

Should abortion rights extend to unaccompanied migrant minors?

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A federal appeals court will determine whether a government agency can establish barriers for unaccompanied migrant children seeking abortions.

A federal district court earlier this year stopped government interference with access to services, ruling that the U.S. Health and Human Services Department's Office of Refugee Resettlement (ORR) cannot establish an anti-abortion policy that unduly burdens these minors' right to abortion.

The question went before the court after ORR—which can make all medical decisions for unaccompanied alien children in place of their parents—issued a memo and follow-up communication to federal grantee organizations that provide shelter and services for the unaccompanied alien children. The agency said that unless it is an emergency situation:

- The grantee organizations must contact ORR about any minor who may require an abortion.
- Grantee organizations could not take any action that facilitates an abortion without ORR's director.
- Grantee organizations could only provide “pregnancy services and life-affirming options counseling.”
- ORR approval for any abortion had to be in writing and would be required even though federal funds wouldn't be used for the procedure.
- The minor seeking an abortion must have an ultrasound, counseling from a pre-approved provider and a notarized declaration of consent from the minor's parents.

The lower court said ORR established the policy without statutory or regulatory authority.

ORR appealed the decision in *Azar II v. Garza* to the U.S. District Court Appeals for the District of Columbia Circuit, which heard oral arguments on the case in September.

The Litigation Center of the American Medical Association and State Medical Societies joined the American College of Obstetricians and Gynecologists and a half-dozen physician organizations supporting the guardian ad litem for a pregnant unaccompanied alien minor who filed the class action lawsuit on behalf of that child and others. The amici are asking the court to uphold the lower court decision.

The New York Times has reported that nearly 13,000 unaccompanied migrant children were held in federal custody in September.

Access to health care at stake

All women—no matter immigration status, age or income—should have timely access to reproductive care, including abortion. Women should be able to consult medical providers in confidence without political interference, the Litigation Center brief tells the court.

ORR’s policy doesn’t allow that to happen. Instead, it compounds challenges for a population of young women who are often fleeing violence in their home countries, including sexual assault, according to the brief.

“Neither Ms. Doe nor any other similarly situated young woman should be forced to carry her pregnancy to term or be deprived of timely access to medically sound, confidential health care,” the brief states. “The policy adds extreme and unfounded barriers that prevent women from obtaining the reproductive health care they need, while depriving them of the confidentiality that is at the very heart of the patient-physician relationship.”

Unsafe, unnecessary barriers

There is no medical reason for a minor to tell a parent or sponsor about a decision to have an abortion because young women can decide when to end a pregnancy and can care for themselves after the procedure, the AMA Litigation Center brief informs the court.

Mandatory notification opens minors up to potential adverse health effects, including severe parental anger. A lack of confidentiality also can create a barrier to adolescents’ receiving the appropriate health care.

Moreover, the counseling at crisis pregnancy centers that ORR refers to is medically unnecessary and harmful to patients. Crisis centers’ “true and sole purpose is in fact to dissuade women from exercising their choice to obtain an abortion through tactics that are manipulative, misleading, and at odds with

medical practice,” the brief says.

Finally, delaying access negatively affects patient safety and choice. Women generally lose access to a medical abortion after 10 weeks’ gestation. And while surgical abortion is safe, complications increase with gestational age. Delays also could make an abortion impossible to obtain. Carrying a pregnancy to term, or longer than necessary, exposes young women to avoidable pregnancy-related health risks.