

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

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 AMERICAN CIVIL LIBERTIES |  
 UNION OF NORTHERN |  
 CALIFORNIA, |  
  
 Plaintiff, |  
  
 vs. |  
  
 ERIC G. HARGAN, Acting |  
 Secretary of Health and |  
 Human Services, et al, |  
  
 Defendants, |  
  
 U.S. CONFERENCE OF |  
 CATHOLIC BISHOPS, |  
  
 Defendant-Intervenor. |  
 -----+

Case Number:  
3:16-cv-3539-LB

Rule 30(b)(6) Videotaped Deposition of  
The Department of Health and Human Services,  
by and through its designated representative,  
JONATHAN WHITE  
Washington, D.C.  
Tuesday, December 19, 2017 - 3:14 p.m.

Reported by:  
Laurie Donovan, RPR, CRR, CSR  
Job no: 20318

1 Rule 30(b)(6) Videotaped Deposition of  
 2 The Department of Health and Human Services,  
 3 by and through its designated representative,  
 4 JONATHAN WHITE

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 6  
 7 Held at the offices of:  
 8 U.S. Department of Justice  
 9 20 Massachusetts Avenue, N.W.  
 10 Room 6139  
 11 Washington, D.C. 20001  
 12 (202)353-4556

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 17  
 18 Taken pursuant to notice, before  
 19 Laurie Donovan, Registered Professional  
 20 Reporter, Certified Realtime Reporter, and  
 21 Notary public in and for the District of  
 22 Columbia.  
 23  
 24  
 25

1 (Appearances continued)  
 2 ON BEHALF OF OFFICIAL CAPACITY FEDERAL DEFENDANTS  
 3 ERIC G. HARGAN AND DEPARTMENT OF HEALTH AND HUMAN  
 4 SERVICES:  
 5 U.S. Department of Justice  
 6 20 Massachusetts Avenue, N.W.  
 7 Room 6139  
 8 Washington, D.C. 20001  
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14 ALSO PRESENT:  
 15 Martin Sherrill, Videographer  
 16 Llewellyn Woolford, Esq. (HHS)  
 17 Caitlin Palacios, Esq. (HHS)  
 18 Jeffrey Hunter Moon, Esq. (USCCB)  
 19 Rachel Chrisinger, paralegal  
 20  
 21  
 22  
 23  
 24  
 25

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12 EXHIBITS  
 13 (None marked)  
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PROCEEDINGS

THE VIDEOGRAPHER: This is tape number 1A of the videotaped deposition of Jonathan White in the matter of ACLU of Northern California versus Burwell. This deposition is being held at 20 Massachusetts Avenue, Northwest, Washington, D.C. on December 19, 2017, at approximately 3:14.

My name is Martin Sherrill from the firm of TransPerfect, and I'm the legal video specialist. The court reporter today is Laurie Donovan in association with TransPerfect.

Will counsel please introduce themselves.

MS. AMIRI: Brigitte Amiri for plaintiff.

MS. BURROWS: Meagan Burrows for plaintiff.

MR. NOWICKI: Daniel Nowicki for defendant-intervenor USCCB.

MR. MOON: Jeffrey Moon with the USCCB.

MR. PHIPPS: Peter Phipps for the official capacity defendants.

MR. TOMLINSON: Martin Tomlinson for official capacity federal defendants.

MR. WOOLFORD: Llewellen Woolford for defendant US Department of Health and Human Services.

MS. PALACIOS: Caitlin Palacios for defendant United States Department of Health and Human Services.

MS. CHRISINGER: Rachel Chrisinger, paralegal with the Department of Justice.

THE VIDEOGRAPHER: Would the court reporter please swear in the witness.

JONATHAN WHITE, having been first duly sworn, testified upon his oath as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFF BY MS. AMIRI:

Q Mr. White, I'm Brigitte Amiri. I am the plaintiff's, the plaintiff's attorney, and thank you so much for making the time today.

Have you ever been deposed before?

A I have not been deposed before.

Q Okay. So I'm sure that your counsel has already told you some of the ground rules, but just to quickly go over them, if you need a break

at any time, just let me know, and we'll take a break, as long as a question is not pending.

And if you don't understand something I have said, feel free to ask me to repeat it.

If your attorney objects, you may still answer the question unless he instructs you not to answer it.

And we'll both try to be mindful of not talking at the same time that the other one is talking, because that makes it hard for the court reporter.

And also along those lines, we also try to make sure that we have verbal responses to the questions so that the court reporter can take that down.

Does that all make sense?

A It does, yes, ma'am.

Q Great. Can you start by telling me about your educational and work background.

A Certainly.

So I'm a career officer in the US Public Health Service Commission Corps. I have been in the Public Health Service Commission Corps since February of 2008. I am a clinical social worker and emergency manager by training.

In terms of degrees, I have a bachelor's degree in English from New College. I have a Ph.D. in American literature from George Washington University. I have a master's in social work from Catholic University of America, and I, in the Public Health Service, have been stationed at the Administration for Children and Families since June of 2010.

I spent most of that time in ACF disaster shop, the Office of Human Services Emergency Preparedness and Response. In that role I worked on unaccompanied children influx events in 2012, 2014 and 2016; and so on the basis of that, I applied and was selected in fall of 2016 to be the deputy director of ORR for the UAC program, and I officially started those duties on the 9th of January of this year.

Q Is that your current title now?

A Deputy director for Children's Services, yes, ma'am.

Q Who do you directly report to in your current role?

A I report to Scott Lloyd, the director of ORR.

Q Who directly reports to you?

1 A Those who directly report to me are,  
 2 first of all, Tricia Swartz, the associate deputy  
 3 director; the division directors for the three  
 4 divisions in the Unaccompanied Alien Children  
 5 Program; that's Captain who is the  
 6 head of our logistics and emergency response  
 7 office; Jallyn Sualog, who runs operations; and  
 8 Michael Bartholomew, who runs DHUC, which is our  
 9 health shop; and also Commander ,  
 10 who is our child welfare senior advisor.

11 Those are the people who report to me  
 12 directly.

13 Q So prior to fall 2016 -- I may have  
 14 missed this, but were you involved with ORR's  
 15 Division of Unaccompanied Children?

16 A I was assisting them first as an  
 17 emergency management specialist, and then in the  
 18 last administration I was a senior advisor to the  
 19 agency head, and I was assigned to help ORR  
 20 through its influx event in 2016.

21 Q Does your knowledge of unaccompanied  
 22 minors' access to abortion and contraception go  
 23 back further than January of this year or fall of  
 24 last year in terms of your prior involvement with  
 25 ORR?

1 A I had limited personal involvement prior  
 2 to I would say fall of 2015, very limited, but  
 3 more involvement following that.  
 4 Q So some of the questions I may ask,  
 5 there may be -- it might not be perfectly explicit  
 6 which time period I'm talking about, so if at any  
 7 point you're confused about kind of what I'm  
 8 talking about in terms of time frame, just let me  
 9 know, and I'm sure Mr. Phipps will also keep me on  
 10 my toes, but I understand there may be  
 11 differences, depending on what time of, of year  
 12 that we're talking about.

13 So I just want you to look at what's  
 14 been marked as Lloyd Exhibit 1, which is in front  
 15 of you. This is our deposition notice under  
 16 Federal Rule 30(b)(6) which allows parties to  
 17 designate certain topics that -- or identify  
 18 certain topics, then to have the other party send  
 19 someone who is a designee.

20 Do you understand -- and you don't have  
 21 to read all of it, but that you're here as a  
 22 designee for the defendants to speak to some of  
 23 the topics on this list?

24 A Yes.

25 Q And do you understand that you're here

1 to speak about the topics on this list that relate  
 2 to unaccompanied immigrant minors and their access  
 3 to abortion and contraception and the HPV vaccine?

4 A Yes.

5 Q I might use "unaccompanied immigrant  
 6 minors," I might use "UAC," I might use "UC," but  
 7 you'll know what I'm talking about; is that fair?

8 A Sure.

9 Q Okay.

10 A Yes, yes. I'll ask for clarification  
 11 when --

12 Q Great.

13 A But yeah, we use all those terms.

14 Q Great.

15 MR. PHIPPS: Synonymously.

16 THE WITNESS: We in the program  
 17 use -- have used at different times  
 18 "unaccompanied children" and "unaccompanied  
 19 alien children" synonymously. We often  
 20 encounter unaccompanied immigrant minors in  
 21 others' language, so it's familiar to us.

22 BY MS. AMIRI:

23 Q We talked a little bit about the, the  
 24 chain of command, and I wanted to ask a question  
 25 about where, where Ken Tota fits in the chain of

1 command. Is he above you or below you in the  
 2 chain of command?

3 A He is my peer --

4 Q Okay.

5 A -- at this time.

6 Q And was he above you in the chain of  
 7 command at some point previously?

8 A At the start of this administration,  
 9 prior to the appointment of an appointed director,  
 10 he was acting director of ORR. At that time he  
 11 was my direct superior.

12 Q If you could look at Lloyd Exhibit 2,  
 13 please. It's the, the next one in the pile there.

14 A Yes, ma'am.

15 Q If you could take a minute to look at  
 16 it, and I'd like to ask you if you recognize it  
 17 and some questions about it.

18 (Witness peruses document.)

19 THE WITNESS: Okay. Yes, I do  
 20 recognize this document.

21 BY MS. AMIRI:

22 Q What is this document?

23 A This is the March 2008 Policy Memorandum  
 24 on Medical Services that require heightened ORR  
 25 involvement.

1 Q Is this the policy that is currently in  
 2 place today?  
 3 A It is.  
 4 Q Have there been any alterations or  
 5 changes made to it since March 2017?  
 6 A There have not been changes made to this  
 7 policy since March 2017.  
 8 Q Are there things that you would  
 9 characterize as clarifications that have been made  
 10 to this policy?  
 11 MR. PHIPPS: Since March 2017?  
 12 BY MS. AMIRI:  
 13 Q Mm-hmm.  
 14 A No, I wouldn't characterize them as  
 15 clarifications.  
 16 Q Okay.  
 17 A I wouldn't characterize them as  
 18 clarifications since March of 2017.  
 19 Q Looking at footnote 1 there, do you have  
 20 any reason to think that the -- there have been  
 21 any changes to the, the statutory language that  
 22 has been referenced in footnote 1 since this memo  
 23 was --  
 24 A No.  
 25 Q -- adopted?

1 A No.  
 2 Q So this is the policy for heightened  
 3 involvement for ORR with respect to abortion and  
 4 other medical procedures; is that fair?  
 5 A That, that's correct.  
 6 Q So can you walk me through just step by  
 7 step. When there is a request for an abortion  
 8 from a grantee, what are the steps that happen  
 9 along the way pursuant to this policy and internal  
 10 ORR practice as they exist from March 2017 until  
 11 present?  
 12 A Could -- when you say the, the  
 13 "steps" --  
 14 Q Yeah, so let's say --  
 15 A For, for whom?  
 16 Q -- just to kind of play it out in real  
 17 life, that a shelter contacts someone at ORR and  
 18 says pursuant to the policy of heightened  
 19 involvement, I am contacting ORR because there is  
 20 a minor in our care, and she's requested an  
 21 abortion.  
 22 And so then what happens at ORR once  
 23 that request is received?  
 24 A That would be elevated to the director,  
 25 and we would receive instruction from the director

1 on how to proceed in that minor's case.  
 2 Q What information is provided to the  
 3 director?  
 4 A What would certainly be provided would  
 5 be that there is a minor with a pregnancy test or,  
 6 or whatever is sort of known at that time, and  
 7 that the minor has expressed interest in or made a  
 8 request for TOP.  
 9 Q And by "TOP," you mean termination --  
 10 A "Termination of pregnancy," correct.  
 11 Q What is your role then while the  
 12 director is considering a request for an abortion?  
 13 A My primary role is that I funnel  
 14 information up and direction down.  
 15 Q Do you yourself ever make  
 16 recommendations to the director about whether he  
 17 should grant approval for a termination of  
 18 pregnancy?  
 19 A I have made, I have made  
 20 recommendations.  
 21 Q On how many occasions?  
 22 MR. PHIPPS: March 2017 until  
 23 present or --  
 24 BY MS. AMIRI:  
 25 Q Just I mean I think probably since

1 you've been in your position. I think I would  
 2 like to encompass both when Scott Lloyd was the  
 3 director and when Ken Tota was the acting  
 4 director.  
 5 A I have made a written recommendation in  
 6 memo form once. There are likely other occasions  
 7 where I made verbal or email recommendations.  
 8 Q And have you ever recommended that the  
 9 director approve an abortion?  
 10 A I have.  
 11 Q On more than one occasion?  
 12 A On one -- I can speak with certainty on  
 13 the one occasion where I made that in memo form.  
 14 Q And on -- and the other forms, email or  
 15 verbal, do you know whether it was a  
 16 recommendation for or a recommendation against  
 17 approval for termination of pregnancy?  
 18 A I have never recommended against a  
 19 termination.  
 20 Q For the time that Ken Tota was acting  
 21 director and the time that Scott Lloyd became  
 22 director until present, have either of the two men  
 23 ever approved an abortion request?  
 24 A There, there have been two instances in  
 25 which a medical abortion procedure that has begun

1 in which the director/acting director at that time  
2 was informed that it was in progress that has been  
3 allowed to be completed.

4 Q And that was when Ken Tota was acting  
5 director?

6 A Once when Ken Tota was acting director  
7 and once when Scott Lloyd was director.

8 Q What criteria are used by ORR to  
9 determine whether an abortion request will be  
10 approved or denied?

11 A The director makes that determination  
12 based on the totality of the circumstances.

13 Q Does any of the agency staff either  
14 below or above the director work with the director  
15 to make the ultimate determination based on the  
16 totality of circumstances whether to approve or  
17 deny an abortion request?

18 A Staff in ORR who work for Scott,  
19 including myself, may be tasked to gather  
20 information. That is a frequent occurrence.

21 Q Do, do you know what criteria Scott  
22 Lloyd uses to make a determination about whether  
23 to approve or deny an abortion request?

24 A I do not.

25 Q Is it your understanding that he makes

1 interests of the child. I'm not aware of any  
2 other written criteria that would inform his  
3 decision.

4 Q Then let's move to other medical  
5 procedures besides abortion.

6 Do you know whether there's any other  
7 criteria than the best interest standard to  
8 determine whether a minor can have access to a  
9 medical procedure other than abortion?

10 MS. BURROWS: We need to break.

11 MS. AMIRI: Okay. I'm sorry.

12 THE VIDEOGRAPHER: Going off record  
13 at 3:30.

14 (Whereupon, a short recess was  
15 taken.)

16 THE VIDEOGRAPHER: We are going  
17 back on record at 3:35.

18 BY MS. AMIRI:

19 Q All right. I apologize for the  
20 interruption.

21 So turning back to the policies at ORR  
22 for unaccompanied immigrant minors' access to  
23 abortion and contraception, if you could please  
24 look at what's been marked as Lloyd Exhibit 3.

25 A Yes.

1 the decision based on criteria that he has  
2 developed himself, based on the information that  
3 you have provided him?

4 A I'm aware that he makes a determination  
5 based on the available information and the  
6 totality of the circumstances, but I couldn't, I  
7 couldn't itemize what those components are.

8 Q And for the approval and denial  
9 considerations, is one of the considerations  
10 what's in, what's in the best interest of the  
11 minor?

12 A Any decision made by ORR, including the  
13 director, regarding medical care, would be based  
14 on an assessment of the best interest of the  
15 child.

16 Q Are there any other considerations that  
17 would be used other than the best interest of the  
18 minor to decide whether a minor could have access  
19 to a particular medical procedure?

20 A When you say "a particular medical  
21 procedure," are we speaking narrowly about  
22 abortion or more broadly?

23 Q Let's talk -- let's start with abortion.

24 A I think the -- I believe that it is  
25 based on the director's assessment of the best

1 Q Do you recognize this document?

2 A I do. This is from our online policy  
3 guide.

4 Q And looking at the second bullet under  
5 the sentence that starts "under the terms of the  
6 Flores Settlement Agreement."

7 A Okay.

8 Q What is your understanding of what is  
9 required under this policy? And we'll talk about  
10 Flores separately just in case there is any  
11 distinction. What is your understanding, under  
12 the policy in front of you, about what is included  
13 in terms of what care providers must provide in  
14 terms of appropriate, routine medical and dental  
15 care, family planning services, including  
16 pregnancy tests and comprehensive information  
17 about and access to medical reproductive health  
18 services and emergency contraception?

19 That wasn't a question yet, but the  
20 question is: Does -- do you -- is it your  
21 understanding that includes access to abortion?

22 A At what point in time?

23 Q At what point in time in pregnancy?

24 A No, what -- at what point in time, to  
25 answer that question.

1 Q Oh, in terms of the administration.  
 2 Since 2017.  
 3 A So at this time?  
 4 Q Yes, at this time.  
 5 A At this time it is my understanding that  
 6 HHS does not view abortion as included in family  
 7 planning services.  
 8 Q Okay, and does HHS at this time consider  
 9 abortion to be part of access to medical  
 10 reproductive health services?  
 11 A Not at this time.  
 12 Q Are you aware of a time in which HHS did  
 13 consider access to medical reproductive health  
 14 services or family planning to include abortion?  
 15 A Yes.  
 16 Q And when was that time?  
 17 A That was the operational interpretation  
 18 in the last administration.  
 19 Q So the actual language of the policy has  
 20 not changed, right?  
 21 A Correct.  
 22 Q It's just the interpretation of the  
 23 policy has changed between the last administration  
 24 and this administration?  
 25 A The operational understanding of what

1 engage in sexual behavior and, therefore, do not  
 2 routinely receive routine contraception.  
 3 Q Is that true both with respect to this  
 4 presidential administration and the last  
 5 presidential administration?  
 6 A That's my understanding, yes.  
 7 Q With respect to "emergency  
 8 contraception," what does that mean?  
 9 A Emergency -- at this time?  
 10 Q Yes.  
 11 A Emergency contraception would be a  
 12 requirement under the Interim Final Rule for  
 13 minors who were sexually assaulted while in ORR  
 14 care.  
 15 Q So do you believe that a minor who had  
 16 not been sexually assaulted while at an ORR-funded  
 17 facility would not be permitted to have access to  
 18 emergency contraception?  
 19 A I don't think we have a policy on that  
 20 at this time.  
 21 Q When medical care is provided to  
 22 unaccompanied minors, there is a treatment  
 23 authorization request that is submitted; is that  
 24 right?  
 25 A For some, for some medical interventions

1 family planning services and medical reproductive  
 2 health services and emergency contraception refers  
 3 to has changed.  
 4 Q Has there been any change in the  
 5 understanding of whether this includes -- this  
 6 definition in bullet 2 includes contraception?  
 7 A Routine contraception for contraception  
 8 purposes has not been understood to be part of  
 9 family planning, as I understand it, in either of  
 10 those points in time.  
 11 Q What is the definition of "family  
 12 planning services" then for -- let's start with  
 13 this administration.  
 14 A Family planning services would include  
 15 prenatal care. It would include general  
 16 reproductive health, such as Ob-Gyn visits or  
 17 urology visits. It would include sexual health  
 18 education, particularly where required under the  
 19 state licensure laws of the state in which the  
 20 shelter is domiciled.  
 21 Q Is contraception for contraceptive  
 22 purposes included in the phrase "access to medical  
 23 reproductive health services"?  
 24 A It is my understanding it has not been.  
 25 Children while in our care are not permitted to

1 and not others.  
 2 Q Is there a treatment authorization  
 3 request for contraception?  
 4 A So not as such. This is -- some minors  
 5 might receive a medication which is also a  
 6 contraceptive for non-contraceptive purposes.  
 7 For example, a girl who suffered from  
 8 dysmenorrhea might receive the same medication  
 9 that is also used for contraceptive purposes, but  
 10 she would be prescribed it for her, for her  
 11 illness rather than to prevent conception.  
 12 Ordinarily that would not require any  
 13 director-level review or, or review, headquarters-  
 14 level review to fill that prescription. That  
 15 would be routine care.  
 16 Q That's routine care, but is there a  
 17 treatment authorization request that would be  
 18 submitted for that?  
 19 A Explain what you mean by "treatment  
 20 authorization request."  
 21 Q So my understanding -- and maybe you can  
 22 help me -- is that when an unaccompanied minor  
 23 requests a service that will be paid for by ORR,  
 24 that there is some request to do so, and I thought  
 25 it was a treatment authorization request, but

1 maybe it's called something else.  
 2 A So there is a, there is a process for  
 3 using -- we call it ATAR. That is an  
 4 administrative tool that's really for  
 5 reimbursement, but there isn't headquarters-level  
 6 review every time a child gets a routine  
 7 medication. Headquarters-level review only occurs  
 8 in cases that are covered by the heightened  
 9 medical policy.  
 10 Q Okay. Fair enough.  
 11 So if a shelter has a teen in her care  
 12 and they have taken her to the doctor or the  
 13 doctor determines that she needs to be on oral  
 14 contraceptives, and the shelter submits a request  
 15 for reimbursement for that, no one at ORR  
 16 overrules or can overrule that decision?  
 17 A I don't know. I don't know that that  
 18 situation has come up.  
 19 Q Okay. Do you understand whether minors  
 20 who are in the care of ORR grantees have the  
 21 ability to obtain contraceptive prescriptions and  
 22 have them paid by ORR?  
 23 A For purposes of contraception?  
 24 Q Yeah. No. Sorry. Let's start with  
 25 medical indications.

1 that those teenagers, just like teenagers in the  
 2 general population, might have "significant  
 3 others" with whom they are sexually active on a  
 4 consensual basis?  
 5 A We -- I don't know that -- I think we  
 6 might have concerns about kids in long-term foster  
 7 care having that much unsupervised time. So I  
 8 don't -- they do attend public school. That does  
 9 not mean that they have the same, the same sort of  
 10 social liberty that other minors in the general  
 11 population might have.  
 12 Q Why? What restricts their social  
 13 liberty?  
 14 MR. PHIPPS: I might just impose --  
 15 I don't know that this is within the  
 16 30(b)(6).  
 17 MS. AMIRI: That's fine.  
 18 BY MS. AMIRI:  
 19 Q You can still answer.  
 20 MR. PHIPPS: To the extent you  
 21 know.  
 22 BY MS. AMIRI:  
 23 Q Yeah.  
 24 A So kids at the LTFC level of care do  
 25 attend -- long-term foster care, which is one of

1 A I'm aware of no impediment that would  
 2 prevent them from accessing medications to treat a  
 3 medical condition.  
 4 Q Okay, and that includes contraception?  
 5 A If it were for, for those medical  
 6 purposes, yes.  
 7 Q Okay, and if a shelter submitted a  
 8 request for reimbursement for contraceptive for  
 9 contraceptive purposes, would ORR have the ability  
 10 to review and possibly deny that request?  
 11 A We certainly might have -- would have  
 12 the ability to review. I don't know whether we  
 13 would routinely review every prescription, but if  
 14 it were elevated to us as a question, yes, we  
 15 would review them. It would inherently raise  
 16 questions why a minor in our care would require  
 17 contraception.  
 18 Q There are some shelters that are more  
 19 like group homes, and the minors go to public  
 20 school and things like that; is that fair?  
 21 A Yes.  
 22 Q Okay.  
 23 A There are long-term foster care. That  
 24 is one level of care within our system.  
 25 Q Okay, and so it would be fair to assume

1 our levels of care, they do attend public school,  
 2 but they are still in ORR care and custody, and I,  
 3 I do not believe that at this time a request for  
 4 contraceptive medication for them -- I'm not aware  
 5 of any policy that prohibits it, but I'm also not  
 6 aware -- I don't, I don't believe that's something  
 7 that we are in the -- routinely approving.  
 8 Q Okay. If you can turn to what's marked  
 9 as Lloyd Exhibit 4, I believe. It should say, it  
 10 should say "4.9.2" at the top.  
 11 A Yes.  
 12 Q Okay, great.  
 13 Take a minute to look at this, and let  
 14 me know if you're familiar with it, and then I  
 15 will ask you some questions.  
 16 (Witness peruses document.)  
 17 THE WITNESS: Yes, I'm familiar  
 18 with 4.9.2.  
 19 BY MS. AMIRI:  
 20 Q Are you also familiar with 4.9.3 and  
 21 4.9.4?  
 22 A I am.  
 23 Q This is also from the policy guide  
 24 online?  
 25 A Correct.



1 Q What is your understanding of, in 4.9.2,  
2 the -- in the second paragraph and the second  
3 sentence that starts "Care providers also must  
4 ensure the victim has access to all lawful  
5 pregnancy-related medical services within the time  
6 frame the services may be provided under  
7 applicable state laws."

8 Since 2017, how has the Agency  
9 interpreted that phrase?

10 A This situation has not arisen, because  
11 this is specific to a minor who becomes pregnant  
12 as a result of sexual abuse while in our care, and  
13 we have not had that, that -- we have not had any  
14 minors become pregnant as a result of sexual abuse  
15 while in our care.

16 Q Has there been -- even if it hasn't come  
17 up, has there been a determination of how this  
18 would be interpreted if that did come up?

19 A The, the Interim Final Rule has not  
20 been, has not been changed.

21 Q Right, but has there been, since 2017, a  
22 determination by ORR about how to interpret that  
23 phrase?

24 A I'm not aware that we've had -- I don't  
25 think there's been any official interpretation of

1 Settlement Agreement, but I wanted to ask you  
2 specifically, putting this policy aside, whether  
3 there is a different interpretation about the  
4 Flores Settlement Agreement itself, and it should  
5 be marked as Exhibit 5 in front of you if you  
6 wanted to look at it, and specifically I believe  
7 it's Exhibit 1 to the settlement agreement, A2.

8 A Fine.

9 Q I'd asked you some questions about the  
10 definition of "family planning services" and  
11 "medical care," and I'm just going to ask whether  
12 your answers with respect to the policy that we  
13 looked at before would be the same for the Flores  
14 agreement itself or whether there is a difference  
15 between the interpretation of the policy and the  
16 Flores agreement itself.

17 A I'm -- with regard to which one?

18 Q The Flores Settlement Agreement, whether  
19 there is a distinction in interpretation between  
20 the two.

21 So, for example, we talked about --  
22 maybe I'll just ask you whether, under the Flores  
23 Settlement Agreement, the Agency, sitting here  
24 today, interprets appropriate "routine medical  
25 care" and "family planning services" to include

1 this phrase.

2 Q With respect to the 4.9.4 religious  
3 objections, at the bottom it talks about the plan  
4 must be preapproved by ORR, and my question is  
5 whether you know whether any plan has been  
6 submitted to ORR under this religious objection  
7 clause in 4.9.4.

8 A I believe there have been religious  
9 objections raised, but none, to my knowledge, have  
10 ever been raised regarding access to any of the  
11 required services for a child victim of sexual  
12 abuse.

13 Q While at the shelter?

14 A As outlined in this policy, yes.

15 Q Okay, and we'll talk about some of the  
16 other religious objections that have manifested,  
17 but I wanted to specifically ask about whether  
18 there was any plan under 4.9.4 that you are aware  
19 of that has been submitted to ORR under this  
20 policy.

21 A I'm not -- I don't, I don't think  
22 there's been a plan specific to 4.9.4.

23 Q Okay. Before, when I asked you about  
24 Lloyd Exhibit 3 and we talked specifically about  
25 the policy, and the policy is based on the Flores

1 abortion.

2 A My understanding is that is not  
3 understood as included.

4 Q But was it in a prior, prior  
5 administration?

6 A Yes.

7 Q I'd like to show you -- skip Lloyd  
8 Exhibit 7. It might be Lloyd Exhibit 8 in front  
9 of you, and turn to page 3 of -- are those the  
10 interrogatories? No. Sorry.

11 MR. PHIPPS: That's 7.

12 MS. AMIRI: 7?

13 MR. PHIPPS: Skip 6 and go to 7.

14 BY MS. AMIRI:

15 Q Skip 6 and go to 7. Okay. There you  
16 go, and start by looking at page 3 of Exhibit 7,  
17 and actually, if you could just take a quick look  
18 at the whole thing, and I believe you signed the  
19 verification page for these.

20 A For some of them, yes.

21 Q For some of them, correct.

22 So on page 3, I was going to ask you  
23 about the sentence that starts about a third of  
24 the way down, "If pregnancy results from an  
25 instance of sexual abuse, care provider facility

1 must ensure that the victim receives timely and  
2 comprehensive information about all lawful  
3 pregnancy-related medical services and timely  
4 access to all lawful pregnancy-related medical  
5 care."

6 Is that -- is the answer to this  
7 interrogatory, does it track the policy that we  
8 were talking about before in terms of 4.9.4, and  
9 it, it results only to -- it relates -- sorry --  
10 only to sexual abuse in the shelter?

11 A So the sentence beforehand says "similar  
12 to the PREA regulation state," so this is, by  
13 context, narrowly focused on the cases where a boy  
14 or girl is sexually abused while in our care.

15 Q Okay, and you said to date that has not  
16 happened?

17 A There has not been, to my knowledge, any  
18 pregnancy which has resulted from the sexual abuse  
19 of a minor while in our care.

20 Q Has there been an instance of sexual  
21 assault in which emergency contraception was  
22 needed to be accessed by the minor?

23 A I'm not aware of any instance where  
24 emergency contraception was required.

25 Q If you can also turn to page 4 and

1 Q Well, let's say five, five years.

2 A It has happened.

3 Q Okay. Has it happened since  
4 January 2017?

5 A It has not happened, to my knowledge,  
6 since January of 2017.

7 Q Is it possible that it could have  
8 happened without your knowledge since 2017?

9 A It is possible but unlikely that it  
10 would have happened without my knowledge since  
11 January of 2017.

12 Q Is it fair to say since March 2017,  
13 let's say, you have been aware of all abortion  
14 requests that have been brought to ORR's  
15 attention?

16 A Yes. If they have been brought to ORR  
17 headquarters' attention, I have been aware of them  
18 all.

19 Q It's possible that some abortion  
20 requests may not have made it to ORR? Is that  
21 possible?

22 A It is possible that some abortion  
23 requests may never have been brought to ORR's  
24 attention.

25 Q Do you have a sense from speaking with

1 interrogatory number 3, if it helps to read the  
2 question, and then I wanted to ask you about the  
3 supplemental response.

4 (Witness peruses document.)

5 THE WITNESS: Yes.

6 BY MS. AMIRI:

7 Q I wanted to ask you about how it works  
8 when a UC requested abortion services and where  
9 the religiously affiliated grantee or subgrantee  
10 had objections to such services, the federal field  
11 specialist, in conjunction with the central  
12 office, effectuated the transfer of the UC.

13 So I want to talk to you about the, the  
14 process of where there was a religiously  
15 affiliated entity that had an objection to  
16 providing access to abortion, what happens in  
17 terms of facilitating the transfer of that minor  
18 to a grantee that does not have a religiously  
19 affiliated -- I'm sorry -- does not have a  
20 religious objection to providing abortion, has  
21 that happened in your time at ORR?

22 A When you say in my time at ORR, do you  
23 mean since January 9, or do you mean in the --

24 Q In the --

25 A -- five years that I've worked with ORR?

1 grantees or doing field visits whether that  
2 happens in terms of a request for abortion doesn't  
3 make it either because it doesn't get communicated  
4 from the shelter to ORR or some other gap in  
5 communication elsewhere in the chain?

6 A I am aware of instances where minors  
7 received abortion without director-level  
8 authorization.

9 Q Are you aware of the converse, where a  
10 minor has wanted an abortion but has not been able  
11 to obtain one because her request has not been  
12 brought up the chain?

13 A No, I'm not aware of any instances like  
14 that.

15 Q Are you aware of any instance where a  
16 minor was unable to obtain an abortion because of  
17 the religious affiliation of the shelter within  
18 which she resided?

19 A I am not aware of any such instance.

20 Q So sitting here today in terms of -- oh,  
21 now I forgot if I've asked this.

22 I believe you said that since March 2017  
23 there has not been an instance where there has  
24 been an abortion request from a religiously  
25 affiliated shelter that had a religious objection

1 to providing an abortion; is that right?  
 2 A That's correct.  
 3 Q Okay. So prior to March 2017, how did  
 4 it work when a religiously affiliated shelter had  
 5 an objection to providing access to abortion for a  
 6 minor? If you can walk me through the steps.  
 7 Presumably they contacted ORR and said we have a  
 8 minor who is requesting an abortion, and then ORR  
 9 took what next steps?  
 10 A So in those cases where that occurred, I  
 11 think it's substantially, as you see it here, that  
 12 the, the grantee program that would have a  
 13 religious or other objection to facilitating  
 14 termination of pregnancy would notify their  
 15 federal field specialist, which is the ORR  
 16 official regionally responsible for that program.  
 17 The FFS would then -- in most cases, FFSs would  
 18 then coordinate with the medical team with those  
 19 on the FFS team to transfer the minor to a program  
 20 that would enable her to receive the TOP.  
 21 Q Do you have a sense of the average  
 22 length of time it took to make that transfer  
 23 between the religiously affiliated entity and an  
 24 entity that did not have an objection to providing  
 25 access to abortion?

1 request and decides whether to approve the  
 2 abortion or not since 2017 of March -- March of  
 3 2017?  
 4 A I would say it has varied.  
 5 Q Okay. Do you have a sense of whether  
 6 that variation is several days, weeks, any just  
 7 ballpark estimates of averages of time between a  
 8 request and the ORR directing -- ORR actor,  
 9 director acting on that request?  
 10 A The, the process is typically that, upon  
 11 notification, there is then an instruction for  
 12 next steps. Those steps are completed, and there  
 13 may be steps subsequent.  
 14 Q What are those next steps?  
 15 A It has varied.  
 16 Q Since March 2017, has one of those steps  
 17 been a visit to a crisis pregnancy or crisis  
 18 resource center?  
 19 A In some cases, yes.  
 20 Q In some but not all?  
 21 A Correct.  
 22 Q The majority of cases?  
 23 A I don't know that I have a count.  
 24 Certainly in a number of cases.  
 25 Q Do you know how many abortion requests

1 A I don't have any firm measures.  
 2 Transfer of a UAC from one shelter to another is  
 3 generally a one- to three-day process.  
 4 Q Regardless of whether that transfer is  
 5 related to an abortion, just in general, I presume  
 6 there are transfers for other reasons?  
 7 A There are numerous transfers shelter to  
 8 shelter, and that is, that is typical. I'm not  
 9 aware of anything that would be different  
 10 operationally for a transfer in order to enable a  
 11 minor to access TOP.  
 12 Q Do you have a sense of how long it takes  
 13 from the time ORR receives an abortion request to  
 14 make a decision one way or another about whether  
 15 to grant or deny that request?  
 16 A There's not a specific time frame in my  
 17 experience.  
 18 Q Is there -- there's not a specific time  
 19 frame within which the ORR director has to act on  
 20 a request? Is that the -- I just wanted to  
 21 clarify.  
 22 A That's correct. There is not a scripted  
 23 time frame for the process.  
 24 Q Do you have a sense just in practice how  
 25 long it takes between the time the director gets a

1 there have been to ORR since March 2017?  
 2 A I believe there have been -- again, the,  
 3 the requests elevated to ORR headquarters?  
 4 Q Yes.  
 5 A I believe it's been about seven.  
 6 Q Going back to the steps, is one of those  
 7 steps mandatory parent notification of the  
 8 pregnancy and/or the abortion decision?  
 9 A Could you break that out a little more?  
 10 Q Sure.  
 11 You were talking about the steps that,  
 12 that happen once the director -- and let's just  
 13 stick with Scott Lloyd here -- once Scott Lloyd  
 14 receives an abortion request. We talked about one  
 15 of the steps possibly being a visit to a crisis  
 16 pregnancy center, and so I'm trying to figure out  
 17 another step that may have to happen along the  
 18 way, and so my question is whether one of those  
 19 steps is a requirement that the parent in the home  
 20 country be notified of the minor's abortion  
 21 decision.  
 22 A In many cases, there has been a  
 23 notification of the parents in home country.  
 24 Q Is that true even over the minor's  
 25 objection?

1 A In some cases it has been without -- it  
2 has been over the objection of the minor.

3 Q Based on your social work background, do  
4 you think it's wise to notify a parent of a  
5 minor's abortion decision over her objection?

6 This is outside 30(b)(6).

7 MR. PHIPPS: I'll object. Beyond  
8 the scope of 30(b)(6). Clarifying that in  
9 this instance "you" means "the witness you,"  
10 not you, "designee by HHS you"?

11 MS. AMIRI: Yes.

12 THE WITNESS: Could you ask the  
13 question again?

14 BY MS. AMIRI:

15 Q Sure.

16 Subject to Peter's, Mr. Phipps'  
17 objections, which will stand after I finish my  
18 question, but based on your social worker  
19 background and, and training, do you think it's  
20 wise to notify a minor's parents of her abortion  
21 decision over the minor's objection?

22 A I would not recommend such a  
23 notification.

24 Q Why is that?

25 A Because of the potential of additional

1 to receive a pregnant girl. We have made no  
2 decisions, no placements differently on the basis  
3 of awareness that the minor was interested in  
4 terminating the pregnancy.

5 Q Do you know whether prior to 2017 there  
6 were placement decisions based on a minor's  
7 request for an abortion specifically to avoid  
8 putting her in a shelter where there might be a  
9 religious objection to providing her access to  
10 abortion?

11 A I'm not aware of any such placement  
12 decisions.

13 Q Do you know how many current ORR  
14 grantees have religious objections to providing  
15 access to abortion or contraception?

16 A I think the ones of which I'm aware,  
17 they sort of have a documented objection, I  
18 believe is the, the USCCB network.

19 Q Any others that you're aware of?

20 A There may be, there may be others.  
21 That's the one of which I'm aware from my, my  
22 reading of the, of the documents.

23 Q Have you personally been involved in  
24 negotiating the terms of a cooperative agreement  
25 with religiously affiliated entities that have a

1 harm or risk.

2 Q Do you -- we talked a little bit about  
3 whether there have been any transfers since March  
4 of 2017 from a religiously affiliated grantee to a  
5 secular facility since March of 2017, but my  
6 question is going to be slightly different,  
7 whether, since March of 2017, there have been any  
8 initial placement decisions about whether a minor  
9 should be placed in a particular location because  
10 she's pregnant and seeking an abortion.

11 A So I have to answer that in -- could  
12 you -- so --

13 Q Let me rephrase it, yeah, and so we'll  
14 start with the time frame.

15 A Right.

16 Q Since March 2017 --

17 A Right.

18 Q -- has ORR made any placement decisions  
19 about whether a minor is pregnant and seeking an  
20 abortion?

21 A We have made no placement decisions  
22 based on a minor expressing an interest in  
23 abortion. We do routinely make placement  
24 decisions based on knowing that a minor is  
25 pregnant -- if we know that -- to a bed licensed

1 religious objection to providing abortion or  
2 contraception?

3 A I have not.

4 Q Do you have knowledge of the process by  
5 which such cooperative agreements were negotiated  
6 by your colleagues at ORR?

7 A I don't believe that cooperative  
8 agreements are negotiated in that way with  
9 individual providers. I think there's a standard  
10 cooperative agreement produced for a period of  
11 time.

12 Q So you're not aware, for example, of a  
13 situation where a religiously affiliated grantee  
14 had asked to remove certain terms from the  
15 cooperative agreement related to access to  
16 abortion or contraception?

17 A I am aware that, that grantees may have  
18 sought a reasonable accommodation to the terms of  
19 the cooperative agreement. That's not a  
20 negotiation of the cooperative agreement.

21 Q Okay, but is it your understanding that  
22 the actual language in the cooperative agreement  
23 may have changed based on a religious objection to  
24 providing access to abortion or contraception?

25 MR. PHIPPS: Just I'll impose --

1 within the scope of 30(b)(6), this relates to  
 2 cooperative agreements regarding  
 3 unaccompanied alien children?  
 4 MS. AMIRI: Yes.  
 5 MR. PHIPPS: Okay.  
 6 Clarification --  
 7 MS. AMIRI: Yep.  
 8 MR. PHIPPS: -- not an objection.  
 9 BY MS. AMIRI:  
 10 Q Yes, and all my questions -- I mean we  
 11 can just lay that out right now. All my questions  
 12 are about the unaccompanied children program. So  
 13 lest there be any confusion about other grants or  
 14 other things, unless I say otherwise, all we're  
 15 talking about is unaccompanied minors.  
 16 A Could you ask the question again? I'm  
 17 sorry.  
 18 Q Sure.  
 19 I believe I said something along the  
 20 lines of whether you were aware of whether the  
 21 language in a particular cooperative agreement was  
 22 changed because of a religious objection to  
 23 providing access to abortion or contraception.  
 24 A I don't believe the language has  
 25 changed. I believe that -- I'm aware that the

1 request.  
 2 A Yes.  
 3 Q How many times has that happened?  
 4 A There have been denials which a minor  
 5 subsequently was able to access abortion through  
 6 court intervention. There have been denials where  
 7 minors exited our care prior to receiving the, the  
 8 procedure.  
 9 Q Do you know of any minors that carried  
 10 their pregnancies to term as a result of a  
 11 director's denial of access to abortion?  
 12 A No.  
 13 (Discussion was held off the  
 14 record.)  
 15 BY MS. AMIRI:  
 16 Q All right. If you could look at Exhibit  
 17 9, please. Lloyd Exhibit 9. I'm sorry. Yes.  
 18 Have you seen this document before?  
 19 A I have.  
 20 Q And what is it?  
 21 A This is a memorandum from Ken Tota,  
 22 then-acting director of ORR.  
 23 Q It's to whom it may, "to whom it may  
 24 concern." Do you know who this was addressed to?  
 25 A It had three potential intended

1 cooperative agreements provide for proposals to  
 2 include an alternate approach to satisfy  
 3 religious-based objections to requirements under  
 4 the cooperative agreement.  
 5 Q And would that alternative approach be  
 6 reduced to writing somewhere outside of the  
 7 cooperative agreement, whether it's in an email  
 8 exchange or a letter?  
 9 A I think the process is contained both in  
 10 the formal proposal for the grant and also in the  
 11 surrounding sort of operational engagement between  
 12 each grantee and the federal government.  
 13 Q And, well, we could pull up some  
 14 additional documents and see if you're familiar  
 15 with them --  
 16 A That would be helpful.  
 17 Q -- and, and, and talk about how such an  
 18 accommodation was operationalized.  
 19 I had asked whether any minor was unable  
 20 to receive an abortion based on the religious  
 21 objection of a grantee.  
 22 My next question is whether you know of  
 23 whether there has been any minor in ORR care since  
 24 March of 2017 that has not been able to receive an  
 25 abortion because the director denied an abortion

1 audiences. The first was, it was directing ORR  
 2 staff. The second is, it was understood as  
 3 directive to the staff of the grantee shelter that  
 4 was sheltering a specific minor whose case is  
 5 referenced here. The third was it was intended to  
 6 be proffered in event of need by ORR staff to  
 7 community healthcare providers.  
 8 Q Were you involved in drafting this memo?  
 9 A I was not involved in drafting this  
 10 memo.  
 11 Q Were you involved in discussions about  
 12 the minor at issue in this memo?  
 13 A I was.  
 14 Q And so tell me what, what, what  
 15 transpired with this minor who sought a medication  
 16 abortion.  
 17 A The minor in question had begun a  
 18 medical chemical procedural abortion using a  
 19 two-dose regimen. She received the first dose  
 20 prior to notification to ORR. ORR became aware  
 21 after that initial dose was administered, and  
 22 there was then a federal effort and a discussion  
 23 to determine what would be the course of action  
 24 following that first dose.  
 25 Q Who made the determination to direct

1 that the UAC be taken to an emergency room of a  
2 local hospital?

3 A I, I know from whom we received that  
4 direction. I, I don't know who ultimately made  
5 that decision.

6 Q Who did, who did you receive that  
7 direction from?

8 A We received that direction from Maggie  
9 Wynne, counselor to the Secretary for Human  
10 Services.

11 Q But you don't know from whom she  
12 received that, that direction?

13 A I would not know that.

14 Q Is it possible that she made the  
15 directive herself rather than having it come from  
16 somebody else?

17 A I really couldn't speak to what was  
18 possible.

19 Q What was the purpose of taking the, the  
20 UC to the emergency room after she had taken,  
21 presumably it was mifepristone?

22 A The memorandum specifies that the minor  
23 is to be brought to the emergency room in order to  
24 determine the health status of the UAC. It's also  
25 to determine at the time if there was a fetal

1 heartbeat.

2 Q And if there was a fetal heartbeat, do  
3 you have an understanding of what ORR would have  
4 directed to have happened?

5 A Prior to that time, we were not aware of  
6 what the decision would be. We understood what  
7 we -- we had received direction on what we should  
8 do if there were no heartbeat.

9 Q And what was that direction?

10 A To allow the procedure, the second part  
11 of the chemical procedure, which, as you know, is  
12 the use of a chemical agent to expel uterine  
13 contents, that that medical intervention could  
14 then be administered.

15 Q And was a fetal or embryonic heartbeat  
16 detected?

17 A It was.

18 Q And nevertheless she was allowed to  
19 complete the medication abortion?

20 A Correct.

21 Q And why was the ultimate decision made  
22 to allow her to continue with the medication  
23 abortion procedure?

24 A I don't know. That was direction that  
25 we received.

1 Q Did ORR explore whether the mifepristone  
2 could have been reversed through progesterone?

3 A We were directed to explore that.

4 Q And is all this direction coming from  
5 Maggie Wynne?

6 A That direction came from Maggie Wynne.

7 Q Who made the direction to allow her to  
8 continue with the medication abortion and take the  
9 misoprostol?

10 A We received that direction, I believe,  
11 from HHS OGC.

12 Q OGC?

13 Do you believe -- and now I'm just  
14 talking about you -- believe that progesterone can  
15 reverse mifepristone?

16 A You're asking me, Jonathan White?

17 Q Yes.

18 MR. PHIPPS: And object to the  
19 scope. Beyond 30(b)(6). You've limited that  
20 way. It's outside the 30(b)(6).

21 BY MS. AMIRI:

22 Q Yes.

23 A My understanding is that progesterone,  
24 there are no studies regarding the safety or  
25 efficacy of progesterone for that purpose, and it

1 is, it is not an evidence-based medical  
2 intervention.

3 Q Do you, Mr. White -- not as a 30(b)(6)  
4 designee -- believe it would have been detrimental  
5 to this minor to prohibit her from taking  
6 misoprostol after she had taken mifepristone?

7 A I am not an obstetrician. I'm not a  
8 medical doctor. I could not speak to her medical  
9 risk.

10 Q Did you understand there were  
11 conversations in ORR about the medical risks to  
12 her if she were not allowed to --

13 A Yes.

14 Q -- take the misoprostol?

15 And what were those conversations?

16 A Could you be more specific?

17 Q Sure.

18 So, so there's -- I have seen some,  
19 some email traffic about this, that, that there  
20 was conversations within ORR about whether the  
21 minor's health would be at risk or whether there  
22 would be some sort of adverse outcome for her if  
23 she were prohibited from taking misoprostol after  
24 she had taken mifepristone.

25 So I believe there was a discussion

1 about that, and --  
 2 A Yes.  
 3 Q -- so I'm just asking you about what was  
 4 that discussion in terms of whether it would have  
 5 been detrimental for this minor to be prohibited  
 6 from completing the medication abortion.  
 7 MR. PHIPPS: I just -- rather than  
 8 take a break, I'll just instruct the witness  
 9 not to answer in a way that would reveal any  
 10 attorney/client communication, should any of  
 11 those exist, or any, any matters that would  
 12 be squarely within the deliberative process  
 13 privilege, should any of those exist. I, I  
 14 don't want to take a break and find out if  
 15 those do. I would just as soon --  
 16 MS. AMIRI: Sure.  
 17 MR. PHIPPS: -- give that  
 18 instruction and see, see where we go.  
 19 MS. AMIRI: Sure, and we can also  
 20 pull the emails, because presumably you  
 21 didn't give me anything that was privileged.  
 22 MR. PHIPPS: Right.  
 23 MS. AMIRI: So we can also grab  
 24 those if that's helpful.  
 25 THE WITNESS: At the crew level, we

1 medical decisions for the minor even when the  
 2 minor has requested another medical course of  
 3 action? In other words -- I can rephrase that.  
 4 Does the ORR director's decision about a  
 5 medical course of conduct supplant the minor's  
 6 desired medical course of conduct?  
 7 A Yes, in some cases.  
 8 Q And is one of those cases abortion?  
 9 A I'm not sure -- I don't know that that's  
 10 actually ever been formulated.  
 11 Q So in the context of abortion, has the  
 12 director of ORR decided that an abortion is not in  
 13 the best interest of a minor, despite the fact  
 14 that the minor has asked for an abortion?  
 15 A Yes, I believe so.  
 16 Q Scott Lloyd wasn't yet the director of  
 17 ORR when this memo was issued, but he was at HHS  
 18 in some capacity; is that right?  
 19 A Yes.  
 20 Q Do you know if Mr. Lloyd was involved in  
 21 writing this memo?  
 22 A I do not know who authored the memo.  
 23 Q Were you involved in conversations with  
 24 Mr. Lloyd about the minor at issue in this memo?  
 25 MR. PHIPPS: Objection. Is the

1 did have discussions regarding the potential  
 2 for medical risk and interrupting the  
 3 sequence of interventions.  
 4 BY MS. AMIRI:  
 5 Q And what were some of the risks that  
 6 were discussed that would have happened or  
 7 possibly could have happened if the minor was  
 8 unable to complete the medication abortion?  
 9 A We did discuss infection risks and other  
 10 medical risks to the minor.  
 11 Q In this memo in the first paragraph,  
 12 there's a line that says, at the very end, "This  
 13 means that the director of ORR is empowered by  
 14 Congress to make all medical decisions for the  
 15 unaccompanied alien child (UAC) in place of the  
 16 child's parents."  
 17 I understand that this was written by  
 18 the acting ORR director, and so my question is:  
 19 Sitting here today, is that statement a current  
 20 understanding of the power of the director of ORR?  
 21 A It is my understanding that the -- that  
 22 we work operationally on the basis that the  
 23 director of ORR makes medical decisions for all  
 24 UACs in ORR care.  
 25 Q Does the director of ORR make all

1 time period before the writing of the memo?  
 2 BY MS. AMIRI:  
 3 Q Anytime before, after, around the memo.  
 4 Conversations about this particular minor. We can  
 5 make it broad.  
 6 Have you ever had a conversation with  
 7 Mr. Lloyd about this particular minor in this  
 8 memo?  
 9 A Yes.  
 10 Q And what were those conversations?  
 11 A He was involved subsequently as director  
 12 in discussions attempting to determine what had  
 13 resulted in, in terminations of minors in ORR  
 14 custody. We talked about this case then. It, it  
 15 may be -- it would be helpful if you had emails to  
 16 point me to. I'm not sure I can recall in this  
 17 moment whether we had discussions about this case  
 18 prior to this memo.  
 19 Q Okay.  
 20 A I would really need to be directed to,  
 21 to sort of emails to --  
 22 Q Sure. Oh, let's put aside for any  
 23 conversations about kind of historical reflection  
 24 about this memo --  
 25 A Sure.

1 Q -- but just kind of focus it on what was  
2 happening in that particular moment. So right  
3 around this time, in early March, while this was  
4 all happening.

5 So when the minor is seeking to finish  
6 the medication abortion, when the decision is  
7 being made to take her to the hospital, what --  
8 were you talking to Scott Lloyd at that point?

9 A Scott Lloyd is one of the HHS officials  
10 that we were talking to about this and other  
11 cases.

12 Q Okay. So it was Maggie Wynne, HHS, OGC,  
13 Scott Lloyd, Ken Tota, yourself. Anyone else?

14 A At some parts of the conversation, also  
15 our medical division director was involved in some  
16 of those conversations.

17 Q Is that Dr. Bartholomew?

18 A That's Commander Michael Bartholomew,  
19 right. So on my team and various other members of  
20 our team -- there were other career staff involved  
21 in, in the execution of, of direction.

22 Q You had mentioned that there was another  
23 circumstance in which a minor had started a  
24 medication abortion, and there was some  
25 "interruption" -- I believe was the word that you

1 THE VIDEOGRAPHER: Going off the  
2 record at 4:28.

3 (Whereupon, a short recess was  
4 taken.)

5 THE VIDEOGRAPHER: We are going  
6 back on the record at 4:42. This begins disc  
7 number 2.

8 BY MS. AMIRI:

9 Q So if you could look in the pile of  
10 exhibits in front of you and see what that next  
11 one is labeled. That's Exhibit 10.

12 A Would that be Lloyd Exhibit 10?

13 Q Lloyd Exhibit 10, yeah. Let's move to  
14 that one. Thank you.

15 Let me ask a general question.

16 A Sure.

17 Q Is Maggie -- it looks like Maggie Wynne  
18 was involved in requests for termination of  
19 pregnancy before Scott Lloyd became the director  
20 of ORR; is that fair?

21 A That's correct.

22 Q After Scott Lloyd was appointed as  
23 director of ORR, has Maggie Wynne been involved in  
24 setting policy with respect to unaccompanied  
25 minors' access to abortion?

1 had used -- when Scott Lloyd was director.

2 Can you tell me about what happened in  
3 that circumstance?

4 A I don't believe there was an  
5 interruption. We became aware that a chemical  
6 procedure had begun. We became aware during the  
7 sequence, and that was elevated up to the  
8 director's awareness. The minor was permitted to  
9 continue the procedure.

10 Q Was that minor also taken to an  
11 emergency room to assess whether there was an  
12 embryonic or fetal heartbeat?

13 A No.

14 Q Was there any discussion about that  
15 minor about using progesterone to reverse the  
16 mifepristone?

17 A We received no direction to pursue that  
18 or investigate that.

19 MS. AMIRI: We've been going for a  
20 little while. Do you want a break?

21 MR. PHIPPS: A short one?

22 MS. AMIRI: Yeah.

23 MR. PHIPPS: Yeah, okay.

24 MS. AMIRI: Five, ten minutes.

25 MR. PHIPPS: Yeah, that's great.

1 A She's been among the, among the staff  
2 involved.

3 Q Do you know if Maggie Wynne has a  
4 religious opposition to abortion?

5 A I believe so.

6 Q Do you believe that Maggie Wynne's  
7 religious opposition to abortion leads her to give  
8 preference to religiously affiliated grantees?

9 MR. PHIPPS: Objection. Scope.  
10 Calls for speculation.

11 BY MS. AMIRI:

12 Q You can answer.

13 A I really don't -- I don't know. I'm not  
14 aware of -- I'm not aware of any decisions that  
15 she's been involved in that, that have involved  
16 giving preference to a grantee, so I, I really  
17 couldn't comment.

18 Q Do you believe Maggie Wynne's religious  
19 opposition to abortion influences her decision as  
20 to whether individual unaccompanied minors should  
21 be allowed to access abortion while in ORR  
22 custody?

23 MR. PHIPPS: Objection. Scope.  
24 Speculation.

25 THE WITNESS: I really couldn't



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1 speak to the motivations of administration  
2 personnel.  
3 BY MS. AMIRI:  
4 Q Have you had conversations with Scott  
5 Lloyd about his opposition to abortion?  
6 MR. PHIPPS: Objection. Assumes  
7 faxes not in evidence.  
8 BY MS. AMIRI:  
9 Q Well, I'll back up and say that  
10 yesterday he testified that he believes abortion  
11 is the destruction of human life. So have you had  
12 conversation with Scott Lloyd about his belief  
13 that abortion is the destruction of human life?  
14 A I have had conversations with him that  
15 would suggest that he has those views.  
16 Q Do you believe that those views are  
17 motivated by his religion?  
18 MR. PHIPPS: Objection. Scope.  
19 Calls for speculation.  
20 THE WITNESS: I have no way of  
21 knowing the origin of, of his views on  
22 abortion's legality or its policy  
23 implications.  
24 BY MS. AMIRI:  
25 Q He's never talked to you about the

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1 Biblical interpretation of whether abortion is  
2 right or wrong?  
3 A We have never had a theological  
4 discussion.  
5 Q Do you know if Scott Lloyd has ever  
6 prayed with unaccompanied minors?  
7 A I don't know.  
8 Q Do you know if Scott Lloyd has ever  
9 spoken to unaccompanied minors about the Bible  
10 before?  
11 A I don't know.  
12 Q So the -- what's been marked as Lloyd  
13 Exhibit 10 that's before you is an email chain,  
14 and I just wanted to focus your attention on the  
15 Bates stamp at the bottom is PRICE-PROD-4529.  
16 A Mm-hmm.  
17 Q That's the, the meat of the email that  
18 went out from Ken Tota.  
19 Are you familiar with this email?  
20 A Give me a moment.  
21 Q Sure.  
22 (Witness peruses document.)  
23 THE WITNESS: Yes, I remember this  
24 email.  
25

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1 BY MS. AMIRI:  
2 Q Were you involved in drafting this  
3 email?  
4 A I was not involved in drafting this  
5 email.  
6 Q Do you have an understanding as to what  
7 motivated Ken Tota to send this email?  
8 A He was directed to send this email.  
9 Q Directed by whom?  
10 A Political appointees at HHS.  
11 Q Any particular political appointee?  
12 A My -- I don't know if this is  
13 deliberative, but --  
14 Q I think who, who directed -- as long as  
15 it wasn't an attorney.  
16 MS. AMIRI: I'll let you counsel  
17 your own witness.  
18 MR. PHIPPS: Yeah, to the extent it  
19 would reveal any communications with an  
20 attorney, I instruct you not to answer and  
21 limit your, your answer accordingly. As long  
22 as your answer is to conclusions only that  
23 don't reveal the mechanics or the substance  
24 of deliberative process, then you can answer.  
25 Otherwise, I instruct you not to answer.

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1 Maybe we take a break if there's  
2 any question about the contours of that.  
3 MS. AMIRI: Yes.  
4 MR. PHIPPS: But I, I'd just as  
5 soon let him go without --  
6 MS. AMIRI: Sure, but as to whom,  
7 whom, which political directee [sic] made the  
8 appointment, that is not deliberative  
9 process.  
10 MR. PHIPPS: Result, yes. I'm just  
11 saying the limit is -- sometimes people give  
12 an answer --  
13 MS. AMIRI: Yeah.  
14 MR. PHIPPS: -- and then they go on  
15 about --  
16 MS. AMIRI: We'll take it step by  
17 step. So we'll -- yeah, just --  
18 MR. PHIPPS: Step by step, I'm  
19 fine. Yeah, step by step, perfectly fine.  
20 BY MS. AMIRI:  
21 Q Which political appointee directed Ken  
22 Tota to send this email?  
23 A This would have been -- this would have  
24 been the policy team, which was comprised of  
25 Maggie Wynne, Scott Lloyd, and, and then also OGC.

1 Q So some combination of those individuals  
 2 directed Ken Tota to send this email?  
 3 A Correct.  
 4 Q Where is Anna Marie Bena in the command  
 5 chain?  
 6 A Anna Marie Bena is the division director  
 7 for Division of Policy and Procedure. She reports  
 8 directly to Scott Lloyd. She is career.  
 9 Q Career? Okay. Do you know if she was  
 10 involved in writing this email?  
 11 A She was not involved in writing this  
 12 email, to my knowledge.  
 13 Q Do you have an understanding of whether  
 14 this email alters the 2008 memo that we talked  
 15 about which was marked Exhibit 2, I believe?  
 16 A It does not alter it. This represents  
 17 this administration's operational interpretation  
 18 of the 2008 email, which has been interpreted  
 19 different ways in different times by different  
 20 administrations.  
 21 Q So let's talk about this administration  
 22 and its interpretation of the 2008 memo. What --  
 23 is, is this email an accurate reflection of the  
 24 interpretation of that memo as we sit here today?  
 25 A I guess I'd say this substantially does

1 authority?  
 2 A That was the operational interpretation  
 3 at that time of the 2008 memorandum.  
 4 Q And as we sit here today, the  
 5 interpretation is that grantees are prohibited  
 6 from taking any steps that facilitate abortion  
 7 without --  
 8 A Without director level approval? That  
 9 is correct. That is the current understanding.  
 10 Q Thank you.  
 11 Did you have conversations with any  
 12 grantees that were concerned about this change in  
 13 interpretation by the new administration?  
 14 A When you say "you," do you mean Jonathan  
 15 White or ORR?  
 16 Q Let's start with you Jonathan White.  
 17 A Sure. I don't -- actually, yes, I did  
 18 have at least one conversation with staff at one  
 19 grantee who was really just seeking clarification  
 20 of the import. There may have been others, but  
 21 there's one that I recall.  
 22 Q Do you remember which grantee that was?  
 23 A I believe that would have been  
 24 Health and Human Services, Inc. in  
 25 Q What was the clarification that they

1 reflect the current interpretation of the 2008  
 2 memorandum.  
 3 Q What was the interpretation of the 2008  
 4 memorandum in the prior administration, if you  
 5 know?  
 6 A Yes. It was the operational direction  
 7 provided by political appointees during the prior  
 8 administration was that the ORR director's  
 9 approval was only required for abortions which  
 10 would be Hyde Amendment excepted abortions  
 11 requiring federal funding.  
 12 Q So in the prior administration, written  
 13 approval from the director was needed if federal  
 14 funds were to pay for the abortion; is that  
 15 correct?  
 16 A Correct, and it would not be needed if  
 17 federal funds by grant were used for facilitation  
 18 or other activities other than the direct  
 19 provision of the procedure.  
 20 Q So in other words, a grantee who was  
 21 assisting a minor accessing abortion, and federal  
 22 funds were not requested, that grantee could  
 23 proceed absent explicit authorization from ORR?  
 24 A If permitted under state law.  
 25 Q Fair enough, but in terms of ORR's

1 were seeking?  
 2 A Just to understand what was permitted  
 3 and not permitted.  
 4 Q So this email that is on the next page,  
 5 the "from" has been redacted, but it's  
 6 PRICE-PROD-4530.  
 7 Do you know if you've ever seen this  
 8 email -- presumably from a grantee, although I  
 9 don't necessarily know -- asking questions about  
 10 the judicial bypass?  
 11 A I have seen this email before. I  
 12 recognize some of the language.  
 13 One moment.  
 14 Q Sure.  
 15 A I need to read it more closely.  
 16 (Witness peruses document.)  
 17 THE WITNESS: My, my recollection  
 18 is that this is an email that was received by  
 19 an ORR staff person from a, from a grantee,  
 20 and it was elevated up to headquarters.  
 21 BY MS. AMIRI:  
 22 Q Is it current ORR policy to prohibit  
 23 grantees from allowing unaccompanied minors from  
 24 meeting with attorneys for the purposes of seeking  
 25 a judicial bypass absent explicit approval from

1 the director of ORR?  
 2 A I apologize. Could you ask that  
 3 again --  
 4 Q Sure.  
 5 A -- because this one is complicated.  
 6 Q Is it the current policy of ORR to  
 7 prohibit grantees from allowing minors to meet  
 8 with attorneys for the purposes of seeking a  
 9 judicial bypass absent explicit authority or  
 10 approval by the director of ORR?  
 11 A I'm not sure.  
 12 Q Are you aware of directions given by  
 13 Scott Lloyd while he was the director of ORR that  
 14 prohibited a grantee from allowing a minor to meet  
 15 with an attorney about a judicial bypass until he  
 16 explicitly approved of that meeting?  
 17 A Yes, I believe that occurred.  
 18 Q Do you know if that occurred on more  
 19 than one occasion?  
 20 A I, I believe that there was only one  
 21 instance where that was an issue.  
 22 Q Do you have Exhibit 11 in front of you,  
 23 Lloyd Exhibit 11?  
 24 A Lloyd Exhibit 11, yes.  
 25 Q You can take a minute to look at it.

1 directive?  
 2 A When we reunify minors, we provide the  
 3 sponsor and the minor with referrals to resources  
 4 in the community related to their individual  
 5 needs. In this case, because the minor was  
 6 seeking abortion services, the provider initially  
 7 provided, among the resources, also a referral to  
 8 a resource to receive abortion services in the  
 9 community. This is essentially contact  
 10 information, these resource referrals. That is  
 11 what Scott is referring to.  
 12 Q So did the minor, upon release to the  
 13 sponsor, receive information about where -- or did  
 14 the sponsor receive information about where the  
 15 minor could obtain an abortion?  
 16 A My understanding is that they did not.  
 17 Q And that's because of Scott Lloyd's  
 18 directive in the email?  
 19 A Correct. I cannot speak with certainty.  
 20 It may be that the, that some of these referrals  
 21 had already been provided prior to the email, but  
 22 that is the intent of the email.  
 23 Q Do you have an understanding of what  
 24 Mr. Lloyd says when he talks about "life-affirming  
 25 options counseling"?

1 I'd like to ask you some questions.  
 2 A Sure.  
 3 (Witness peruses document.)  
 4 THE WITNESS: Yes.  
 5 BY MS. AMIRI:  
 6 Q So part of this looks like you're  
 7 involved in an email exchange here.  
 8 A Yes.  
 9 Q What was the context of this email  
 10 exchange?  
 11 A This was a minor who had sought TOP  
 12 while in our care, who had proceeded through the  
 13 case management process and was ready for  
 14 reunification with a sponsor. That's the context  
 15 for this particular exchange of emails.  
 16 Q So the minor had requested pregnancy  
 17 termination but had not yet received it?  
 18 A Correct.  
 19 Q And the email from Scott Lloyd to you in  
 20 the middle there where Mr. Lloyd says, "Grantees  
 21 should not be supporting abortion services pre- or  
 22 post-release, only pregnancy services and  
 23 life-affirming options counseling."  
 24 A Yes.  
 25 Q What is your understanding of that

1 A I think I understand what that is.  
 2 Q And what is that?  
 3 A My understanding is that life-affirming  
 4 options counseling is a form of intervention by  
 5 providers, designed to educate pregnant women  
 6 about their, about their options in a way that  
 7 emphasizes the risks and harms of abortion and the  
 8 benefits of other alternatives.  
 9 Q This directive with respect to this  
 10 particular grantee, does it apply also to other  
 11 grantees? In other words, is this a policy or  
 12 practice that other grantees should be following?  
 13 A We've not promulgated this message  
 14 widely, to my knowledge, no.  
 15 Q Is it your understanding that Scott  
 16 Lloyd believes that all grantees should not be  
 17 supporting abortion services pre- or post-release,  
 18 only pregnancy services and life-affirming options  
 19 counseling?  
 20 A He has --  
 21 MR. PHIPPS: Objection.  
 22 Foundation.  
 23 BY MS. AMIRI:  
 24 Q You can answer.  
 25 A I have not received a subsequent message

1 that contradicts his statement made here.  
 2 Q Okay. Thank you.  
 3 If you could look at Lloyd Exhibit 13, I  
 4 believe.  
 5 A 13.  
 6 Q But maybe I have the number wrong. It  
 7 should have "Exhibit D" on the cover page.  
 8 A Exhibit D is Exhibit 13 on mine.  
 9 MR. PHIPPS: Oh, oh, 12 and 13.  
 10 MS. AMIRI: Oh, they both have --  
 11 THE WITNESS: Oh, I'm sorry.  
 12 They're both Exhibit D. I apologize.  
 13 BY MS. AMIRI:  
 14 Q Well, if you look at the next page, and  
 15 it's PRICE-PROD-10950.  
 16 A 10950, that is Lloyd Exhibit 13. I have  
 17 it, yes.  
 18 Q Great. If you could take a quick look  
 19 at that, and I'd like to ask you some questions  
 20 about that.  
 21 (Witness peruses document.)  
 22 THE WITNESS: Yes. What about  
 23 this?  
 24 BY MS. AMIRI:  
 25 Q Can you explain about the particular

1 requesting information regarding abortion.  
 2 Q Do you know much about the sponsorship  
 3 process?  
 4 A Yes.  
 5 Q So in item 4, he, Mr. Lloyd, talks about  
 6 "If things get dicey with the sponsor, I know a  
 7 few good families with a heart for these  
 8 situations, who would take her in a heartbeat and  
 9 see her through her pregnancy and beyond."  
 10 Do you know whether it is possible for a  
 11 family who is not connected to the minor to be a  
 12 sponsor?  
 13 A It may be possible. Wait. Let me pause  
 14 for a moment. You said "a family who is not  
 15 connected."  
 16 Q Yes.  
 17 A I, I inferred something by that. Could  
 18 you amplify that a little more?  
 19 Q Sure, absolutely.  
 20 So if there has been no prior connection  
 21 to the minor, could a random family become a  
 22 sponsor?  
 23 A I believe that is possible.  
 24 Q At, at -- in your time at ORR, have you  
 25 ever seen that happen?

1 minor that the email chain is referring to? I  
 2 guess my first question is -- looking at 10951,  
 3 that's an email from Scott Lloyd, and I'm not sure  
 4 who it's to. I'm assuming a grantee, and there  
 5 are three paragraphs.  
 6 Do you know whether this email relates  
 7 to one minor or more than one minor?  
 8 A I believe this is referring to a single  
 9 minor.  
 10 Q Do you know the circumstances about this  
 11 particular minor that is being referred to in this  
 12 email?  
 13 A This is a minor who was in ORR custody,  
 14 a pregnant girl who expressed interest in  
 15 terminating the pregnancy, desire for information  
 16 regarding terminating pregnancy.  
 17 Q Do you know if Mr. Lloyd spoke with her  
 18 at the shelter at  
 19 A He did speak with the minor at the  
 20 shelter.  
 21 Q Do you know, at the time that he spoke  
 22 with her, whether she was still considering an  
 23 abortion?  
 24 A I believe that at the time that he spoke  
 25 with her, she was still expressing interest in or

1 A I have never seen such a reunification,  
 2 which doesn't mean it has not happened, but I'm  
 3 not aware of them.  
 4 Q Do you know what Mr. Lloyd was talking  
 5 about here with respect to "good families with a  
 6 heart for these situations"?  
 7 A I don't know what he was speaking of,  
 8 because my knowledge is, is limited to the  
 9 sentences that you see in front of you.  
 10 Q Okay. Did you -- did he have a  
 11 conversation with you about the conversation he  
 12 had with this particular minor?  
 13 A We did discuss briefly his conversation  
 14 with the minor, but we did not discuss the part  
 15 addressed in number 4.  
 16 Q Okay. Did you talk about the part  
 17 addressed in number 3?  
 18 A Yes. I was asked, as I recall, more  
 19 information about what psychosocial and counseling  
 20 supports we have in place for minors both sort of  
 21 globally and in her case.  
 22 Q And is that because, as he says, in his  
 23 opinion, "these girls start to regret abortion"?  
 24 A I, I don't believe we had a conversation  
 25 about, about those individuals who expressed

1 distress or regret related to abortion in the  
 2 context of this minor.  
 3 Q You are on the email then, I think --  
 4 A Yes, I was on this --  
 5 Q -- following?  
 6 A Yes, I was on this email chain.  
 7 Q Okay.  
 8 A Yep. I was CC'd on it, on the, on the  
 9 response back.  
 10 Q I see, and it looks like maybe three  
 11 days later, Mr. Lloyd sends an email to you asking  
 12 about whether there are updates on her placement,  
 13 and --  
 14 A It, it was not to me. I was CC'd on  
 15 that one.  
 16 Q Oh, sorry. You're right. You were CC'd  
 17 on that one.  
 18 Do you know what the outcome was with  
 19 this particular minor with respect to her sponsor?  
 20 A I believe this minor was reunified with,  
 21 with a sponsor, but -- one moment. Let me just  
 22 look there.  
 23 Q Sure.  
 24 A I can reacquaint myself.  
 25 Q And if you don't know without looking at

1 following, what, what are those specifically?  
 2 A That when minors who are sheltered in  
 3 programs expressing religious objection to  
 4 facilitating abortion make that request, the FFS  
 5 will work to facilitate her transfer.  
 6 Q Do you know anything about how long it  
 7 took her to be transferred from to  
 8 A I don't have that information.  
 9 Q Do you know whether is part of the  
 10 USCCB network?  
 11 A I believe, I believe they are, but I  
 12 could be mistaken. We, we generally deal with the  
 13 providers at the shelter level. So if they have a  
 14 common name -- like know they're all part  
 15 of I don't always know for the networks  
 16 that don't share a name. And I apologize, I don't  
 17 always know which one, which ones are parts --  
 18 Q If you could look at Exhibit 14, Lloyd  
 19 Exhibit 14.  
 20 A Right.  
 21 Q So earlier we had talked about a  
 22 situation in which Mr. Lloyd directed a grantee to  
 23 prohibit a minor from meeting with an attorney for  
 24 pursuing a judicial bypass.  
 25 Is that referenced in PRICE-PROD-10709?

1 further emails, there may be some other emails  
 2 that talk about it.  
 3 A Yeah, I'm -- I apologize. I don't --  
 4 I'm not totally sure I recall in this case what  
 5 her reunification outcome was.  
 6 Q Do you recall whether she had the  
 7 abortion while in ORR custody or not?  
 8 A She did not, I believe.  
 9 Q Do you know anything about the  
 10 circumstances by which she was transferred from  
 11 that had a religious objection to providing  
 12 access to abortion, to that did not have an  
 13 objection to providing access to abortion  
 14 services?  
 15 MR. PHIPPS: Objection. Assumes  
 16 facts not in evidence.  
 17 THE WITNESS: I don't know much  
 18 about her prior to this time period. My  
 19 recollection is that she had previously been  
 20 in and under the operational procedures  
 21 that we were following at that point. She  
 22 was transferred to as a result of her  
 23 expressing an interest in termination.  
 24 BY MS. AMIRI:  
 25 Q The operational procedures you were

1 MR. PHIPPS: I . . .  
 2 MS. AMIRI: Am I on the wrong page?  
 3 Yes? I'm on the wrong page?  
 4 MR. PHIPPS: Yeah, I don't know. I  
 5 don't know where you're going. I'm --  
 6 MS. AMIRI: The --  
 7 MR. PHIPPS: Maybe a little more  
 8 direction.  
 9 BY MS. AMIRI:  
 10 Q PRICE-PROD-10709 --  
 11 A Yeah.  
 12 Q -- and then at the very top, number 6,  
 13 "The UC should not be meeting with an attorney  
 14 regarding her termination or otherwise pursuing  
 15 judicial bypass at this point."  
 16 A Yes, that's my understanding of what  
 17 that means.  
 18 Q Do you know whether, other than this  
 19 instance, whether Mr. Lloyd prohibited a grantee  
 20 or required a grantee to prohibit a minor from  
 21 meeting with an attorney for the purposes of  
 22 seeking a judicial bypass?  
 23 A I don't know that he prohibited. I  
 24 think he may have at that time had a requirement  
 25 that they seek his authorization prior to that

1 step.  
 2 Q Do you know whether that requirement  
 3 stands, as we're sitting here today, for all  
 4 grantees?  
 5 A I don't know.  
 6 Q Based on your experience with Mr. Lloyd  
 7 to date, do you believe -- do you, Mr. White,  
 8 believe that Mr. Lloyd will ever approve any  
 9 abortion request?  
 10 MR. PHIPPS: Objection. Scope.  
 11 Calls for speculation.  
 12 THE WITNESS: I don't know. I  
 13 don't know.  
 14 BY MS. AMIRI:  
 15 Q Mr. Lloyd does not think that pregnancy  
 16 as a result of rape is a sufficient basis alone  
 17 for his authorization to proceed with a  
 18 termination of pregnancy; is that fair?  
 19 A That is fair.  
 20 Q Have you spoken with him about any  
 21 constellation of facts or other criteria that  
 22 would lead him to authorize an abortion?  
 23 A We have not had a conversation that  
 24 resulted in that. We have identified some facts  
 25 in which he believes his authorization would not

1 Q Sure. Take your time.  
 2 A -- to sort of develop clues on which  
 3 case this is.  
 4 Q Yep, yep, absolutely.  
 5 (Witness peruses document.)  
 6 THE WITNESS: I believe I recall  
 7 the case that's being referenced here.  
 8 BY MS. AMIRI:  
 9 Q Do you know that -- whether, despite the  
 10 concerns raised by the Young Center about  
 11 revealing the minor's abortion decision to her  
 12 parents in her home country, whether the parents  
 13 were, in fact, notified of the minor's abortion  
 14 decision?  
 15 A If this is the, the, the -- if this is  
 16 the case that I think it is, I believe the parents  
 17 were notified.  
 18 Q If you could look at Exhibit 16, please,  
 19 Lloyd Exhibit 16.  
 20 If you want to just skim through. You  
 21 don't -- I mean I'm happy to give you --  
 22 A Sure.  
 23 Q -- time to read anything that you need,  
 24 obviously, but --  
 25 A Sure.

1 be required.  
 2 Q And that would be in the context of an  
 3 emergency?  
 4 A Correct.  
 5 Q If I could have you look at Exhibit 15,  
 6 please, Lloyd Exhibit 15. It's been redacted, so  
 7 I actually don't know if you were -- if you saw  
 8 this email, if you have seen this document before.  
 9 A I don't believe I've seen this Young  
 10 Center report before. I have seen Young Center  
 11 reports on other minors not, not related to issues  
 12 of abortion. I've certainly seen plenty of Young  
 13 Center best-interest statements. I don't believe  
 14 I've seen this best-interest recommendation  
 15 before, but I may have.  
 16 Q Even if you haven't seen this particular  
 17 one, are you -- were you aware at this time, this  
 18 time, the time that this was happening, rather --  
 19 so at the end of March 2017 is when this was  
 20 sent -- that the Young Center was advocating to  
 21 someone in ORR that a minor's decision to have an  
 22 abortion be kept confidential? Are you familiar  
 23 with the circumstances in, in this, in this  
 24 letter?  
 25 A Give me just a moment to read it --

1 Q -- just to get a general sense of the,  
 2 the minor we're talking about here.  
 3 A Right. Yes, I'm fairly confident I know  
 4 the minor in this case.  
 5 Q So it's, it's Jane Doe, correct, who --  
 6 A I believe this is the minor who in, as  
 7 far as that case, is referred to as "Jane Doe."  
 8 Q Okay. So if we can talk about the time  
 9 prior to litigation about the, what was required  
 10 of the shelter in terms of the abortion request,  
 11 it looks like there was a clinical visit with  
 12 someone named Dr. R  
 13 A Where, where is that? I apologize.  
 14 Q So flip all the way to the back. Oh,  
 15 sorry. Maybe not all the way. Maybe  
 16 PRICE-PROD-15164 and going on to 15165.  
 17 A Mm-hmm, yes.  
 18 Q Do you know who Mr. R is? I'm  
 19 sorry. Dr. R  
 20 A I do not know who Dr. R is. I  
 21 know he is the, he is the healthcare provider whom  
 22 Scott Lloyd directed the program director of the  
 23 program sheltering this minor to, to take her to.  
 24 Q Is Dr. R associated with a crisis  
 25 pregnancy center?

1 A I, I don't know for certain, but that  
 2 would be consistent.  
 3 Q Does -- do you know if Dr. R went  
 4 to meet with the minor in the shelter, or was the  
 5 minor taken to visit Dr. R in some office?  
 6 A If you give me just a moment to sort of  
 7 reacquaint myself --  
 8 Q Sure.  
 9 A -- because this, this was, this was  
 10 complicated, and I was not funneling these  
 11 particular directions, so --  
 12 Q Okay.  
 13 A -- I don't have as much firsthand  
 14 knowledge.  
 15 Q Sure, and if you don't have firsthand  
 16 knowledge, that's fine, too.  
 17 A But I, I was aware of it by emails.  
 18 Q Yes.  
 19 A I believe that the minor was initially  
 20 to, scheduled to be taken to a crisis pregnancy  
 21 center. The distance was somewhat prohibitive  
 22 from the location where the minor was sheltered,  
 23 and this resulted in, I believe, Dr. R  
 24 seeing the minor at the shelter. This is my  
 25 recollection of the facts.

1 pre-litigation about what happened to the, this  
 2 particular minor in Exhibit 16 that isn't  
 3 contained in these emails?  
 4 A Pre-litigation that's not contained in  
 5 these emails?  
 6 Q For example, is there a meeting that you  
 7 attended where this particular minor was discussed  
 8 pre-litigation?  
 9 A There were, I'm sure, a number of  
 10 meetings.  
 11 Q So who, who would have been at those  
 12 meetings?  
 13 A Scott Lloyd and a number of us who are  
 14 career staff in these cases. There may have been  
 15 other meetings that involved other political  
 16 officials.  
 17 Q And pre-litigation, what was the  
 18 substance of those meetings?  
 19 A Much of it was to share information  
 20 about the specifics of the request and the updates  
 21 on the, on the director's instructions.  
 22 Q Did ultimately Scott Lloyd make a  
 23 determination about whether this minor could  
 24 obtain an abortion?  
 25 A There was not an ultimate sort of

1 Q What was Maggie Wynne's role in this  
 2 particular minor's abortion request?  
 3 A I don't, I don't recall a significant  
 4 role for, for Maggie Wynne.  
 5 Q Around the same time that this  
 6 particular minor had requested an abortion, was  
 7 there another abortion, abortion request from the  
 8 same shelter?  
 9 A I believe so.  
 10 Q Do you know what happened with that  
 11 particular abortion request?  
 12 A I apologize. Sometimes I get these --  
 13 Q That's okay. We might be able to --  
 14 A If you have something to point me to, it  
 15 will help me differentiate cases.  
 16 Q Sure, sure. Yeah, we might be able  
 17 to -- we might be finding it at some point.  
 18 Do you have any facts about what  
 19 happened with this particular minor in Exhibit --  
 20 A Sorry.  
 21 Q Sure. Happy to take a break if you need  
 22 to.  
 23 A No, no. I just need to turn that off.  
 24 That's all.  
 25 Q Do you have any particular information

1 signing of a memorandum. There was, of course --  
 2 because, because approval had not been granted,  
 3 and the minor was represented by counsel, it  
 4 became a matter for litigation.  
 5 Q Was -- did Scott Lloyd -- did you have  
 6 any conversation with Scott Lloyd about what was  
 7 in this minor's best interest?  
 8 A Yes.  
 9 Q And what was that discussion?  
 10 MR. PHIPPS: I'm -- can we take  
 11 this as to what was the result of that  
 12 discussion, and then if there's internal  
 13 deliberations that maybe I -- I don't know  
 14 where we are on this, but I don't want -- we  
 15 could take a break and find out if, if the  
 16 answer is going to implicate deliberative  
 17 process.  
 18 MS. AMIRI: Why don't we do that  
 19 on, on your break, and we can come back to  
 20 it, but I mean maybe I can phrase it this  
 21 way.  
 22 BY MS. AMIRI:  
 23 Q Ultimately did ORR make a determination  
 24 about whether an abortion would be in this  
 25 particular minor's best interest?

1 A The director determined that abortion  
2 would not be in this minor's best interest.

3 Q Did he articulate why?

4 A He, he did articulate. He did  
5 articulate that the, that the, that the fetus and  
6 the pregnancy was also a minor in care.

7 Q Mr. Lloyd has said before that when a  
8 minor is pregnant, that the unborn child is a  
9 child in his care, has he not?

10 A He has said that.

11 Q And was that a similar sentiment in this  
12 particular minor's case that he was expressing?

13 A That was one component of his best  
14 interest determination.

15 Q Was there another component?

16 A That, that abortion causes harm to the  
17 young lady involved as well.

18 Q In terms of psychological harm or  
19 physical harm?

20 A He articulated psychological harm.

21 Q Do you, Mr. White, believe that abortion  
22 causes psychological harm?

23 A Not in, not in the 30(b)(6), but as  
24 myself?

25 Q Yes.

1 A I do not believe that abortion per se  
2 causes psychological harm. I think, I think  
3 individuals can experience traumatic consequences  
4 as a result of abortion. They can also experience  
5 traumatic -- have a traumatic experience and  
6 consequences of being denied abortion.

7 Q So pre, pre-litigation, in terms of the  
8 meetings that were happening with this particular  
9 minor in Exhibit 6, it looks like the steps were a  
10 visit from Dr. R , it looks like  
11 notification of the minor's parents in her home  
12 country.

13 Were there other steps that were  
14 required of this particular minor leading up to  
15 Mr. Lloyd's decision about whether the abortion  
16 would be in her best interest?

17 A Give me a moment --

18 Q Sure.

19 A -- to reacquaint myself. So . . .

20 (Witness peruses document.)

21 THE WITNESS: Correct.

22 The, the steps that were  
23 communicated to us were that there would be  
24 parental notification, and to seek their  
25 written, I think at that point written and

1 notarized consent to termination; second,  
2 that the minor should receive options  
3 counseling from an approved -- a provider  
4 from the approved, HHS-approved providers.  
5 Or excuse me. An HHS -- an approved provider  
6 of his selection.

7 BY MS. AMIRI:

8 Q So when you talk about the "approved  
9 provider," what does that mean?

10 A This would be consistent with his prior  
11 direction that minors would receive life-affirming  
12 options counseling. So in this case we were  
13 directed to -- this is one of the cases in which  
14 we were -- it was indicated to us which provider  
15 should be used.

16 Q I know we're, we're getting sadly close  
17 to my, my time limit, but on that subject, I just  
18 wanted you to take a look at Exhibit 18 and  
19 Exhibit 19, Lloyd Exhibits 18 and 19.

20 A Exhibit 18 and --

21 Q Exhibit 19.

22 A Give me a moment.

23 Q Sure.

24 (Witness peruses document.)

25 THE WITNESS: Yes, I remember this.

1 BY MS. AMIRI:

2 Q So in terms of the list of approved  
3 providers that you had mentioned before, do Lloyd  
4 Exhibit 18 and Exhibit 19 reflect the genesis of,  
5 of those lists?

6 A Yes.

7 Q And it looks like a list came from  
8 CareNet Centers; is that fair? That's one of the  
9 attachments on Exhibit 18.

10 A The, the list was provided by the HHS,  
11 what we call the Partnership Center, which is an  
12 HHS Center for Faith-based and Neighborhood  
13 Partnerships. That's, that's a staff division of  
14 HHS.

15 Q And -- but they got the list, it looks  
16 like, from CareNet?

17 A CareNet is one of the two provider  
18 networks that they provided us. CareNet was in  
19 the initial package, and the other network of  
20 providers was in the second package.

21 Q And that second one was Heartbeat  
22 International?

23 A I think that's correct.

24 Q Do you have any knowledge as to what the  
25 counseling looks like at one of these centers that



1 are approved as trusted providers by HHS?  
 2 A I don't know what it looks like. I've  
 3 never observed it. I only know what I have read.  
 4 Q Do you know whether it is religious in  
 5 nature?  
 6 A I believe it is religious in nature.  
 7 MS. AMIRI: Okay. I want to be  
 8 prompt. I promised you 5:30, so . . .  
 9 MR. PHIPPS: Okay. All right.  
 10 Well, thank you.  
 11 MS. AMIRI: Yeah, I mean I want to  
 12 be respectful, respectful of the witness,  
 13 although I feel like there's, there's more I  
 14 would love to ask, but -- so maybe we can  
 15 take a break, and you can -- I can see if I  
 16 have like any burning things that I just  
 17 can't let go, and then -- and, and you can  
 18 be -- have your time, and, and Dan can have  
 19 his time, and we'll go from there.  
 20 MR. PHIPPS: That's great.  
 21 MS. AMIRI: Okay.  
 22 THE VIDEOGRAPHER: Going off the  
 23 record at 5:29.  
 24 (Whereupon, a short recess was  
 25 taken.)

1 THE VIDEOGRAPHER: We are going  
 2 back on the record at 5:39.  
 3 BY MS. AMIRI:  
 4 Q One follow-up question.  
 5 Before, you had talked about the  
 6 cooperative agreements for religiously affiliated  
 7 shelters that have religious objections to  
 8 providing care, and my question is whether, since  
 9 the new administration, there has been a change in  
 10 approach with cooperative agreements with  
 11 religiously affiliated entities, either within the  
 12 text of the cooperative agreements or the  
 13 application of the ACF faith-based grant policy.  
 14 A We don't yet have new cooperative  
 15 agreements. Those are still in development at  
 16 this time.  
 17 Q Okay.  
 18 A So we have not issued new cooperative  
 19 agreements in the current administration.  
 20 Q Okay. Have you made a decision -- and  
 21 I'm being careful to avoid deliberative process,  
 22 but a decision about how the faith-based policy or  
 23 any alternative arrangements will be  
 24 operationalized for religiously affiliated  
 25 entities that have an objection to providing

1 access to abortion or contraception?  
 2 A No. There's been no new decision or  
 3 policy formulation that's been shared with me.  
 4 MS. AMIRI: Okay. I don't have  
 5 anything further at this time. I would like  
 6 to say, before I forget, though, that we have  
 7 an agreement to keep this deposition open in  
 8 case we need to come back and have a quick  
 9 conversation after we get additional  
 10 documents that the government is to produce  
 11 by the close of discovery this week.  
 12 MR. PHIPPS: Oh, and just to  
 13 clarify --  
 14 MS. AMIRI: Yes.  
 15 MR. PHIPPS: -- we're going to  
 16 produce documents through the close of  
 17 discovery --  
 18 MS. AMIRI: Correct.  
 19 MR. PHIPPS: -- but I don't think  
 20 we're going to produce them this week.  
 21 MS. AMIRI: By close? By the end  
 22 of --  
 23 MR. PHIPPS: Yeah, it will be  
 24 through that date, but --  
 25 MS. AMIRI: Fair enough. Okay.

1 We'll talk about it.  
 2 EXAMINATION BY COUNSEL FOR  
 3 OFFICIAL CAPACITY DEFENDANTS  
 4 BY MR. PHIPPS:  
 5 Q Good afternoon, Mr. White. My name is  
 6 Peter Phipps. I'm an attorney at the Department  
 7 of Justice, and I represent the defendants in  
 8 their official capacity in this case. I have a  
 9 few follow-up questions for you about your  
 10 testimony today.  
 11 A Yes, sir.  
 12 Q First, are you aware of any instance in  
 13 which any grantee shelter has made a final  
 14 decision that an unaccompanied alien child in its  
 15 custody may not receive contraception?  
 16 A No.  
 17 Q Are you aware of any instance in which  
 18 any grantee shelter has made the final decision  
 19 that an unaccompanied alien child in its custody  
 20 may not receive access to an abortion?  
 21 A No.  
 22 Q As deputy director of ORR, are you aware  
 23 of any preferential treatment that HHS or ORR has  
 24 given to any faith-based grantee or faith-based  
 25 applicant for the care and custody of

1 unaccompanied alien children?  
 2 A No.  
 3 MR. PHIPPS: Thank you. That's all  
 4 I have.  
 5 EXAMINATION BY COUNSEL FOR DEFENDANT USCCB  
 6 BY MR. NOWICKI:  
 7 Q Good afternoon. I'm Dan Nowicki for  
 8 USCCB. I just have maybe just one quick follow-up  
 9 question.  
 10 So you were asked a question about  
 11 Home and their affiliation with certain grantee  
 12 networks, and I believe you may have already  
 13 clarified this, but do you know which grantee  
 14 network Home is part of?  
 15 A I don't. I would need to check.  
 16 MR. NOWICKI: I have no further  
 17 questions.  
 18 THE WITNESS: Right.  
 19 THE VIDEOGRAPHER: Going off the  
 20 record at 5:53.  
 21 THE REPORTER: And do you still  
 22 want a rough draft?  
 23 MS. AMIRI: Sure.  
 24 MR. PHIPPS: We get a transcript.  
 25 MR. NOWICKI: I get a transcript.

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 6 ACKNOWLEDGEMENT OF WITNESS  
 7 I, Jonathan White, do hereby  
 8 acknowledge that I have read and examined the  
 9 foregoing testimony, and the same is a true,  
 10 correct and complete transcription of the  
 11 testimony given by me, and any corrections  
 12 appear on the attached Errata sheet signed by  
 13 me.  
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 18 (DATE) (SIGNATURE)  
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1 MS. AMIRI: Yes.  
 2 THE REPORTER: Okay.  
 3 (Signature having not been  
 4 waived, the Rule 30b6 video  
 5 deposition of Department of Health  
 6 and Human Services, by and through  
 7 its designated representative,  
 8 JONATHAN WHITE, was concluded at  
 9 5:53 p.m.)  
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1 ERRATA SHEET  
 2 IN RE: ACLU vs. HARGAN & USCCB  
 3 RETURN BY:  
 4 PAGE LINE CORRECTION AND REASON  
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CERTIFICATE OF SHORTHAND REPORTER -- NOTARY PUBLIC

I, Laurie Donovan, Registered Professional Reporter, Certified Realtime Reporter, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 2nd day of January, 2018.  
My commission expires: March 14th, 2021

\_\_\_\_\_  
LAURIE DONOVAN  
NOTARY PUBLIC IN AND FOR  
THE DISTRICT OF COLUMBIA