

Immigration

Immigrant rights group in email says it was warned not to mention abortion to teens

By **Ann E. Marimow** and **Maria Sacchetti** February 15 at 4:25 PM

A major legal services group for immigrant children told its lawyers nationwide not to discuss abortion access, even if minors in custody ask for help understanding their legal rights, for fear it would jeopardize a multimillion-dollar contract with the Department of Health and Human Services.

The constraints on what government-funded lawyers can say to young detainees was contained in an email from the nonprofit Vera Institute of Justice, which said it acted after a phone call with an HHS employee. Vera's instruction to lawyers comes as the Trump administration has tried in court to block access to abortion procedures for undocumented teens in federal custody.

"We know for a fact that there is a very real risk to the entire legal services program for children in [Office of Refugee Resettlement] custody if issues other than immigration are addressed in consultations or representation, the abortion issue in particular," a Vera official cautioned in a Feb. 2 email obtained by The Washington Post.

The government pays \$57 million a year under a five-year contract to Vera, which works with 38 organizations in six regions to provide legal help to minors who have crossed the border illegally and without their parents.

In the email, Vera official Anne Marie Mulcahy said she was sending it after a conversation with the government analyst who manages the program within the Office of Refugee Resettlement (ORR) at HHS.

During the call, the employee "directed us to ensure that Vera's legal services providers are not talking to children in HHS custody about abortion," wrote Mulcahy, who is the director of Vera's unaccompanied minors program.

Mulcahy instructed lawyers to immediately strip references to abortion from "Know Your Rights" legal pamphlets and said lawyers could refer children with abortion-related questions to other attorneys.

An HHS spokesman declined to make the employee available for an interview, and independent attempts to reach her were not successful. Mulcahy did not respond to phone and email messages seeking comment.

In a statement, the HHS spokesman said the department “has not issued a new directive on the matter of abortion” to Vera, which it said is under contract “to provide immigration expertise” to unaccompanied minors.

Vera said it routinely is given oral instructions from the ORR.

The department declined to say whether the contract is in jeopardy if lawyers answer questions about or mention abortion rights to the minors and said Vera has not provided it with a copy of the email.

In response to questions about the email, Vera said in a statement: “When given this latest instruction, we issued an email to our legal service provider subcontractors to do two things: protect the program that serves 50,000 children a year, and provide alternative pathways to ensure that children receive the information they need for their health and well-being, including pertinent information about their reproductive rights.”

Immigrants — including children — are not entitled to government-appointed lawyers in immigration court. Federal money for programs like Vera’s is a main avenue for legal advice for unaccompanied children in custody. The group’s lawyers provide one-on-one legal screenings and presentations to advise minors of their rights.

The Vera Institute email directs its lawyers’ attention to how important the abortion issue is to the new head of the ORR.

The office is responsible for the care of approximately 7,700 minors in custody, nearly 70 percent of whom are boys, according to HHS. The minors are facing possible deportation to countries such as El Salvador and Honduras that are ravaged by gang violence and have some of the world’s highest homicide rates.

Mulcahy wrote, “I recognize that this limitation will be concerning to many of you. At the same time, this is a highly sensitive issue right now, and one of utmost import to ORR’s director.”

The ORR chief, E. Scott Lloyd, has refused to “facilitate” abortion procedures for pregnant minors in custody, even at their own expense, triggering a pending lawsuit from the American Civil Liberties Union and a national debate over the constitutional rights of undocumented teens to access abortion services. Since October, four pregnant teens in custody have asked a judge in Washington to force the administration to stop blocking access to abortion services.

Robert Carey, who was ORR director until January 2017, said that under past administrations, Republican and Democratic, the agency did not interfere with the right to obtain abortions.

The federal agency did not pay for the procedures, except in the case of rape, incest or if the teen’s life was in jeopardy, he said. But the agency did not attempt to prevent minors from obtaining abortions through other means nor did it restrict lawyers’ discussions with minors in custody.

Legal experts said the new limitations put lawyers in a bind if they are prohibited from telling teens in custody, for instance, that there is a constitutional right to an abortion.

By reining in what information is provided, they said, the order threatens the role of a lawyer as an independent advocate.

Kari Hong, an immigration law expert who runs a pro-bono program for noncitizens, called the order “very disconcerting.”

“It’s hard to overstate what a breach this is into the communications lawyers are supposed to be providing,” said Hong, who is also a Boston College law professor.

The Supreme Court has upheld restrictions on federally funded family planning clinics prohibiting discussions with patients about abortion. But Hong said that “with gag orders on doctors, the patient is free to walk down the hall or find another hospital.” Children in custody have limited access to lawyers, and she said it’s unrealistic that the minors could find or afford another attorney.

In the email, Vera said its attorneys could refer children to other lawyers not funded by the federal government. “My understanding from ORR is that the referred attorney can then contact the facility and request to meet with the child,” the email says.

Vera said this week that it later followed up with a phone call to legal services providers to say the emailed instructions “do not apply to those cases where lawyers are providing representation to a child, which is covered by many legal and ethical protections.”

The warning to legal services providers drew swift rebuke from members of Congress and from lawyers involved in the broader court challenge to the administration policy related to abortion procedures.

Brigitte Amiri, a lawyer for the American Civil Liberties Union who last year filed the court challenges on behalf of teens in custody seeking abortions, said the instruction to lawyers is “part of Scott Lloyd’s campaign to restrict access to abortion for these young people and it’s deeply troubling.”

She said the ACLU is “investigating the issue and assessing the legality.”

Rep. Jerrold Nadler (D-N.Y.) said the ORR instructions to Vera are a “gross violation of legal ethics.” Rep. Zoe Lofgren (D-Calif.) said Lloyd has “interfered in the constitutionally protected rights of young women who have been placed under his protection” and is “unfit for office.”

Julie Tate and Magda Jean-Louis contributed to this report.

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