

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

AMERICAN CIVIL LIBERTIES
UNION OF NORTHERN
CALIFORNIA,

Plaintiff,

v.

ERIC G. HARGAN, Acting
Secretary of Health and
Human Services, et al.,

Defendants,

v.

U.S. CONFERENCE OF
CATHOLIC BISHOPS,

Defendant-Intervenor.

Case Number:

3:16-cv-3539-LB

VIDEOTAPED DEPOSITION OF COMMANDER JONATHAN WHITE, AS
A FACT WITNESS AND U.S. PUBLIC HEALTH SERVICE'S
DESIGNATED 30(B)(6) REPRESENTATIVE, VOLUME II
Washington, D.C.

Tuesday, February 13, 2018 - 1:41 p.m.

Reported by:

Ann Medis, RPR

Job No. 20790

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Videotaped Deposition of
COMMANDER JONATHAN WHITE

Held at the offices of:

U.S. Department of Justice
20 Massachusetts Avenue, N.W.
Washington, D.C. 20001
202.353.4556

 Taken pursuant to notice,
before Ann Medis, Registered
Professional Reporter, and notary
public in and for the District of
Columbia.

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Kim Johnson, Videographer
Llewellyn Woolford, Esquire, HHS
Caitlin Palacios, Esquire, HHS
Rachel Chrisinger, Paralegal

P R O C E E D I N G S

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THE VIDEOGRAPHER: Here begins Media Number 1 in the videotaped deposition of Jonathan White taken in the matter of American Civil Liberties Union of Northern California versus Burwell, et al., Case No. 3:16-cv-3539-LV in the U.S. District Court of Northern California, San Francisco Division?

This deposition is being held at 20 Massachusetts Avenue, Northwest, Washington, D.C. on February 13, 2018 at approximately 1:41 p.m. My name is Kim Johnson. I'm a legal video specialist. The court reporter today is Ann Medis. Both are in association with TransPerfect.

Will counsel please introduce yourselves and state who you represent.

MS. AMIRI: Brigitt Amiri for the plaintiff.

MS. BURROWS: Meagan Burrows for the plaintiff.

MR. TOMLINSON: Martin Tomlinson for the federal defendants.

MR. WOOLFORD: Llewellyn Woolford for the defendant U.S. Department of Health and Human

1 Resources.

2 MS. PALACIOS: Caitlin Palacios of the
3 U.S. Department of Health and Human Services.

4 MR. SPENCER: Jacob Spencer for the
5 defendant-intervenor and the USCCB. Also on the
6 phone is Robert Dunn.

7 THE VIDEOGRAPHER: Will the court
8 reporter please swear in the witness.

9 COMMANDER JONATHAN WHITE,
10 having been first duly sworn, was examined
11 and testified as follows:

12 EXAMINATION

13 BY MS. AMIRI:

14 Q. Mr. White, thank you so much for joining
15 us again today. A lot of questions I'm going to
16 ask you are going to be about things that have
17 happened since your deposition. So I'll try to
18 keep saying that in my questions, but generally,
19 we're here to finish up the deposition from
20 documents that we received since then, and I'll
21 ask you questions about some things that have
22 happened since your deposition.

23 Has ORR finalized any policies with respect
24 to abortion access since your deposition in
25 December?

1 A. No. There have been no additional
2 policies since we last spoke in December at the
3 last deposition.

4 Q. And by policies I also include final
5 guidance, final statements, broad statements to
6 shelters, things like that. So I'll use the term
7 more broadly than like a formal policy, but
8 guidelines or anything that would fall into the
9 category of a final statement from ORR about
10 abortion access.

11 A. I understand. There's been no
12 additional guidance, policy or direction
13 promulgated to providers by ORR on this issue.

14 Q. Have there been any contracts that have
15 been negotiated with religiously-affiliated
16 shelters that have objections to providing access
17 to abortion and contraception since your
18 deposition in December?

19 A. Contracts, we operate those typically on
20 a grant basis.

21 Q. I'll amend my question with grant
22 instead of contract.

23 A. Could you repeat your question?

24 Q. Since your deposition in December, have
25 there been any negotiations with any

1 religiously-affiliated shelter about the terms of
2 their grant or a Memorandum of Understanding about
3 access to abortion and contraception for
4 unaccompanied minors?

5 A. I believe we have formalized an addendum
6 to the cooperative agreement with USCCB and also
7 with Lutheran Immigration and Refugee -- Human
8 Refugee Services.

9 Q. Does the addendum for the cooperative
10 agreement with USCCB speak to the issue of access
11 to abortion or contraception for unaccompanied
12 minors?

13 A. It formalizes the prior operational
14 practice.

15 Q. I know we talked about it the last time,
16 but just for purposes of our conversation right
17 now, what was the prior operational practice?

18 A. That in the event that any long-term
19 foster care grantee in that network were to
20 receive a request from a minor in care for a
21 healthcare intervention that would be inconsistent
22 with Catholic doctrine, that the grantee's
23 requirement would be to notify the ORR federal
24 field specialists of that request.

25 Q. And does the contract or, sorry, the

1 Memorandum of Understanding also say what happens
2 after the notification from USCCB's subgrantees to
3 the federal field specialist?

4 A. I don't believe it specifies that.

5 Q. In practice we talked at your deposition
6 last time about what has happened in the past. Is
7 it your understanding that that would be the same
8 practice, and roughly I'll just kind of
9 paraphrase, that the federal field specialist
10 would then contact ORR and arrangements for a
11 transfer of the minor would take place to a
12 shelter that didn't have objections to providing
13 the specific healthcare?

14 A. That has been the practice in the past.
15 We've not had such a request from a minor in a
16 sheltered -- in a residential care facility that
17 has a document-based objection. I have not
18 received direction on what our federal actions
19 would be in that circumstance now, but that is an
20 accurate statement about the previous operational
21 activities.

22 Q. Were you personally involved in the
23 contract negotiations -- grantee negotiations --
24 I'll back up and strike that altogether.

25 Were you personally involved in the

1 Memorandum of Understanding negotiation with USCCB
2 about the religious exception that they have in
3 the addendum that you just referenced?

4 A. No, I was not.

5 Q. Do you know what the conversations did
6 consist of in terms of any of those negotiations
7 with USCCB?

8 A. I'm not privy to the content of those
9 conversations.

10 Q. Who at ORR would be?

11 A. I believe that would most likely be our
12 division of policy and procedure.

13 Q. And who is the director of the division
14 of policy and procedure now?

15 A. The division director is Anna Marie
16 Bennett.

17 Q. But as it stands now since your
18 deposition in December, there is an addendum to
19 USCCB's cooperative agreement signed by both USCCB
20 and ORR that memorializes a religious exception to
21 providing certain forms of healthcare?

22 A. I have not seen a version that's signed
23 by both parties. I have seen a version signed by
24 ORR that does formalize our prior practice.

25 Q. You also mentioned Lutheran Immigration

1 Refugee Services as well. Did the agreement
2 signed with LIRS speak to the issue of access to
3 abortion and contraception?

4 A. It did not. To my knowledge, it did
5 not.

6 Q. To your knowledge, does LIRS have a
7 religious objection to providing access to
8 abortion and contraception for unaccompanied
9 minors in their care?

10 A. I don't know.

11 Q. So other than the USCCB and LIRS
12 agreement, are you aware of any other discussions
13 with any other grantee about the terms of their
14 Memorandum of Understanding with respect to
15 abortion or contraception?

16 A. I don't believe there are any.

17 Q. You mentioned there had not been any
18 requests for abortion from religiously-affiliated
19 shelters that have a religious objection to
20 providing access to abortion. And I just want to
21 clarify the timeframe. I know we talked about it
22 at your last deposition.

23 So let's say since your last deposition, is
24 that the case, that there's been no request for
25 abortion from a religiously-affiliated shelter

1 that has had objection to providing access to
2 abortion?

3 A. I have not been notified of any request
4 for access to abortion services by a minor
5 sheltered in a program which has such an
6 objection.

7 Q. And my same question would be true with
8 respect to contraception, are you aware of any
9 sort of instance where a religiously-affiliated
10 shelter has had a minor in their care who's
11 requested access to contraception and not been
12 provided with access to contraception because of
13 the religious affiliation of the shelter?

14 A. I'm not aware of any such request. As a
15 reminder, that is not a covered service in any of
16 our providers.

17 Q. I think just to clarify that, last time
18 I believe you said with respect to medical
19 indications, contraception can be prescribed.

20 A. Correct.

21 Q. And I'm also guessing based on the
22 Prison Rape Elimination Act, that emergency
23 contraception for unaccompanied minors who suffer
24 sexual assault in the facility is a covered
25 service?

1 A. Under our interim final rule, any minor
2 who is sexually assaulted while in ORR care has
3 access to emergency contraception.

4 Q. And I think last time we met, there had
5 not been an instance of a sexual assault at a
6 facility that necessitated the need for access to
7 emergency contraception or abortion.

8 So my question is: Since your deposition,
9 has there been any such request?

10 A. There has not. I have not received any
11 report of any minor becoming pregnant as a result
12 of sexual assault while in ORR custody.

13 Q. Have you received a report of a minor
14 who hasn't yet become pregnant as a result of
15 sexual assault, but has requested emergency
16 contraception to prevent pregnancy?

17 A. No. I've not received any such request.

18 Q. Since your deposition, have you become
19 aware of any abortion requests from shelters?

20 MR. TOMLINSON: Before we move on, can I
21 just state for the record what we discussed before
22 we went on the record, which is that Mr. White was
23 prepared as a 30(b)(6) witness with regard to
24 events and documents that were generated prior to
25 December 22, 2017, and he can speak as a 30(b)(6)

1 witness on behalf of the federal defendants in his
2 capacity as a 30(b)(6) witness with regard to
3 those events. Anything outside of that timeframe
4 he is testifying as a fact witness in his personal
5 capacity.

6 MS. AMIRI: Thank you. Yes.

7 BY MS. AMIRI:

8 Q. So with that caveat -- and that can
9 stand for any of the questions. I might ask you
10 specifically something as falling within the scope
11 of the 30(b)(6) that I would have anticipated that
12 you would have been prepared for. That's a
13 different thing. But I'm happy for that objection
14 to stand. If we need further clarification for
15 any of those specific questions, we can certainly
16 do that.

17 Since your deposition, have you been made
18 aware of abortion requests from shelters?

19 A. Yes.

20 Q. How many?

21 A. I believe five subsequent to the
22 deposition.

23 Q. There should be a pile of exhibits in
24 front of you. Let's start with the first one.

25 Hopefully 22 is the first.

1 A. 22?

2 Q. Yep. I'm sorry. I mean 23. I did not
3 mean 22.

4 A. I don't know if I should see 22. I
5 think it's speaking to Mr. Lloyd's deposition.

6 We're looking at 23?

7 Q. 23.

8 A. Can you give me just a moment to review
9 this?

10 Q. Yes, absolutely. Take your time. Let me
11 know when you're ready.

12 A. Yes. I'm familiar with this email
13 exchange.

14 Q. When you spoke about the five minors
15 since your deposition that have come to your
16 attention that have sought abortion, is this one
17 of them?

18 A. No. This is a minor whose request was
19 outstanding when we spoke last and had continued
20 through the period of the last deposition.

21 Q. Is it your understanding -- well, let me
22 back up and just ask the question. Do you believe
23 that there is anyone on staff at ORR that has the
24 clinical training or competency to do options
25 counseling with respect to pregnancy and abortion?

1 A. Could you sort of clarify which
2 component of options counseling?

3 Q. Sure. Actually, I'm going to try to
4 find it. In one of the emails, there's a
5 reference to a conversation that you had with
6 ██████████ about whether there was anyone
7 from ORR that had the clinical training to do
8 options counseling and specifically in the context
9 of this particular minor. So we can find it and
10 pull it up, but I wanted to ask you some questions
11 about it. And I just wasn't able to put my
12 fingers on it yet.

13 Exhibit 26, do you recognize the email in
14 Exhibit 26?

15 A. Yes, I do.

16 Q. It's an email from you to Scott Lloyd?

17 A. Correct.

18 Q. Who is ██████████?

19 A. ██████████ is a special assistant.

20 ██████████ ██████████
21 ██████████. She's a nonsupervisory
22 individual, career, who is a special assistant.
23 She's not a decision-maker.

24 Q. In number two in your email, that is
25 what I was referencing, that ██████████ has indicated

1 that the DHUC staff are not able to participate.
2 I wanted to ask you in the context of this email,
3 it seems like there was maybe a conversation that
4 you had with [REDACTED] or knowledge that you had
5 about the clinical training, expertise and
6 practice scope of the HUC staff members.

7 A. Correct.

8 Q. So kind of going back to my question,
9 was there a determination made that there was
10 nobody on ORR staff that had the clinical training
11 or expertise or practice scope to provide option
12 counseling to this minor who was considering
13 termination?

14 A. It was -- it was my view and that of the
15 medical team that there was no one on our medical
16 team who was trained to provide medical options
17 counseling.

18 Q. Was that view disputed by Scott Lloyd or
19 anyone higher up?

20 A. No, not to my knowledge. We did not
21 have a discussion.

22 Q. Was it your understanding that [REDACTED]
23 [REDACTED] was being asked to provide options
24 counseling to the minor in this email?

25 A. [REDACTED] was not directed to

1 provide options counseling. She was directed to
2 observe the interactions to it and to determine --
3 to ensure that the minor was able to verbalize her
4 options.

5 Q. Do you know who did the options
6 counseling for this particular minor?

7 A. It was provided by the medical director
8 of the sheltering program is my understanding.

9 Q. Do you understand know whether -- do you
10 know whether Scott Lloyd instructed this
11 particular minor to attend a counseling session at
12 a crisis pregnancy center?

13 A. I believe this minor did attend a crisis
14 pregnancy center counseling session.

15 Q. Do you know whether this particular
16 minor was required to tell her parents about her
17 abortion decision?

18 A. There was a parental notification
19 conducted to my recollection.

20 Q. Was that at the requirement of ORR?

21 A. Yes.

22 Q. Did you know that Scott Lloyd had
23 directed that this particular minor be read a
24 description of a dilation and extraction
25 procedure?

1 A. I'm aware that that was his direction.

2 Q. Do you know whether anyone at ORR
3 carried out that direction?

4 A. I believe that that description was read
5 to the minor but not by federal personnel.

6 Q. By someone at the shelter?

7 A. That is my understanding, yes.

8 Q. Is this the first time that Scott Lloyd
9 had ever required a minor considering abortion to
10 be read a description of abortion from a Supreme
11 Court case?

12 A. I have not received any direction prior
13 to this for that to happen in any other case.

14 Q. Have you received any instruction after
15 this case for that to happen?

16 A. No.

17 Q. This is you, Jonathan White personally.
18 Do you think it's appropriate for a minor
19 considering abortion to be required to listen to a
20 description of an abortion procedure that is
21 discussed in a Supreme Court case?

22 MR. TOMLINSON: Objection. Foundation.

23 THE WITNESS: Could you just articulate
24 sort of what you mean? Appropriate in what sense?

25

1 BY MS. AMIRI:

2 Q. Appropriate in terms of whether this is
3 appropriate for counseling, options counseling or
4 medical informed consent.

5 A. It is my understanding that it would not
6 meet JCAHO standards for medical informed consent.

7 Q. What is your understanding of what
8 JCAHO -- well, let's back up and say what the
9 acronym for JCAHO is.

10 A. It's the Joint Commission for the
11 Accreditation for Health Organizations.

12 Q. And what is your understanding of what
13 JCAHO's standards are for informed consent.

14 A. At a medical intervention that informed
15 consent would be based on information provided by
16 the provider who will perform the procedure.

17 Q. Are you aware of ORR providing this type
18 of medical informed consent to a minor in any
19 context other than abortion?

20 A. I'm not sure I understand the question.

21 Q. So a minor undergoing any other medical
22 procedure, not abortion, are you aware of whether
23 ORR has required this type of medical informed
24 consent be given by the shelter staff or ORR
25 staff?

1 A. I'm not aware of another instance for a
2 different intervention that would require that.

3 Q. Do you know whether Scott Lloyd issued
4 any instructions with respect to this particular
5 minor that were not communicated over email?

6 Sorry. I'll ask it a different way.

7 Did Scott Lloyd have any verbal conversations
8 with you about instructions for this particular
9 minor as prerequisites for her abortion request to
10 be considered by him?

11 A. We had a number of conversations about
12 this minor's case in which direction was provided.

13 Q. What direction was provided to you about
14 this minor's case from Scott Lloyd?

15 A. I don't recall any direction which is
16 not contained or summarized in the email. Most of
17 the direction had to do with what would need to be
18 communicated with the minor and by whom.

19 Q. We talked about one component of what
20 needed to be communicated with the minor, which
21 was the description in the Gonzales case; correct?

22 A. That's correct.

23 Q. Another was an offer for her to view a
24 picture of a 23-week abortion. Does that sound
25 familiar?

1 A. It does. That's also correct.

2 Q. And is there anything else in the bucket
3 of information that needed to be communicated with
4 the minor that we haven't talked about?

5 A. The minor also had the option to carry
6 the child -- to carry the pregnancy to term and
7 parent, to carry the pregnancy to term and place
8 the resulting baby up for adoption in addition to
9 the option for termination.

10 Q. You're aware that Scott Lloyd also
11 proposed a certain list of questions to a medical
12 provider about which type of abortion would be
13 performed. Do you remember that?

14 A. Yes, but is there a document you can
15 direct me to so it will help me?

16 Q. Yes. I'm not sure that we have
17 introduced it yet. Give me just a second. I
18 think we might not have made it an exhibit yet.

19 MS. AMIRI: Marty, do you have a
20 preference? Do you want to start with White 1?

21 MR. TOMLINSON: How did we do it last
22 time?

23 MS. AMIRI: I didn't have any new
24 exhibits for Mr. White last time. We only used
25 ones that we had done for Lloyd last time.

1 MR. TOMLINSON: I leave it up to you.
2 We can do White 1, but if you just want to do 30
3 or whatever.

4 MS. AMIRI: 33?

5 MR. TOMLINSON: I think that would be
6 fine.

7 (White Exhibit 30 was marked.)

8 BY MS. AMIRI:

9 Q. I'll hand you what has been marked as
10 Exhibit 30.

11 A. Thank you. Yes. I do recall being
12 directed to have these questions posed.

13 Q. Do you know why Scott posed these
14 questions to the provider?

15 A. I do not know why.

16 Q. Do you know whether those questions were
17 answered by a medical provider?

18 A. I don't believe they were ever answered
19 or if they were, that answer was not provided to
20 me.

21 Q. Did you have any conversations with
22 Scott Lloyd about whether he intended to influence
23 which type of abortion procedure this minor would
24 undergo to maximize the chance of a live birth?

25 A. We did not have any such conversation.

1 Q. Do you know whether Scott Lloyd had
2 those conversations with anybody?

3 A. I'm not aware of any such conversations.

4 (White Exhibit 31 was marked.)

5 BY MS. AMIRI:

6 Q. I'll hand you what's been marked as
7 Exhibit 31.

8 A. Thank you, ma'am.

9 (Witness reviewed the exhibit.)

10 THE WITNESS: Yes. I've reviewed it.

11 BY MS. AMIRI:

12 Q. I had a question, if you happen to know.
13 In the email that is from [REDACTED] to
14 you, in the sentence that begins, "The medical
15 exam at [REDACTED] conducted on," and then it's been
16 redacted, I wanted to ask you if you knew what [REDACTED]
17 stood for.

18 A. I believe in this context, it likely
19 refers to the name of the sheltering program where
20 the minor was prior to her transfer.

21 Q. So this particular minor had been at one
22 shelter, was transferred to another shelter?

23 A. Correct.

24 Q. The shelter that she originated at, was
25 it a religiously-affiliated shelter?

1 A. I do. I produced this document.

2 Q. Have you provided Mr. Lloyd with any
3 decisional documents like this for any other
4 minor?

5 A. This is the only case for which I've
6 produced a full memorandum of this kind.

7 Q. And why did you do it in this case but
8 not any other?

9 A. I did it in this case because the minor
10 in this case was covered by an exception to the
11 Hyde Amendment.

12 Q. So this decisional memo is both about
13 approval for the abortion procedure and for the
14 use of federal funds; is that correct?

15 A. That is correct.

16 Q. So in the other circumstances where
17 there has been an abortion request, the request
18 has not necessarily involved the request to use
19 federal funds; is that correct?

20 A. That is correct.

21 Q. And you recommended --

22 MS. AMIRI: I'm guessing it's redacted
23 because you're claiming deliberation privilege?

24 MR. TOMLINSON: Over the recommendation.

25 Well, over the reason behind the recommendation.

1 MS. AMIRI: But the fact that Mr. White
2 recommended the abortion is not --

3 MR. TOMLINSON: Correct.

4 BY MS. AMIRI:

5 Q. I can clarify that you recommended to
6 Mr. Lloyd that he approve the abortion and approve
7 the use of federal funds for the abortion?

8 A. I recommended that he approve the
9 authorization for the minor to receive the
10 abortion procedure, and I recommended that he
11 authorize the use of federal funds for the
12 procedure and the facilitation of the procedure.

13 Q. But he did not accept your
14 recommendation?

15 A. The final decision was not to approve
16 the procedure or the use of federal funds.

17 Q. Let's look at Exhibit 24 in front of
18 you. I should have the right one.

19 A. Yes.

20 Q. So the page starting Price production
21 15607, that's Mr. Lloyd's final decision; is that
22 correct?

23 A. Correct. This is his note to the file
24 explaining the reasoning behind his decision.

25 What is before that is a cover email from me

1 sharing it with members of our team.

2 Q. Were members of your team concerned
3 about Mr. Lloyd's ultimate determination not to
4 authorize access to abortion for this particular
5 minor?

6 A. Yes.

7 Q. Since your deposition, have you had any
8 conversations about abortion access with anyone
9 above Mr. Lloyd, for example, Steven Wagner or the
10 new HHS secretary?

11 A. I have been in meetings where updates on
12 cases were made. I do not recall being in any
13 decision-making discussions.

14 Q. If you could look at Exhibit 28 in front
15 of you, please.

16 (Witness reviewed the exhibit.)

17 THE WITNESS: Yes. I'm familiar with
18 this communication.

19 BY MS. AMIRI:

20 Q. Do you know -- some of it is redacted to
21 protect their personal identities, but my question
22 is not about the names of people who are with the
23 minor at the time that [REDACTED] visited. But were
24 any of the people who were with [REDACTED] when she
25 visited the minor staff of the federal government?

1 A. It is possible that a federal field
2 specialist would have been there also. I'm not
3 certain.

4 Q. Do you know whether any clinician from a
5 crisis pregnancy center was at that meeting?

6 A. I'm trying to reacquaint myself.

7 Q. Sure. Take your time.

8 A. I do not believe at this meeting there
9 ended up being any CBC personnel. I believe that
10 it involved staff from the sheltering program and
11 [REDACTED].

12 MS. AMIRI: Marty, I'd like to ask about
13 the conclusion on the last page and wanted to see
14 if there were any parameters I could ask about
15 what's been redacted. We can put a pin in it, and
16 then maybe during a break, we can see if there's
17 anything that -- I'd like to know whether there
18 was some --

19 BY MS. AMIRI:

20 Q. My question would be like whether there
21 was an ultimate recommendation made from this
22 visit that [REDACTED]. But you can discuss at
23 the break with Mr. Tomlinson whether the answer to
24 that would reveal some sort of deliberative
25 process. So we can come back to it.

1 A. I understand.

2 Q. Before we move on, I just wanted to go
3 back to my earlier line of questions when we
4 started this. Since your deposition, have there
5 been any initial placement decisions made based on
6 the fact that a minor is seeking an abortion?

7 A. None of which I'm aware, no.

8 Q. Turn to Exhibit 29.

9 A. Yes. I recall this email exchange.

10 Q. So this is about a different minor;
11 correct?

12 A. This is not the same minor we were just
13 discussing.

14 Q. On page 15592, it looks like an email
15 from you to the federal field specialist -- I
16 think she's a federal field specialist -- [REDACTED]
17 [REDACTED], relaying Scott's instructions that the
18 [REDACTED] receive notification of the pregnancy and
19 the termination request.

20 A. That's correct.

21 Q. Were there any other instructions that
22 Mr. Lloyd told you to relay to the shelter or the
23 federal field specialist with respect to this
24 particular minor?

25 A. Yes. Those instructions were that the

1 program should request consent to notify parents
2 of the pregnancy and termination request. That
3 was the previous instruction. The determination
4 was made since it was the [REDACTED] who had been her
5 care provider in the home country and she had not
6 been in contact with her parents that the [REDACTED]
7 should be viewed acting in place of the parents.

8 Q. And is it your understanding if the
9 minor does not consent to telling the [REDACTED] about
10 her pregnancy and termination, that the shelter or
11 the federal field specialist would be required to
12 do so anyway?

13 A. The direction that I received and
14 conveyed was if she does not consent, the program
15 should proceed without consent. That notification
16 would be done by the program staff, not the
17 federal staff specialist.

18 Q. So I understand the difference, who
19 comprises the program staff? Are you talking
20 about the shelter?

21 A. The program staff would be individuals
22 who work at that grantee residential care shelter
23 provider. That's distinct from ORR federal
24 personnel.

25 Q. Thank you. So there's the instruction

1 to tell the [REDACTED] in the home country. Were
2 there any other instructions that Mr. Lloyd
3 conveyed to you about this particular minor?

4 A. One moment.

5 Q. Sure. Feel free to take your time and
6 see if there's anything in the email that jogs
7 your memory.

8 A. It is my recollection that in this
9 minor's case, the set of instructions involved
10 options counseling from a crisis pregnancy center,
11 notification of parents, later [REDACTED] in home
12 country, continued ob-gyn prenatal care, the
13 option for spiritual counseling if the minor so
14 wished and/or supportive psychosocial counseling
15 services for the minor while in our care. That is
16 my recollection of the full set of instructions.

17 Q. If you could look on page No. 15595. In
18 the email from [REDACTED] to you, in I guess the
19 fourth paragraph, there's the discussion of the
20 minor undergoing an ultrasound.

21 A. Um-hum.

22 Q. Do you know whether that ultrasound took
23 place at a crisis pregnancy center or at a
24 different type of doctor's office?

25 A. I don't recall whether that was provided

1 in a community ob-gyn clinic or in a CPC.

2 Q. It also says that minor has requested
3 that during this ultrasound, the screen is turned
4 to the side where she is not able to see the
5 screen.

6 Did you have any conversations with Mr. Lloyd
7 about whether this minor would be required to view
8 the ultrasound?

9 A. We had no conversation on that topic.

10 Q. Have you had any conversations with
11 Mr. Lloyd, either in writing or verbally, about
12 whether a minor would be required to view an
13 ultrasound in the context of seeking an abortion?

14 A. I don't recall any such conversation at
15 any time.

16 Q. You enumerated a certain list of
17 instructions that you believe you had received
18 from Scott Lloyd with respect to this particular
19 minor. Do you know whether they were carried out?
20 For example, do you know whether she was taken to
21 the crisis pregnancy center?

22 A. I believe that she did visit a crisis
23 pregnancy center. That's my recollection. I do
24 not recall whether she opted to receive spiritual
25 counseling services. I do know that the parental

1 or in this case the [REDACTED] notification of her
2 pregnancy and wish for termination was conducted.
3 That was performed. And I do know that she
4 received routine prenatal care.

5 Q. Do you believe that she continued to
6 receive prenatal care even though this email that
7 we were just talking about says she does not want
8 to start any prenatal appointments?

9 A. I do not know if she had any subsequent
10 appointments following the date of this email.

11 Q. So those were the two minors that I
12 think we talked about that had abortion requests
13 pending during our last meeting.

14 A. Yes, that's correct.

15 Q. Then there have been five since
16 approximately?

17 A. I believe so.

18 Q. So one of them, and this will be subject
19 to the protective order, was in a shelter in
20 [REDACTED]. Does that sound familiar?

21 A. Yes, that is correct.

22 Q. Do you know what Mr. Lloyd's
23 instructions were for her abortion request?

24 MR. TOMLINSON: Can I just state for the
25 record we're moving into non-30(b)(6) personal

1 territory.

2 THE WITNESS: In the case of the minor
3 with the request from the [REDACTED] shelter in
4 [REDACTED], the instructions included parental
5 notification. However, that was ultimately not
6 performed.

7 BY MS. AMIRI:

8 Q. The instructions were for parental
9 notification, but it was not performed for this
10 particular minor?

11 A. That's correct.

12 Q. Do you know why?

13 A. Due to concerns from federal and program
14 staff regarding [REDACTED] law regarding
15 notifications of the parents without the minor's
16 consent.

17 Q. Do you know whether this particular
18 minor was instructed by Mr. Lloyd to be taken to a
19 crisis pregnancy center?

20 A. I do not believe this minor was taken to
21 a crisis pregnancy center. I do not recall such
22 an instruction.

23 Q. Do you recall an instruction regarding
24 an adoptive family offer be read to the minor?

25 A. Yes.

1 Q. And what is your recollection of that
2 adoptive family letter?

3 A. There was an unsolicited communication
4 that we received in ORR from a community dwelling
5 family offering to adopt should the minor carry
6 her pregnancy to term. We were directed to convey
7 this communication from that individual to the
8 minor through reading his message. We redacted
9 the email and phone number since he had not been
10 vetted.

11 Q. You mentioned community dwelling. What
12 does that mean?

13 A. Sorry. That's a term of art meaning
14 basically living out in the world and not
15 connected with the program.

16 Q. Got it. Do you know if ORR vetted this
17 adoptive -- prospective adoptive family before
18 they communicated this offer to the minor?

19 A. He was not vetted. For this reason, we
20 did not permit direct contact between that
21 individual and the minor.

22 Q. Is this the only minor that was
23 instructed to receive by Scott Lloyd this letter
24 of prospective adoptive parents?

25 A. I've not received any other instruction

1 to have any other such offer communicated to a
2 minor by Scott.

3 Q. Did this minor independently indicate
4 that she was interested in carrying her pregnancy
5 to term and placing her child for adoption?

6 A. She never expressed an interest in
7 adoption. She indicated after this communication
8 that she was maintaining her request to terminate
9 the pregnancy.

10 Q. From a social work perspective, do you
11 think it's appropriate for a minor who is
12 requesting an abortion to be read a letter from a
13 prospective family seeking to adopt her baby
14 should she carry to term?

15 MR. TOMLINSON: Objection. Foundation.

16 You can answer.

17 THE WITNESS: I would not recommend such
18 an intervention.

19 BY MS. AMIRI:

20 Q. What has happened -- sorry. Let me just
21 go back. Do you know whether Mr. Lloyd or anyone
22 else at ORR knew the couple who was making the
23 adoption offer prior to the solicitation coming
24 in?

25 A. To my knowledge, no one had any prior

1 contact or was familiar with that individual.

2 Q. Do you know whether this particular
3 minor was also given a brochure put out by the
4 State of Texas about abortion?

5 A. I do not believe that the Texas options
6 counseling curriculum materials were provided to
7 this minor.

8 Q. Those materials have been provided to
9 other minors in other circumstances?

10 A. Yes.

11 Q. You mentioned that there were other
12 abortion requests. There's one currently pending
13 in [REDACTED] now. What has Mr. Lloyd's instructions
14 been with respect to that particular minor?

15 A. We've not received an abortion request
16 from a minor in [REDACTED].

17 Q. Were you aware before I had just asked
18 the question there was a minor in [REDACTED] seeking
19 abortion?

20 A. Yes. I'm aware of a minor who
21 previously had a request that was not conveyed to
22 ORR. I'm aware that a minor made a request and
23 engaged counsel. She has since advised that she
24 does not wish to have the abortion. There was
25 never a request made to us.

1 Q. Do you know whether there were any
2 instructions to take this minor to a crisis
3 pregnancy center or offer spiritual counseling or
4 any of the other list of things that have happened
5 to prior minors?

6 A. None of those interventions have been
7 directed to be performed as the minor has not made
8 a request to us and has stated that she does not
9 wish an abortion.

10 Q. What are the other abortion requests
11 that have happened since your deposition that we
12 have not talked about and what have the
13 instructions been from Mr. Lloyd and the outcomes?

14 A. I'm relying on my memory. I believe
15 there have been other cases. These have involved
16 minors who at one point expressed interest in or
17 request for TOP and subsequently withdrew that
18 request.

19 Q. So the ones we have not talked about had
20 requested access to abortion and then decided
21 against an abortion?

22 A. I believe that's correct. I would need
23 to check. There may be one other minor who also
24 aged out or was age rated. The status of her
25 request I'm not sure about.

1 Q. Do you know whether these minors have
2 been instructed to go through the list of things
3 that you have mentioned before in terms of a
4 crisis pregnancy center visit, parental
5 notification, things that have happened in the
6 prior abortion requests?

7 A. In some cases. In others, the minor
8 rescinded the request prior to those instructions.

9 Q. So for some yes and for others no?

10 A. Correct.

11 MS. AMIRI: This might be a good place
12 to take a break.

13 THE VIDEOGRAPHER: We are off the record
14 at 2:37.

15 (Recess from 2:37 p.m. to 2:58 p.m.)

16 THE VIDEOGRAPHER: We are back on the
17 record at 2:58.

18 BY MS. AMIRI:

19 Q. Just a few more questions, Mr. White.
20 There's something we haven't talked about yet, and
21 it's whether you have any knowledge about whether
22 ORR has restricted the discussion of abortion with
23 legal services organizations that are funded by
24 ORR, and I just wanted to see if you had any
25 knowledge of that issue.

1 A. There has been no policy direction to
2 our legal services providers not to -- there's
3 been no direction not to discuss abortion with
4 legal services organizations.

5 Q. We're going to ask you about the email
6 sorry, the email findings from [REDACTED], which is
7 Exhibit 28.

8 A. Okay.

9 Q. So I guess one of the questions I asked
10 before and perhaps you have some clarity now is
11 whether there were any other federal government
12 staff employees present during the meeting with
13 this particular minor other than [REDACTED].

14 A. I've gone back and reviewed, and
15 [REDACTED] was the only federal official
16 present.

17 Q. And I understand per your counsel I'm
18 allowed to ask whether [REDACTED] made any
19 particular recommendations in this summary, in
20 this exhibit that perhaps had been unredacted.

21 A. She made no recommendations regarding
22 providing or not providing TOP.

23 Q. Did she provide any findings relating
24 to --

25 A. She did. She did. She had two

1 findings. The first is that the minor was able to
2 verbalize that she understood she had the options
3 of termination, carrying the pregnancy to term and
4 parenting and carrying the pregnancy to term and
5 placing the baby for adoption. That was her first
6 finding.

7 The second finding was that the minor was not
8 able to verbalize what would happen in the
9 surgical termination procedure. Those were her
10 two factual findings.

11 Q. I don't think I have anything further,
12 but there is a document that I would want to ask
13 you about, but it has been redacted. Maybe we can
14 go ahead and mark it. I'm going to look for the
15 unredacted version. We'll mark it as 33.

16 (Exhibit 33 was marked.)

17 BY MS. AMIRI:

18 Q. I hand you what has been marked as
19 Exhibit 33, but I understand that your counsel
20 will pull an unredacted version. But I wanted to
21 to be able to see if there was anything I could
22 ask you about an email that you wrote starting on
23 page 1555 and continuing onto 1556 that is
24 completely blacked out.

25 MR. TOMLINSON: At this point, I'm going

1 to instruct him.

2 MS. AMIRI: You're going to take a break
3 and see if there's anything that I can ask that
4 isn't going to raise a question of whether
5 something is protected by privilege. Then that's
6 my last line of questioning subject to anything
7 that you all are going to ask.

8 MR. TOMLINSON: So we'll go off the
9 record.

10 THE VIDEOGRAPHER: Off the record at
11 3:02.

12 (Recess from 3:02 p.m. to 3:43 p.m.)

13 THE VIDEOGRAPHER: We're back on the
14 record at 3:43.

15 BY MS. AMIRI:

16 Q. You have in front of you Exhibit 33.
17 And I wanted to ask you about your email, which
18 starts on 1555 and goes onto the next page. So I
19 believe there's some questions I can ask, and
20 Mr. Tomlinson will jump in if I have overstepped,
21 but I wanted to start first by just getting a
22 general sense of what this email is.

23 A. This email is guidance from me to my
24 team on steps they need to take to take next steps
25 designed to inform Scott Lloyd's decision-making

1 on my recommendation to him to approve
2 authorization and federal funding for the abortion
3 of the minor in [REDACTED] whom we have discussed.

4 Q. And were there any specific instructions
5 laid out in this memo either from you or from
6 Mr. Lloyd?

7 A. I conveyed Mr. Lloyd's direction to the
8 team that [REDACTED] and one member
9 of the health division UAC program should travel
10 to [REDACTED] to meet with the minor.

11 Q. And those instructions are in other
12 emails in the chain that we have already discussed
13 at deposition already; is that fair?

14 A. Yes, ma'am, that's correct.

15 Q. Is there anything with respect to those
16 instructions that we have not already discussed or
17 that isn't in an exhibit that we have reviewed in
18 your deposition? Is there something else
19 basically, some other instruction that we haven't
20 already talked about?

21 A. No. The instructions are those we've
22 discussed and that were executed by [REDACTED]
23 [REDACTED].

24 Q. I don't think I have anything further.
25 I think those are my limits on that document. So

1 I don't have any further questions at this time.

2 MR. TOMLINSON: The federal defendants
3 do not have any follow-up questions.

4 MR. SPENCER: Neither does the
5 defendant-intervenor.

6 THE VIDEOGRAPHER: This concludes the
7 video deposition of Jonathan White. We're off the
8 record at 3:46.

9 (Whereupon, at 3:46 p.m., the taking of
10 the instant deposition ceased.)

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C E R T I F I C A T E

DISTRICT OF COLUMBIA:

I, Ann Medis, Registered Professional Reporter and Notary Public, hereby certify the witness, COMMANDER JONATHAN WHITE, was by me first duly sworn to testify to the truth, that the foregoing deposition was taken at the time and place stated herein, and that the said deposition was recorded stenographically by me and then reduced to printing under my direction, and constitutes a true record of the testimony given by said witness.

I certify the inspection, reading and signing of said deposition were NOT waived by counsel for the respective parties and by the witness.

I certify I am not a relative or employee of any of the parties, or a relative or employee of either counsel, and I am in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 26th day of February, 2018.

Notary Public

1 TRANSPERFECT DEPOSITION SERVICES
 216 East 45th Street
2 Suite 903
 New York, New York 10017
3 212.400.8845

4 ERRATA SHEET

5 CASE: ACLU v HARGAN, ET AL.
6 DATE: FEBRUARY 13, 2018
7 WITNESS: COMMANDER JONATHAN WHITE

7	Page	Line	Change and reason for change:
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
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21
22
23 Subscribed and sworn to me this
24 _____ day of _____, 2018.
25 _____

ACKNOWLEDGMENT OF DEPONENT

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I, COMMANDER JONATHAN WHITE, do here certify that I have read the foregoing pages 1 to 45 and that the same is a correct transcription of the answers given by me to the questions herein propounded, except for the corrections or changes in form or substance, if any, noted in the attached errata sheet.

DATE

COMMANDER JONATHAN WHITE

Subscribed and sworn to me this _____ day of _____, 2018.

Notary Public