Trump's Department of Justice attempts to block 17-year-old immigrant from getting abortion

Josh Varlin
23 October 2017

The US Department of Justice (DoJ) is attempting to block a 17-year-old undocumented immigrant from receiving an abortion. The case combines two of the Trump administration's major anti-democratic campaigns—attacks on immigrant rights and on the right to an abortion—and presages further attacks on the democratic rights of the population.

The immigrant teenager, an unaccompanied minor from an unspecified Central American country, is, due to her age, known as Jane Doe in court documents. As an unaccompanied minor, Doe is overseen by the Office of Refugee Resettlement (ORR), a division of the Department of Health and Human Services (DHHS).

Doe reportedly fled abusive parents and in September arrived in Texas, which has restrictive abortion laws. Under Texas law, she can get an abortion only with parental permission or a judicial waiver. However, in spite of obtaining a judicial waiver, she has been blocked from receiving an abortion.

Because Texas abortion law only allows for abortion in the first 20 weeks of pregnancy, and Doe is approximately 15 weeks pregnant, time is of the essence in this case. Because of this, her case is quickly progressing through the courts and various levels of appeal.

The cause of Doe's pregnancy has not been made public, but immigrants are often subject to sexual assault and rape in both their home countries and on their journeys to the United States, during which they are often at the mercy of human traffickers.

After President Donald Trump was inaugurated in January, he appointed Scott Lloyd to head the ORR. Lloyd, a Virginia-based attorney, is a longtime opponent of abortion rights. He hopes to "defeat *Roe* [*v. Wade*]," which established women's rights to an abortion. He has called the *Roe v. Wade* decision "a moral failure" and "faulty jurisprudence," and closed an article written on the 40th anniversary of the landmark decision with, "Let us continue to pray that one day soon our current justices follow" (the lead of the *Roe v. Wade* dissenters).

According to *Slate*, "In March, ORR announced that federally funded shelters could not take 'any action that facilitates' abortion for unaccompanied minors, including 'scheduling appointments, transportation, or other arrangement,' without 'direction and approval' from Scott Lloyd, the agency's director."

Lloyd has denied Doe's request. In another instance, he attempted to dissuade an immigrant seeking an abortion by calling her.

The American Civil Liberties Union (ACLU), which is representing Doe in this case, notes that the shelter does not have to take any positive action to allow her to receive an abortion—all the arrangements have been taken care of privately. Nevertheless, the ORR shelter is refusing to let her leave to have the abortion, effectively holding her hostage under the anti-immigrant, anti-choice regime established by Trump and Lloyd.

The Justice Department's arguments against Doe's right to an abortion have an extreme right-wing character. *Slate* calls this case "Trump's *Dred Scott* " in an article noting the similarities between the government's arguments in 2017 and the notorious 1857 *Dred Scott* decision, in which the Supreme Court found that black people were not "persons" and therefore had no constitutional rights.

© World Socialist Web Site

In an echo of *Dred Scott*, during an earlier hearing before US District Judge Tanya Chutkan, DoJ lawyer Scott Stewart declined to make the "concession" that Doe, as an undocumented immigrant, has *any* constitutional rights whatsoever.

The argument that undocumented immigrants and other non-US citizens are not protected by the Constitution is so flagrant that it has been emphatically rejected before. In a 6-3 opinion issued by the Sixth US Circuit Court of Appeals in 2003, the court rejected the Bush administration's argument that undocumented immigrants are not afforded substantive due process:

"If excludable aliens were not protected by even the substantive component of constitutional due process, as the government appears to argue, we do not see why the United States government could not torture or summarily execute them. … [W]e do not believe that our Constitution could permit persons living in the United States—whether they can be admitted for permanent residence or not—to be subjected to any government action without limit."

Friday's arguments saw a certain retreat from this position, which is both constitutionally and politically untenable—at least at this stage.

DoJ lawyer Catherine Dorsey, in response to a question from Judge Karen LeCraft Henderson, also appointed by George W. Bush, said that the government has not taken an official position on whether undocumented immigrants have a constitutional right to an abortion. When pressed, Dorsey conceded that Doe may have a base constitutional right to an abortion, but that the government is not obliged to facilitate it.

The government's arguments traded the "shocking" (to quote the ACLU lawyers) assertion that undocumented immigrants may not have any constitutional protections, for the absurd argument that they are not unduly burdening Doe from receiving an abortion because she could leave the United States to do so. Yet, when asked by the judge if Doe's home country permitted abortion, Dorsey said she believed it did not.

The DC Circuit Court of Appeals heard arguments Friday morning on the case. In an evident attempt to avoid addressing the serious constitutional questions involved, the court ruled that the government has a deadline of October 31 to find a private sponsor for Doe, which would make the ORR's obligations to her a moot point.

However, finding a sponsor is a difficult and time-consuming process, and may not be logistically possible in the next week. If the government cannot find Doe a sponsor by then, the lower court will be able to consider ordering the government to stop holding her hostage so she can get an abortion, and the government can then appeal the order.

The government may be attempting to run out the clock on Texas' 20-week window for abortions, thereby forcing Doe to carry her unwanted pregnancy to term. Professor Steve Vladeck of the University of Texas law school said: "This is kicking the can down the road. And because of the strict abortion laws in Texas, there's not a lot of road left."

However Doe's case proceeds, the government's arguments in this case are clearly oriented at least in part to whipping up a fascist movement. In earlier hearings, government lawyers argued, according to the *Los Angeles Times*, "Requiring the government to allow her to go to a clinic for an abortion could 'incentivize illegal immigration by pregnant minors.'"

This argument tracks along racist screeds against so-called "anchor babies," or infants guaranteed US citizenship because they were born on US territory. The fascistic right wing claims that such infants prevent their mothers from being deported.

Trump, during the presidential campaign, advocated removing birthright citizenship, which was one of the great democratic gains resulting from the American Civil War, enshrined in the Fourteenth Amendment to the Constitution.

To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact

© World Socialist Web Site