

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5236**September Term, 2017****1:17-cv-02122-TSC****Filed On: October 20, 2017**

Rochelle Garza, as guardian ad litem to
unaccompanied minor J.D., on behalf of
herself and others similarly situated,

Appellee

v.

Eric D. Hargan, Acting Secretary, Health and
Human Services, et al.,

Appellants

BEFORE: Henderson,* Kavanaugh, and Millett,** Circuit Judges

ORDER

Upon consideration of the emergency motion for stay pending appeal, the opposition, the supplement thereto, and the reply; the brief of amici curiae; the administrative stay entered on October 19, 2017; and the oral argument of the parties, it is

ORDERED that the administrative stay be dissolved. It is

FURTHER ORDERED that the District Court's temporary restraining order entered on October 18, 2017, be vacated as to paragraphs 1 and 2 of the order and that the case be remanded to the District Court.¹

The Government argues that, pursuant to standard HHS policy, a sponsor may be secured for a minor unlawful immigrant in HHS custody, including for a minor who is seeking an abortion. The Government argues that this process – by which a minor is released from HHS custody to a sponsor – does not unduly burden the minor's right under Supreme Court precedent to an abortion. We agree, so long as the process of securing a sponsor to whom the minor is released occurs expeditiously. *Cf. Planned Parenthood v. Casey*, 505 U.S. 833, 899 (1992); *Ohio v. Akron Center for Reproductive*

¹ As both parties agree, we have jurisdiction over this appeal because the District Court's temporary restraining order was more akin to preliminary injunctive relief and is therefore appealable under 28 U.S.C. § 1292(a)(1). See *Sampson v. Murray*, 415 U.S. 61, 86 n.58 (1974).

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Health, 497 U.S. 502, 513 (1990). The District Court is directed to allow HHS until Tuesday, October 31, 2017, at 5:00 p.m. Eastern Time for a sponsor to be secured for J.D. and for J.D. to be released to the sponsor. If a sponsor is secured and J.D. is released from HHS custody to the sponsor, HHS agrees that J.D. then will be lawfully able, if she chooses, to obtain an abortion on her own pursuant to the relevant state law. If a sponsor is not secured and J.D. is not released to the sponsor by that time, the District Court may re-enter a temporary restraining order, preliminary injunction, or other appropriate order, and the Government or J.D. may, if they choose, immediately appeal. We note that the Government has assumed, for purposes of this case, that J.D. – an unlawful immigrant who apparently was detained shortly after unlawfully crossing the border into the United States – possesses a constitutional right to obtain an abortion in the United States. It is

FURTHER ORDERED that the emergency motion for stay pending appeal be dismissed as moot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to issue the mandate forthwith to the District Court.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Robert J. Cavello
Deputy Clerk

*Although Circuit Judge Henderson concurs in this order, her reasoning therefor will follow in a separate statement to be filed within five days of the date of this order.

**Circuit Judge Millett would deny the emergency motion for stay. A statement by Judge Millett, dissenting from the disposition of this case, will issue shortly.