

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION**

YANIRA YESENIA OLDAKER, et al.,  
Petitioners-Plaintiffs,

v.

THOMAS P. GILES, et al.,  
Respondents-Defendants.

Civil Action No. 7:20-cv-00224-WLS-MSH

**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT  
OF PETITIONERS-PLAINTIFFS AND GRANTING THE EMERGENCY  
MOTION FOR TEMPORARY RESTRAINING ORDER AND PETITION  
FOR WRITS OF HABEAS CORPUS AD TESTIFICANDUM**

The American College of Obstetricians and Gynecologists (“ACOG”) respectfully moves for leave to file an *amicus curiae* brief in support of Petitioners-Plaintiffs’ Emergency Motion for Temporary Restraining Order. Counsel for United States Government Respondents-Defendants consent to the filing of this amicus brief. Counsel for other Respondents-Defendants take no position on this motion. A copy of ACOG’s proposed brief is attached to this motion.

In support of this Motion, ACOG states as follows:

1. “[It] is well-settled that a district court has broad discretion to grant the request of a nonparty to file an amicus brief.” *Chavez v. Credit Nation Auto Sales, Inc.*, No. 1:13-CV-00312-WSD-JCF, 2014 WL 12780146, at \*2 (N.D. Ga. Jun. 5, 2014) (citing *Conservancy of Sw. Fla. v. U.S. Fish & Wildlife Serv.*, 2:10-CV-106-FTM-SPC, 2010 WL 3603276, at \*1 (M.D. Fla. Sept. 9, 2010)); *Dunn v. City of Fort Valley*, 464 F.Supp.3d 1347, 1354 (M.D. Ga. 2020) (permitting filing of *amicus* brief).

2. ACOG is a leading professional medical organization of physicians dedicated to the treatment of women. The organization has long been committed to preserving and advancing high-quality and safe health care for all women. ACOG is dedicated to promoting high ethical standards, evidence-based approaches to medicine, and advocacy for all patients, regardless of immigration or incarceration status.

3. ACOG is disturbed by the allegations raised in Petitioners-Plaintiffs' complaint, which implicate bedrock principles of medical ethics. When physicians fail to respect patient autonomy, they violate the most basic principles of medical ethics. They also put their patients—particularly those who are already vulnerable, such as incarcerated unauthorized immigrant women—at risk of serious and possibly irreversible harm. ACOG has a strong interest in ensuring that the Court have access to information concerning medical ethics and informed consent, particularly in cases, as here, that allege systematic abuse and the most grievous violations of that consent.

4. ACOG is an authority on reproductive health care and rules of ethical conduct for obstetricians-gynecologists. Courts, including the United States Supreme Court and courts in this Circuit, routinely cite submissions from ACOG as authoritative medical sources on issues related to reproductive health and informed consent to reproductive health care.<sup>1</sup> ACOG offers important perspective to this Court on: medical ethical requirements, the importance of informed

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<sup>1</sup> See, e.g., *June Medical Services v. Russo*, 140 S. Ct. 2103, 2132 (2020) (citing ACOG's amicus brief to evaluate medical privileging requirements); *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2315 (2016) (citing ACOG's amicus brief to evaluate surgical center requirements); *W. Ala. Women's Ctr. v. Williamson*, 900 F.3d 1310, 1320 n.8 (11th Cir. 2018) (citing AGOG's amicus brief to assess disputed claims on fetal capacity to perceive pain); *Stuart v. Camnitz*, 774 F.3d 238, 251-252 (4th Cir. 2014) (citing ACOG and AMA's amicus brief to establish the scope and requirements of patient informed consent in relation an ultrasound requirement); *Greenville Women's Clinic v. Bryant*, 222 F. 3d 157, 168 (4th Cir. 2000) (discussing and describing ACOG's guidelines as "commonly used and relied upon by obstetricians and gynecologists nationwide to determine the standard and the appropriate level of care for their patients.").

consent, particularly in detention settings, and the need to medically evaluate the Petitioners-Plaintiffs and their allegations. This context—and these harms—underscore the need for a meaningful and unimpeded evaluation of Petitioners' claims.

**CONCLUSION**

For the foregoing reasons, ACOG respectfully urges that its Motion be granted.

Dated: March 10, 2021

Respectfully submitted,

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**BRIEF OF AMERICAN COLLEGE OF OBSTETRICIANS AND  
GYNECOLOGISTS AS *AMICUS CURIAE* IN SUPPORT OF  
PETITIONERS-PLAINTIFFS AND GRANTING THE EMERGENCY  
MOTION FOR TEMPORARY RESTRAINING ORDER AND PETITION  
FOR WRITS OF HABEAS CORPUS AD TESTIFICANDUM**

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Local Rule 87.1, The American College of Obstetricians and Gynecologists certifies that it is a non-profit organization and is not a publicly held corporation. The American College of Obstetricians and Gynecologists does not have a parent company and no publicly held corporation owns 10% or more of its stock.

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### INTEREST AND IDENTITY OF AMICUS CURIAE

The American College of Obstetricians and Gynecologists (“ACOG”) is a non-profit professional membership organization that works towards improving women’s health through continuing medical education, practice, research, and advocacy. ACOG believes that excellence in women’s health care is an essential element of the long-term physical, intellectual, social and economic well-being of any society. It is a basic determinant of the health of future generations. With more than 60,000 members representing board certified ob-gyns across the United States, ACOG is the nation’s leading organization of women’s health care physicians. Its members are committed to facilitating access to and quality of women’s health care, and must not discriminate against patients based on race, color, national origin, disability, age, religion, marital status, sexual orientation, perceived gender, or any other basis. ACOG’s work has previously been cited by federal courts, including the Supreme Court and courts in this Circuit, as authoritative medical guidance.<sup>1</sup> ACOG is committed to promoting high ethical standards, scholarship in medical science, advocacy for patients, and changing the culture of medicine, including eliminating racial inequities in women’s health outcomes. Paramount to this commitment is ACOG’s dedication to promoting the preservation and advancement of high-quality and safe health care for *all* women, regardless of immigration or incarceration status.

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<sup>1</sup> See, e.g., *June Medical Services v. Russo*, 140 S. Ct. 2103, 2132 (2020) (citing ACOG’s amicus brief to evaluate medical privileging requirements); *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2315 (2016) (citing ACOG’s amicus brief to evaluate surgical center requirements); *W. Ala. Women’s Ctr. v. Williamson*, 900 F.3d 1310, 1320 n.8 (11th Cir. 2018) (citing AGOG’s amicus brief to assess disputed claims on fetal capacity to perceive pain); *Stuart v. Camnitz*, 774 F.3d 238, 251-252 (4th Cir. 2014) (citing ACOG and AMA’s amicus brief to establish the scope and requirements of patient informed consent in relation an ultrasound requirement); *Greenville Women’s Clinic v. Bryant*, 222 F. 3d 157, 168 (4th Cir. 2000) (discussing and describing ACOG’s guidelines as “commonly used and relied upon by obstetricians and gynecologists nationwide to determine the standard and the appropriate level of care for their patients.”).

Plaintiffs-Petitioners (“Petitioners”) have set forth in their briefs and accompanying declarations why they are entitled to emergency temporary relief. ACOG writes separately to provide the Court with information regarding the detrimental effect that coerced reproductive health procedures have on patients, particularly the vulnerable women currently housed in government immigration facilities. The disturbing allegations of pattern and practices set forth in Petitioners’ complaint raise critical issues with bedrock principles of medical ethics and public health concerns. Accordingly, ACOG respectfully asks the Court to consider this *amicus* brief in support of Petitioners’ motion for a temporary restraining order, which is necessary to facilitate a full and fair investigation and adjudication of the disturbing allegations raised.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

In medicine, the patient is paramount, and medical ethics requires physicians to respect autonomy, beneficence, non-maleficence, and justice.<sup>2</sup> The allegations in this lawsuit describe a disturbing pattern of invasive, medically unindicated, and non-consensual gynecologic medical procedures. Petitioners’ allegations, if true, amount to serious violations of these bedrock principles of medical ethics.

All women—including the exceedingly vulnerable women in custody of federal immigration authorities—should have agency to make informed decisions about their health and whether or how to receive reproductive health care. All women, in all environments, should be able to trust in and meaningfully consult with their medical professionals. Informed consent takes on heightened importance and sensitivity in environments like the Irwin County Detention Center (“ICDC”), where patients face barriers to full and voluntary expression of medical autonomy.

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<sup>2</sup> R. Gillon, *Ethics needs principles—four can encompass the rest—and respect for autonomy should be “first among equals,”* 19 J. MED. ETHICS 307, 310 (2003).

All women should also feel safe to come forward if that trust is violated. Upon reports of allegations regarding concerns in the ICDC, ACOG and seventeen other medical organizations called for a full and swift investigation.<sup>3</sup> If Petitioners are deported during the pendency of an investigation in retaliation for speaking out, other individuals detained in immigration detention facilities—and unauthorized immigrants more broadly—may be discouraged from reporting similar instances of medical abuse. Unauthorized immigrants might further be discouraged from seeking medical care at all, for fear of mistreatment or deportation if they report that mistreatment. The profound ethical violations that Petitioners allege demand meaningful and immediate investigation. The significant chilling effects that could occur if they are deported demand their meaningful participation in this investigation in the United States.

## ARGUMENT

### **I. Informed Consent and Respect for Patient Autonomy are Foundational Requirements of Medical Ethics**

The protection of patient autonomy and informed consent is at the very heart of the medical ethical standards. “[I]nformed consent to medical treatment is fundamental in both ethics and law.”<sup>4</sup> It is the “first among equals” of the foundational principles of medical ethics.<sup>5</sup> Informed consent and respect for patient autonomy requires physicians to convey adequate, accurate, and understandable information, so patients can make intentional and voluntary choices about health care.<sup>6</sup> It should never involve coercion. In order to provide adequate and accurate

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<sup>3</sup> *Joint Statement: Reports of Hysterectomies Performed Without Consent*, ACOG (Sept. 2020) <https://www.acog.org/-/media/project/acog/acogorg/files/pdfs/news/jointstatement-ice-final.pdf?la=en&hash=9E3BBFA12DB9409FFDD3D29177B8CC91>.

<sup>4</sup> American Medical Association, *Informed Consent, Code of Medical Ethics Opinion 2.1.1*, <https://www.ama-assn.org/delivering-care/ethics/informed-consent>.

<sup>5</sup> Gillon, *supra* note 2.

<sup>6</sup> American College of Obstetricians and Gynecologists, *Informed Consent and Shared Decision Making in Obstetrics and Gynecology* e35 (Comm. on Ethics, Committee Opinion

information to a patient, physicians must disclose: their diagnosis (when known), treatment alternatives (including options for non-operative care), and the burdens, risks, and expected benefits of all options, including foregoing treatment.<sup>7</sup> Women cannot make fundamental decisions about their reproductive health absent such information. To provide understandable information, physicians must engage in effective, patient-centered communication. This requires physicians to, at a minimum, tailor the amount and complexity of medical information to a patient's ability to comprehend that information.<sup>8</sup>

Patient understanding is a necessary prerequisite to informed consent and meaningful exercise of patient autonomy—where language or cultural differences challenge that understanding, physicians have an ethical duty to accommodate those differences.<sup>9</sup> To avoid miscommunication or failure to communicate because of language, physicians should ensure that patients have access to professional medical interpreters.<sup>10</sup> To ensure informed consent despite cultural differences, physicians should consider and respect a patient's values and priorities.<sup>11</sup> Accommodating differences across patients is essential: studies show that subtle ambiguities in practitioners' and patients' understanding can contribute to significant disparities in care.<sup>12</sup>

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No. 819, 2021), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/02/informed-consent-and-shared-decision-making-in-obstetrics-and-gynecology>.

<sup>7</sup> *Id.*

<sup>8</sup> Barry G. Main et al., *Informed Consent and the Reasonable-Patient Standard*, 316(9) JAMA Comment and Response 992-93 (2016), <https://jamanetwork.com/journals/jama/article-abstract/2547747>.

<sup>9</sup> American College of Obstetricians and Gynecologists, *supra* note 6 at e36.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> American College of Obstetricians and Gynecologists, *Racial and Ethnic Disparities in Obstetrics and Gynecology* 3 (Comm. on Health Care for Underserved Women, Committee Opinion No. 649, 2015), <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2015/12/racial-and-ethnic-disparities-in-obstetrics-and-gynecology.pdf>.

Furthermore, differences are more likely to complicate effective physician-patient communication when patients are people of color, immigrants, and members of other marginalized groups.<sup>13</sup> Without accommodation, these differences risk eroding patient autonomy and compounding historic and ongoing racial and ethnic disparities in health and health care.

In addition to the minimum ethical requirements listed above, proper practice of informed consent requires accurate and comprehensive documentation of that consent. Physicians should document conversations about informed consent in the medical record.<sup>14</sup> Additionally, physicians should document a patient's consent to or refusal of any recommended testing or treatment.<sup>15</sup> However, documented consent does not suffice to guarantee adequate informed consent—it is merely one of the elements.

The alleged conduct at issue in this litigation subverts each of these fundamental principles of informed consent and patient autonomy by failing to properly seek, convey, and record relevant medical information to Petitioners prior to treatment. If true, these allegations constitute a gross abdication of a medical practitioner's duty to provide ethical medical care.

## **II. Incarcerated Unauthorized Immigrant Women are Particularly Vulnerable to Unethical Violations of Patient Autonomy and Reproductive Coercion**

The allegations at issue here are particularly troubling because they are taking place in an immigration detention facility. Detention centers are inherently restrictive environments. It has been documented that women in detention facilities have poor access to quality medical care.<sup>16</sup>

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<sup>13</sup> American College of Obstetricians and Gynecologists, *supra* note 6 at e36.

<sup>14</sup> American Medical Association, *supra* note 4.

<sup>15</sup> *Id.*

<sup>16</sup> American College of Obstetricians and Gynecologists, *Health Care for Unauthorized Immigrants* 3 (Comm. on Health Care for Underserved Women, Committee Opinion No. 627,

Incarcerated immigrant women often cannot choose their doctor or whether or how they may receive care; they are fully dependent on the health care provided to them.<sup>17</sup> In this environment, achieving truly voluntary, informed consent and full expression of patient autonomy is especially important but also challenging.

Incarcerated immigrant women are vulnerable to a myriad of abuses: abuse of agency, abuse of consent, and abuse of bodily autonomy. The facts alleged in this case raise serious concerns about compliance with every basic requirement of medical ethics and informed consent, so much so that the medical community has uniformly called for swift investigation.<sup>18</sup> Failing to meaningfully investigate Petitioners' claims would fail to fully account for the potential abuses at issue in this case and create a chilling effect that would discourage additional victims from coming forward to report medical abuse.

### **III. Petitioners Allege Grievous Ethical Violations That Demand Meaningful Investigation**

The facts alleged in this litigation are disturbing and raise significant concerns regarding medical ethics. Given the circumstances alleged, Petitioners should not be deported so that a comprehensive medical evaluation and investigation can take place. There are two primary reasons to support this position.

*First*, if Petitioners are deported before a meaningful investigation is completed and the full scope of any injuries is assessed, this may be perceived as a retaliatory action against victims that bravely reported medical abuse. This, in turn, could create a chilling effect that would

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2015), <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2015/03/health-care-for-unauthorized-immigrants.pdf>.

<sup>17</sup> Jörg Pont et al., *Dual Loyalty in Prison Care*, 102 AM. J. PUB. HEALTH 475 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3487660/>.

<sup>18</sup> Joint Statement, *supra* note 3.

discourage additional victims from reporting medical abuse. This would be detrimental to the medical community, which has a vested interest in ensuring that all individuals receive ethical medical treatment.

*Second*, the facts alleged in this case raise serious concerns about compliance with every basic requirement of medical ethics and informed consent and mandate a comprehensive and meaningful investigation. Petitioners allege that while they were detained at ICDC, they were subjected to or ordered to be subjected to “non-consensual, medically unindicated, and/or invasive gynecologic procedures, which the complaint alleges amounted to sexual assault.” (Compl. ¶ 1.) In October, an Independent Medical Review Team (“Review Team”) comprised of nine board-certified obstetrician-gynecologists affiliated with major academic medical centers and two nursing experts reviewed the medical records produced by ICDC, Irwin County Hospital, and the Respondent for 19 women who allege medical maltreatment during their detention at ICDC, including some of the Petitioners. (*See* Executive Summary of Findings by the Independent Medical Review Team (“Medical Report”), DE 56-1, Ex. B at 1.) The Review Team found that the records reflect disturbing patterns of behavior by Defendants that would warrant further investigation, such as requiring Petitioners to undergo overly aggressive procedures that are inconsistent with the standard of care required of medical professionals, pressuring women to undergo surgery that was not medically indicated or which was not consented to, and severely inadequate informed consent. (*Id.* at 2.)

Due to the alleged lack of informed consent and information provided to these women, it is critical they receive appropriate medical consultation, including an opportunity to speak with and be examined by an independent medical expert in order to understand what has happened to their bodies. (*See* Decl. of Margaret Mueller, MD FACS FACOG, Dec. 20, 2020, DE 56-27 ¶ 8.)

Additionally, Petitioners may also identify as trauma survivors based on the alleged unconsented and invasive gynecologic procedures. The negative health consequences from sexual victimization can be both short- and long-term.<sup>19</sup> Victims can experience physical and psychological injuries from the sexual assault, and many victims experience posttraumatic stress disorder as a long-term consequence.<sup>20</sup>

It is paramount that when sexual violence is alleged, the allegations are investigated and individuals receive appropriate and timely, trauma-informed care.<sup>21</sup> Obstetrician-gynecologists and other women's health care professionals can play a key role in the evaluation and management of sexual assault survivors, and are uniquely positioned to be able to screen for a history of sexual assault. Forcing Petitioners to leave the United States could have detrimental health consequences. It is unclear whether Petitioners would have the financial means or support to seek medical attention in their countries of origin, and at least one Petitioner would not have access to medical professionals should she be deported to Mexico. (Compl. ¶ 160.)

In addition to the harmful medical effects deportation would have on Petitioners, it would also negatively impact the medical evidence included in the record for this case. Although the Review Team was able to review some medical records, they found that the records were incomplete. (Medical Report, DE 56-1, Ex. B at 5.) Significantly, none of the records contained any imaging studies and in many cases had missing referral records, operative notes, pathology reports, and hospital records. (*Id.*) As a result, Petitioners should receive a thorough case evaluation which includes a physical examination, ideally by a medical provider with training

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<sup>19</sup> American College of Obstetricians and Gynecologists, *Sexual Assault* e297 (Comm. on Health Care for Underserved Women, Committee Opinion No. 777, 2019), <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2019/04/sexual-assault.pdf>.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at e298.

and experience in gynecology, and further medical testing such as imaging, as appropriate or necessary. (Margaret Mueller Decl. ¶¶ 11–12.) Deporting Petitioners at this time could very plausibly cause the medical records for Petitioners to remain incomplete throughout the pendency of this case.

Providing access to quality health care for immigrant women, including those in detention centers, is essential to the nation’s public health. Given the nature of Petitioners’ claims, a meaningful investigation requires particular care assessing and remediating these claims, using evidence-based, medical approaches to ethical health care. Deporting Petitioners could undermine their ability to receive necessary medical attention that is not only important for evidentiary purposes, but also for Petitioners’ physical, mental, and emotional health.

**CONCLUSION**

For the reasons set forth above, ACOG respectfully asks the Court to grant Petitioners' Emergency Motion for a Temporary Restraining Order, to enjoin Defendants from retaliating against Petitioners, and to ensure a meaningful investigation of Petitioners' serious allegations.

Dated: March 10, 2021

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