

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

**DEFENDANTS’ OPPOSITION TO PLAINTIFFS’ EMERGENCY MOTION FOR AN  
EXTENSION OF TRO FOR JANE ROE AND JANE POE**

Defendants Eric D. Hargan, Steven Wagner, and Scott Lloyd in their official capacities (“Defendants”) hereby oppose Plaintiffs’ Emergency Motion for an Extension of paragraph 3 of the Court’s December 18, 2017 TRO for Jane Roe (“Ms. Roe”) and Jane Poe (“Ms. Poe”). ECF Nos. 73, 94. Defendants do not oppose extension of paragraphs 4 and 5 of the December 18, 2017 TRO. ECF No. 73.

With regards to Ms. Roe, she is not a minor and therefore has been transferred to the custody of the Department of Homeland Security (“DHS”). She has been since been released on her own recognizance, and is no longer under the jurisdiction of the Office of Refugee Resettlement (“ORR”). ECF No. 84 at 2. Thus, extension of paragraph 3 for Ms. Roe is unnecessary.

With regards to Ms. Poe, she has already disclosed her desire to obtain an abortion to ORR, which operates *in loco parentis* on Ms. Poe’s behalf. As stated in Defendants’ Motion to

Reconsider (ECF No. 45), filed on November 6, 2017, extending paragraph 3 for Ms. Poe would significantly affect Defendants' ability to provide her with appropriate medical care and to vet potential sponsors. Accordingly, Defendants respectfully request this Court to either decline to extend paragraph 3 of the December 18, 2017 TRO (ECF No. 73) for Ms. Poe, or amend it to only restrain Defendants from "revealing [Ms. Poe's] abortion decision, in connection with her name or other information that would reveal her identity, except insofar as necessary to perform their custodial obligations such as providing medical care, emergency care, or identifying and evaluating potential sponsors."

### **ARGUMENT**

#### **I. Ms. Roe is not a minor and no longer under the jurisdiction of ORR.**

Ms. Roe, as noted, is not a minor, is no longer in ORR custody, and therefore is not subjected to any purported ORR "policy." ECF No. 84 at 2. As Ms. Roe is an adult, ORR has no occasion to reveal any of her private information; indeed, Ms. Roe has made no showing that ORR has ever done so for an adult not in its care.

Additionally, Plaintiffs' concern that Defendants "could reveal [Ms. Roe's abortion] to family" members is belied by the record. ECF No. 94 at 2. ORR has already indicated that it has not disclosed this information to Ms. Roe's family, nor does it have any intention of revealing that information. ECF No. 66-1 (Jonathan White Declaration) at ¶ 4). In short, as Ms. Roe is not subject to the jurisdiction of ORR and Plaintiffs' concern regarding disclosure of her abortion decision to family members is unsubstantiated, this Court should decline to extend paragraph 3 of the December 18, 2017 TRO (ECF No. 73) for Ms. Roe as unnecessary.

#### **II. ORR must be able to disclose important personal facts about Ms. Poe to medical providers and to vet potential sponsors.**

As a minor under ORR's care, Ms. Poe's right to the nondisclosure of her abortion is not unrestricted. Acting in *loco parentis*, ORR must have the discretion and ability to disclose relevant medical information about Ms. Poe to medical care providers and to vet potential sponsors.<sup>1</sup> The Supreme Court has stated that privacy interests do not automatically outweigh the reasonable exercise of the government's legitimate authorities. *See, e.g., Whalen v. Roe*, 429 U.S. 589, 600-03 (1977). Here, Congress has directed ORR to take care and custody of unaccompanied minors like Ms. Poe until they can be released to a sponsor. *See* 8 U.S.C. § 1232(b); *see also* 6 U.S.C. § 279(b)(1)(B) (ORR must ensure that "the interests of the child are considered in decisions and actions relating to the care" of an unaccompanied minor); *cf. Parham v. J.R.*, 442 U.S. 584, 619 (1979) ("[T]he state agency having custody and control of the child in *loco parentis* has a duty to consider the best interests of the child . . ."). The Supreme Court has long recognized "that when a parent or another person has assumed 'primary responsibility' for a minor's well-being, the State may properly enact 'laws designed to aid discharge of that responsibility.'" *Hodgson v. Minn.*, 497 U.S. 417, 448 (1990) (*quoting Ginsberg v. New York*, 390 U.S. 629, 639 (1968)). This is because "[t]he State has a strong and legitimate interest in the welfare of its young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely." *Id.* at 444.

Thus, ORR, acting in *loco parentis* for Ms. Poe, has the authority to disclose relevant medical information to medical providers and to vet potential sponsors when ORR believes that

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<sup>1</sup> Defendants' contend that the disclosure of these facts are critical to the sponsorship process and assist ORR in the placing an individual in a situation where they would not be subjected to harm. This is only further supported in Ms. Poe's case where her uncle, and potential sponsor, threatened to "beat her" should she obtain an abortion. ECF No. 92-1 at 5. If ORR were not permitted to make appropriate disclosures of Ms. Poe's history as part of its legitimate investigation of a sponsor's suitability, ORR might inadvertently release Ms. Poe into an environment that put her at serious risk, which is exactly what the TVPRA is designed to avoid.

doing so is in Ms. Poe's best interests. Here, Ms. Poe already disclosed her desire to obtain an abortion to ORR when she requested that ORR help facilitate her abortion. Now, Ms. Poe, through counsel, now concedes that Ms. Poe has, in fact, obtained an abortion. ECF No. 94 at 1 ("... [t]o ensure that Defendants do not retaliate against Ms. Roe and Ms. Poe for having obtained an abortion ..."). Ms. Poe provides no legal justification for enjoining ORR from using information she has freely disclosed in the exercise of its custodial responsibilities.

Moreover, Ms. Poe has also disclosed her pregnancy to her parents, that she was considering having an abortion, and it will be obvious in a matter of months that she is no longer pregnant. Because of Ms. Poe's self-disclosure, her parents may communicate their knowledge of the pregnancy, and the facts surrounding it, to whomever they chose. If the TRO were applied to Ms. Poe's parents, it would likely constitute a content-based abridgement of their First Amendment rights. *See, e.g., Smith v. Daily Mail Pub. Co.*, 443 U.S. 97, 101-02 (1979) (disclosure of minor's names lawfully obtained); *Oklahoma Pub. Co. v. District Court*, 430 U.S. 308, 310 (1977) (injunction against media disclosure of information lawfully obtained); *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 558-59 (1976). So too here, given ORR's custodial relationship with Ms. Poe and Ms. Poe's self-disclosure to the agency. Here, just as Ms. Poe's parents are permitted to act based on information lawfully obtained, so, too may ORR. At a minimum, the government, while acting in the place of the parent or as the legal guardian of an unaccompanied minor, does not transgress the rights of a minor in its care by carrying out its important, legitimate custodial responsibilities in a similar manner based on information voluntarily conveyed.

Further, Defendants have proffered legitimate custodial reasons for disclosing Ms. Poe's abortion information in *limited* circumstances: primarily to medical providers to ensure proper

medical care and to vet prospective sponsors. Neither medical providers nor sponsors (who would take responsibility for future medical care) can be reasonably expected to carry out their functions in the absence of the disclosed information. Additionally, as discussed before with regards to Ms. Doe, these reasons include placing her on the appropriate medical regimen; informing medical personnel in the case of an emergency; and identifying a suitable sponsor. ECF No. 40 Jonathan White (Redacted) Declaration at ¶¶ 5-10. These constitute significant ORR custodial responsibilities that continuation of paragraph 3 of the December 18, 2017 TRO makes even more difficult to carry out.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs' Plaintiffs' Emergency Motion for an Extension of TRO for Jane Roe and Jane Poe, ECF No. 94, should be denied.

Dated: December 29, 2017

Respectfully submitted,

CHAD A. READLER  
Acting Assistant Attorney General  
Civil Division

AUGUST E. FLENTJE  
Special Counsel

ERNESTO H. MOLINA  
Deputy Director

BY: /s/ Sabatino F. Leo  
SABATINO F. LEO  
W. DANIEL SHIEH  
Trial Attorneys  
Office of Immigration Litigation  
Civil Division, U.S. Department of Justice  
P.O. Box 878, Ben Franklin Station  
Washington, D.C. 20044  
Phone: (202) 514-8599  
Fax: (202) 616-4975  
sabatino.f.leo@usdoj.gov

*Attorneys for Defendants*