



Defendants have given no indication that they will refrain from obstructing class members' access to abortion while their petition for certiorari is pending, despite the fact that the en banc Court recognized that their policy is likely unconstitutional. In fact, all indications are to the contrary, as Defendants continue to defend their policy in their petition. As noted in Plaintiff's Motion for Class Certification, there are hundreds of pregnant unaccompanied minors in Defendants' custody each year. *See* Pls.' Mot. for Class Certification at 4, ECF No. 18 (noting that in 2016, there were 682 pregnant unaccompanied minors in ORR custody, relying on attached exhibits). Entry of a preliminary injunction to protect the class is therefore a matter of considerable magnitude and urgency, for the same reason that relief for J.D. was urgent. Defendants should not be permitted to delay this case, and inflict their unconstitutional policies on the putative class in the interim. This Court should not facilitate Defendants' desire to put this case on hold for several months while they continue to violate the constitutional rights of young women.

2. Alternatively, Defendants ask this Court to first rule on the motion for class certification, and subsequently receive additional briefing on the motion for a preliminary injunction. This approach would likewise delay adjudication of the preliminary injunction for weeks, without justification, and would cause irreparable harm to the putative class, as discussed *supra*. There is no reason why the Court cannot proceed simultaneously with the motion for class certification and preliminary injunction as to the class. Indeed, contrary to Defendants' unsupported claim that the "scope and nature" of the class is "highly relevant" to the preliminary injunction, Defs.' Mot. at 4, the class is in the same position as J.D., namely, they are subject to

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Defendants will have an opportunity to seek interlocutory review from the Supreme Court by taking an appeal from the grant of a preliminary injunction as to the class and then petitioning for certiorari if the court of appeals affirms.

Defendants' unconstitutional policies that obstruct abortion access. There is nothing particular or unique about the class that would need to be resolved prior to the preliminary injunction. If Defendants believe there is, they can make their arguments in their simultaneously filed briefs. At a minimum, if the Court remains uncertain about the precise "scope and nature" of the class, it can enter an order provisionally certifying the class at the same time that it preliminarily enjoins the Defendants from blocking class members' access to abortion. *See* Plaintiff's Motion for Class Certification (ECF No. 18) at 1 n.2 (noting this Court's provisional class certification in conjunction with granting preliminary injunction in the context of an immigration detention case in *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 179-80 (D.D.C. 2015)).

3. Lastly, Defendants ask this Court for leave to file an opposition to Plaintiff's motion for a preliminary injunction as to the class on November 20, 2017. Plaintiff does not object, as long as Plaintiff is allowed until November 30, 2017, to file a unified reply in further support of both her motion for class certification and preliminary injunction.

### CONCLUSION

For the reasons given above, the Defendants' motion should be denied. A proposed order is filed herewith.

Date: November 7, 2017

Respectfully submitted,

/s/ Arthur B. Spitzer

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