

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

In the Interest of Jane Doe

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Civil Action No. 18-cv-26

NOTICE OF REMOVAL

Comes now Respondent the Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR), through the United States Attorney General, files this Notice of Removal. The Court is referred to the following in support of this pleading:

1. The state-appointed guardian and attorney ad litem,¹ respectively Rochelle and Myles Garza, filed this action in the District Court, [REDACTED] Judicial District, [REDACTED], Texas, Cause [REDACTED] on or about [REDACTED], seeking to interfere with the United States' interests over a minor child. Respondent was served on February 9, 2018. A trial has not been set in this matter. Copies of all documents served upon Respondent will be filed separately under seal.
2. This case involves an unaccompanied minor who is not lawfully present in the United States. She is pregnant, does not seek an abortion, and does not want the state-appointed guardian ad litem, Rochelle Garza, and attorney ad litem, Myles Garza, to represent her interests.

¹ These roles were obtained through filings in state court that we believe was ex parte.

3. The minor has written and signed two statements attesting to being “made” to sign a Department of Homeland Security (DHS) G-28 attorney representation form by the guardian and attorney ad litem, and that she no longer wants to receive further assistance from them, and does not want to obtain an abortion. A state court hearing has been scheduled for Monday, February 12, 2018, at 8:30A Central Time, where ORR has been effectively ordered to transport the minor.
4. At least until she is released to a sponsor, is returned to her Country of Origin, or reaches 18 years of age, she is in the custody of ORR, the Director of which is responsible for her care and placement. 6 USC 279(a) and (b). SWK is a contractor/grantee of ORR that is providing residential and other services to the minor.
5. Since Jane Doe is an unaccompanied minor, not lawfully in the United States, she has been placed in the custody of ORR, acting through SWK, a custodial residence for minors in Brownsville, Texas. The federal contractor and its employees are acting pursuant to the terms of their grant with ORR with regard to the minor as relevant for the purposes of this case.

This action may be removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1442(a) because it is a civil action commenced in state court against the custodial authority of the United States, and the exercise of that authority through ORR and its contractor, for official acts in the performance of their federal duties and because district courts have jurisdiction over the subject matter of this case – the conditions of the placement, care, and release of an unaccompanied minor in federal custody.

The state court order runs against the United States in three ways. First, it requires the

United States to bring a minor who is currently in its custody and care to state court. Second, it requires the United States to facilitate access to the minor by the state court appointed guardian and attorney ad litem, inconsistent with the minor's stated wishes. Third, it requires the United States to provide a third party with access to federal records, without going through the proper avenue to obtain those documents. Accordingly, this is an action against HHS ORR and a grantee acting under the direction and control of ORR that may be removed pursuant to 28 USC § 1442(a)(1).

A copy of the Notice of Removal is being served upon the guardian and attorney ad litem, and a copy of the Notice of Removal will promptly be filed with the Clerk of the District Court [REDACTED], Texas pursuant to 28 U.S.C. § 1446(d) where the suit is pending.

WHEREFORE, the United States District Court has jurisdiction over the matter and removal is properly perfected. Cause number [REDACTED], in the [REDACTED] Judicial District [REDACTED] [REDACTED], Texas, entitled *In the Interest of Jane Doe*, which is presently pending should BE DEEMED REMOVED to the United States District Court for the Southern District of Texas with the filing of this Notice of Removal.

Respectfully submitted,

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Civil Division

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BY: /s/ W. Daniel Shieh

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 12th day of February, 2018, a true and correct copy of the foregoing "Notice of Removal" with all attachments thereto, will be served in the [REDACTED] District Court of [REDACTED] Texas [REDACTED], Cause No. [REDACTED], via hand delivery, and that an electronic copy was served on the following on the 11th day of February, 2018 to Myles Garza, myles@garzapllc.com and Rochelle Garza, rochelle@garzapllc.com

s/ W. Daniel Shieh
W. Daniel Shieh
Trial Attorney