and provided medical treatment survive); America College of Obstetricians and Gynecologists, Obstetric Care Consensus (Oct. 2017) ("A review of studies published over the past three decades reveals a progressive increase in the rate of survival for infants born at 22, 23, 24, and 25 weeks of gestation."). In the absence of such a determination, the undue burden standard does not apply under *Casey*'s own terms. Nor has Ms. Poe shown that a post-viability abortion would be appropriate because the pregnancy endangers her life or health. *See Casey*, 505 U.S. at 846.

And assuming the undue burden standard applies, Ms. Poe does not allege that HHS has placed any burden in her path -- notably absent in their pleading is the fact that her situation is delayed not because ORR erected an undue burden in her path to obtaining an abortion, but because she herself decided not to get an abortion until only last week.

Moreover, unlike in Ms. Doe's case where she obtained a judicial bypass from a Texas state court, there has been no similar determination that either Ms. Roe or Ms. Poe, both 17 year old minors, are sufficiently mature to make their abortion decision. *See Bellotti*, 443 U.S. at 635. While Ms. Roe and Ms. Poe are in States that do not require that determination to be made by a judge, ORR's mission of protecting the interests of the child is required as a matter of federal law, and some determination is needed to address this issue beyond that child's own independent decision. 6 U.S.C. § 279(b)(1)(A), (B) (stating that ORR's Director is responsible for "ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child," and for "implementing policies with respect to the care and placement of unaccompanied alien children."). The Supreme Court has held that "[t]o promote the State's profound interest in potential life, throughout the pregnancy the State may take

measures to ensure that the woman's choice is informed, and measures designed to advance this interest will not be invalidated so long as their purpose is to persuade the woman to choose childbirth over abortion." *Casey*, 505 U.S. at 878. Given that neither Plaintiff has appeared before a state judge or other impartial body that can ensure their decisions are informed, the existence of an informed choice cannot be presumed.

In short, the facts presented here in both Ms. Roe and Ms. Poe's cases are distinguishable from Jane Doe, and do not similarly establish a likelihood of success on the merits. And Ms. Roe's case in particular does not call for immediate judicial intervention, given that she is early in pregnancy and a sponsor has been found and can be approved in two weeks.

2. The Due Process Clause Does Not Require the Government to Facilitate an Abortion, Given the Government's Legitimate Interest in Protecting Life and the Ability of an Alien to Return to Her Country of Nationality

Defendants concede that for purposes of this TRO, they are bound by the D.C. Circuit's October 24, 2017 *en banc* decision insofar as the law and the facts contained herein are indistinguishable. However, to preserve the issue, Defendants again argue that the government's refusal to facilitate an elective abortion does not impose an undue burden in violation of the Fifth Amendment. Plaintiffs' Memorandum ISO App. for TRO at 4-5. Under *Casey*, the government is entitled to pursue its legitimate interests, provided that it does not impose an "undue burden" on a woman's choice to terminate her pregnancy before viability. *Id.* at 870. Plaintiffs cannot show that an alleged ORR policy of protecting fetal life necessarily imposes such an undue burden in every application, or even a large fraction of applications, for one fundamental reason: an alien who illegally crosses the border and is detained pending a determination of whether she will be permitted to remain in the United States retains the power to withdraw her application for admission and may depart the United States to return to her home country, *cf. Parra v. Perryman*,

172 F.3d 954, 958 (7th Cir. 1999) ("An alien in Parra's position can withdraw his defense of the removal proceeding and return home to his native land, thus ending his detention immediately. He has the keys in his pocket."), where she may presumably take the appropriate steps to exercise her right to an abortion there. Plaintiffs here have not put forward any facts relating to their ability to return to their country of nationality. *See Garza*, 874 F.3d at 740 (in the case of J.D., voluntary departure "not a constitutionally adequate choice either given both the life-threatening abuse that J.D. claims a . . . and her potential claims of legal entitlement to remain in the United States").

Given these points, Plaintiffs are incorrect in claiming that the government has imposed an undue burden on their abortion decision.

B. Plaintiffs have not Demonstrated a Likelihood of Success on their Related Claims.

Finally, Plaintiffs have no likelihood of success on their claim that the government has violated their rights by providing counseling or including the parents of the children in the decision. Plaintiffs' Memorandum ISO App. for TRO at 5-6. They assert that ORR "requires minors to tell parents and/or sponsors about their pregnancies and abortion decisions even if they do not wish to do so—otherwise Defendants will tell those parents and sponsors themselves over the minors' objections—and compels minors to attend 'life-affirming' spiritual counseling." *Id.* at 5. This, they claim, violates their speech rights and abortion rights.

There is no issue with respect to Ms. Poe and Ms. Roe on parental notification. In Ms. Roe's case, "ORR has not notified her parents of her pregnancy and does not plan to notify them." White Decl. ¶ 4. In Ms. Poe's case, she herself already disclosed her pregnancy and consideration of abortion to her parents. White Decl. ¶ 5. Neither claim the contrary in their declarations. In any event, it is appropriate for HHS to confer with the parents of a minor on weighty medical matters like an abortion, and that consultation in no way imposes an undue burden on the minor's decision.

With respect to counseling, Plaintiffs are unlikely to show it to be a constitutional violation. The government only *impermissibly compels speech* when it forces a speaker to convey a message and "the complaining speaker's own message was affected by the speech it was forced to accommodate." *Rumsfeld v. FAIR*, 547 U.S. 47, 63 (2006); *see Nat'l Assoc. of Manufacturers v. NLRB*, 717 F.3d 947, 958 (D.C. Cir. 2013) (a "compelled-speech violation' occur[s] when 'the complaining speaker's own message was affected by the speech it was forced to accommodate'"); *see also Nat'l Assoc. of Manufacturers v. SEC*, 800 F.3d 518, 521-23 (D.C. Cir. 2015) (collecting compelled speech cases). It is not compelled speech when the individual is not required to say anything. *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (The First Amendment contemplates that listeners may be exposed to messages that "in someone's eyes are misguided.").

Indeed, HHS serves in the role of the child's legal custodian and is directed to place UACs "in the least restrictive setting that is in the best interest of the child," 8 U.S.C. § 1232(c)(2)(A), while in HHS custody—that is, until they are released to a suitable sponsor, obtain lawful status or leave the country and thus are no longer unlawfully present. *See* 6 U.S.C. § 279(g); 8 U.S.C § 1232(b)(1), (g). HHS provides an extensive amount of speech to UACs: on-campus schooling, regular psychological counseling as needed, regular case management and social work discussions, as well as information about their medical care. When caring for a child's medical needs, HHS exercises custodial responsibility, and in these circumstances must consider child welfare. In addressing the UAC's welfare, and more specifically, the needs of a pregnant minor, ORR provides pregnancy counseling in this custodial capacity. Despite Plaintiffs' assertion that they are being "compelled" to speak during counseling, ECF No. 1 ¶ 57, they are not forced to engage in discourse, or respond to any inquiries, and may remain completely silent during any such counseling. Finally, the Supreme Court and various lower courts thereafter have recognized that

the government imposes no undue burden or First Amendment violation when it requires the provision of specific, and often extensive, information prior to an abortion. *See, e.g., Casey*, 505 U.S. at 881–84. ORR's decision to provide options counseling and information before an abortion, from ORR's grantees' own medical and counseling professionals, is sustainable on the same grounds.

For these reasons, Plaintiffs' compelled-speech claim has no likelihood of success. *See Johanns v. Livestock Mktg. Ass'n*, 544 U.S. 550, 557 (2005) (stating a compelled speech claim arises when "an individual is obliged personally to express a message he disagrees with, imposed by the government").

* * *

Accordingly, Plaintiffs have failed to demonstrate a likelihood of success on the merits of their claims.

II. Plaintiffs Have Not Established that a TRO Is Needed to Prevent Irreparable Harm.

Plaintiffs cannot obtain relief for the independent reason that they have not established irreparable harm. Plaintiffs contend that, unless this Court grants the TRO, they will face the irreparable injury of being forced to carry the pregnancy to term against their will. Plaintiffs' Memorandum ISO App. for TRO at 7-8. This claim fails for both Ms. Roe and Ms. Poe.

Ms. Roe's claimed injury provides no basis for the injunctive relief that she seeks. The issue before this Court is not whether Ms. Roe will have to carry a pregnancy to full term, but rather whether she can obtain a court order enabling her to have an abortion as early as this week. Ms. Roe has weeks, not a few days, before viability. She has a sponsor lined up who is only awaiting a background check, which could be completed in two weeks' time. White Decl. ¶ 4. She need not compel the government to facilitate her abortion to an abortion this week to vindicate

the right that she claims. Because Ms. Roe's fetus is still weeks away from viability, she will not be irreparably injured if she does not obtain effectively irreversible relief now, and the Supreme Court has noted evidence that even second trimester abortions present few complications. *See Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2311 (2016); *Gonzales*, 550 U.S. at 164. In Ms. Poe's case, her situation is delayed in part because she changed her mind regarding whether she requested abortion as recently as December 4, 2017, and only decided last week that she again wanted the procedure. White Decl. ¶ 5. In both cases, granting immediate relief would disrupt the status quo and would irreversibly harm the government's strong interests in not facilitating the termination of fetal life without an opportunity for a full adjudication on the merits.

III. The Balance of Hardships and Public Interest Weigh Against Plaintiffs' Request for Relief.

The balance of the hardships and the public interest weigh against granting Plaintiffs' motion. The government has a legitimate and significant interest in ensuring that it does not affirmatively facilitate an abortion, especially, as in the case of Ms. Poe, a later-stage abortion. That interest would be completely extinguished if Plaintiffs' motion is granted and Plaintiffs have an abortion this week or next week. The public interest also weighs against incentivizing illegal immigration by compelling the federal government to facilitate an unaccompanied alien child's request for an elective abortion. *Cf. Landon v. Plsencia*, 459 U.S. 21, 34 (1982) ("The government's interest in efficient administration of the immigration laws at the border also is weighty. Further, it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.").

IV. Any Ruling by this Court Should Allow Time for Appellate Review.

Defendants request that any disposition by the Court permit the unsuccessful party sufficient time to vindicate its position through emergency appeal. If the Court issues a TRO, given the magnitude of the interests in play—including the irreversible nature of abortion—any ruling by this Court on the motion should be stayed pending appeal with respect to both minors. If the Court is not willing to enter a stay pending appeal for both minors, because Ms. Roe is only 10 weeks and is very likely to have a sponsor soon, the Court should grant a stay of 2 weeks with respect to Ms. Roe. At a minimum, the Court should grant a stay of 24 hours to allow the government an opportunity to seek emergency relief from the D.C. Circuit and the Supreme Court.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' request for a temporary restraining order.

DATED: December 17, 2017

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROCHELLE GARZA, et al.	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 1:17-cv-2122**
	)	
ERIC HARGAN, et al.	)	
	)	
Defendants.	)	
	)	

DECLARATION OF JONATHAN WHITE, DEPUTY DIRECTOR FOR CHILDREN'S PROGRAMS, OFFICE OF REFUGEE RESETTLEMENT, ADMINISTRATION FOR CHILDREN AND FAMILIES, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES

I, Jonathan White, for my declaration pursuant to 28 U.S.C. § 1746, hereby state and depose as follows, based on my personal knowledge and information provided to me in the course of my official duties:

1. I am the Deputy Director for Children's Programs of the Office of Refugee Resettlement ("ORR"), an Office within the Administration for Children and Families ("ACF"), Department of Health and Human Services ("HHS").

2. I am familiar with ORR policies and procedures concerning the care of unaccompanied alien children ("UACs") in ORR care and custody, including the medical care and the process of considering prospective sponsors for the UACs.

3. I am also familiar with the policies, procedures, decisions, case details, and care concerning the two newly identified minors identified in the amended complaint as Jane Roe (J.R.) and Jane Poe (J.P.).

4. Shortly after J.R.'s arrival into our custody, she identified a potential sponsor. The potential sponsor is a family member, a U.S. citizen, and has submitted an application. Although additional documents, fingerprint results, and a home study are required, if the potential sponsor promptly gets us the additional information we need, and if the background checks and home visits return favorable results, we estimate the process of reunification would be completed within two weeks. ORR has not notified her parents of her pregnancy and does not plan to notify them.

5. J.P. is approximately 22 weeks pregnant. She arrived in our custody less than a month ago. As recently as November 29, she was estimated to be approximately 9 weeks pregnant. She was subsequently determined to be significantly further along in her pregnancy. She informed her parents of her pregnancy and of her contemplation of abortion. After doing so, on December 4 she indicated that she no longer requested an abortion. More recently, she again indicated that she requests an abortion.

6. We are aware of no medical records for either J.R. or J.P. that show a medical indication for either of them to have an abortion.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 16, 2017.

Jonathan White, *ORR Deputy Director for Children's Programs*