

1 ELIZABETH O. GILL (SBN 218311)  
2 JENNIFER L. CHOU (SBN 304838)  
3 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
4 OF NORTHERN CALIFORNIA, INC.  
5 39 Drumm Street  
6 San Francisco, CA 94111  
7 T: (415) 621-2493  
8 F: (415) 255-8437  
9 Email: *egill@aclunc.org*  
10 Email: *jchou@aclunc.org*

11 BRIGITTE AMIRI (*pro hac vice*)  
12 BRIAN HAUSS (SBN 284759)  
13 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
14 125 Broad Street, 18<sup>th</sup> Floor  
15 New York, New York 10004  
16 T: (212) 549-2633  
17 F: (212) 549-2652  
18 Email: *bamiri@aclu.org*  
19 Email: *bhauss@aclu.org*

20 *Attorneys for Plaintiff*  
21 [ADDITIONAL COUNSEL ON FOLLOWING PAGE]

22  
23 **UNITED STATES DISTRICT COURT**  
24 **NORTHERN DISTRICT OF CALIFORNIA**  
25 **SAN FRANCISCO DIVISION**

26 AMERICAN CIVIL LIBERTIES UNION OF )  
27 NORTHERN CALIFORNIA, )  
28 )  
29 Plaintiff, )

Case No. 3:16-cv-3539-LB

30 v. )  
31 SYLVIA MATHEWS BURWELL, Secretary )  
32 of Health and Human Services; MARK )  
33 GREENBERG, Acting Assistant Secretary for )  
34 Administration for Children and Families; )  
35 ROBERT CAREY, Director of Office of )  
36 Refugee Resettlement, in their official )  
37 capacities, )  
38 )  
39 Defendants. )

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR LEAVE TO FILE  
AMENDED COMPLAINT**

Date: March 9, 2017  
Time: 9:30 a.m.  
Location: Courtroom C  
Judge: Hon. Laurel Beeler

1 MELISSA GOODMAN (SBN 289464)  
2 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
3 OF SOUTHERN CALIFORNIA  
4 1313 West 8th Street  
5 Los Angeles, CA 90017  
6 T: (213) 977-9500  
7 F: (213) 977-5299  
8 Email: *mgoodman@aclusocal.org*

9 DANIEL MACH (*pro hac vice*)  
10 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
11 915 15th Street NW  
12 Washington, DC 20005  
13 T: (202) 675-2330  
14 Email: *dmach@aclu.org*

15 *Attorneys for Plaintiff*

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**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 9, 2017, at 9:30 a.m. or as soon thereafter as it may be heard before the Honorable Laurel Beeler of the United States District Court for the Northern District of California, Plaintiff will, and hereby does, move the Court pursuant to Federal Rule of Civil Procedure 15(a)(2), for leave to file an Amended Complaint. This motion is based on the Memorandum of Points and Authorities submitted herewith, all pleadings and filings filed in this action, and such oral arguments and evidence as may be presented at the hearing on the motion.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff moves for leave to file an Amended Complaint to allege newly discovered facts  
4 regarding Defendants' authorization of religious restrictions on government-provided services to  
5 survivors of human trafficking. Defendants do not object to Plaintiff's motion to file the  
6 proposed Amended Complaint, attached as Exhibit A.

7 After Plaintiff filed its initial complaint, it received information pursuant to a Freedom of  
8 Information Act (FOIA) lawsuit indicating Defendants provided a grant to the U.S. Conference  
9 of Catholic Bishops (USCCB), and allowed USCCB to impose restrictions on reproductive  
10 health care provided to human trafficking victims, and to make subgrants only to organizations  
11 that shared their religious opposition to certain reproductive health care. The authorizing statutes  
12 and sources of federal funding for Defendants' human trafficking victims program are  
13 substantially similar to—and in many instances, the same as—those at issue in Defendants'  
14 unaccompanied immigrant minor program. Rather than engaging in duplicative litigation over  
15 virtually identical questions of law and facts, Plaintiff moves to amend its initial complaint in the  
16 instant case.

17 Leave to amend must be “freely given” unless it is clear that the proposed amendment is  
18 brought after undue and unexplained delay; is offered in bad faith; would be futile; or would be  
19 prejudicial to the other parties. *See* Fed. R. Civ. P. 15(a)(2); *Foman v. Davis*, 371 U.S. 178, 182  
20 (1962). None of those factors apply here. Therefore, in order to promote judicial efficiency and  
21 ensure meaningful relief, the Court should grant Plaintiff's motion for leave to amend its  
22 complaint.

23 **II. BACKGROUND AND FACTS**

24 On June 24, 2016, Plaintiff filed this action to challenge Defendants' authorization of  
25 religiously motivated restrictions on access to reproductive health care for unaccompanied  
26  
27

1 immigrant minors (also known as unaccompanied children, or “UC”) in the custody of the U.S.  
2 Office of Refugee Resettlement (ORR). *See* ECF No. 1.

3 After filing its complaint, Plaintiff received information in response to a FOIA lawsuit  
4 about Defendants’ grant to USCCB to provide services for trafficking victims. *See* Declaration of  
5 Brigitte Amiri (Amiri Decl.) ¶ 4. These documents show that, as with Defendants’ actions in the  
6 UC program, Defendants’ trafficking victims program also authorizes USCCB to impose  
7 religious restrictions on reproductive health care for the survivors of trafficking who access their  
8 program. *Id.* ¶ 6. Defendants have also allowed USCCB to provide subgrants based on religious  
9 criteria. Plaintiff now seeks to amend its complaint to allege additional facts regarding the extent  
10 of Defendants’ authorization of religious restrictions on the use of taxpayer funds.

11 Defendants do not object to Plaintiff’s motion to amend its complaint. *Id.* ¶ 8.

### 12 **III. ARGUMENT**

13 Federal Rule of Civil Procedure 15(a)(2) states that courts “should freely give leave [to  
14 amend a pleading] when justice so requires.” The Supreme Court has held that leave to amend  
15 must be permitted unless there is an “apparent or declared reason for denial.” *Foman*, 371 U.S. at  
16 182; *see also Sonoma Cty. Ass’n of Retired Emps. v. Sonoma Cty.*, 708 F.3d 1109, 1117 (9th Cir.  
17 2013) (leave to amend must be applied with “extreme liberality”) (quoting *Owens v. Kaiser*  
18 *Found. Health Plan, Inc.*, 244 F3d. 708, 712 (9th Cir. 2001)). The party seeking to amend need  
19 only establish the reason why justice so requires the amendment, and the party opposing the  
20 amendment bears the burden of demonstrating otherwise. *See DCD Programs, Ltd. v. Leighton*,  
21 833 F.2d 183, 187 (9th Cir. 1987). All inferences must be drawn in favor of the moving party.  
22 *Griggs v. Pace Am. Grp. Inc.*, 170 F.3d 877, 880 (9th Cir. 1999).

23 In making a determination about whether to grant leave to amend, courts must look for  
24 “strong evidence” of the following factors: (1) undue delay; (2) bad faith or dilatory motive on  
25 the part of the movant; (3) repeated failure to cure deficiencies by amendments previously  
26 allowed, (4) futility of amendment, or (5) undue prejudice to the opposing party by virtue of  
27

1 allowance of the amendment. *Sonoma Cty. Ass'n of Retired Emps.*, 708 F.3d at 1117. None of  
2 these factors applies here.

3 **A. Plaintiff Has Not Unduly Delayed in Bringing This Motion.**

4 Plaintiff's Amended Complaint is timely and should be allowed. The facts Plaintiff now  
5 seeks to amend into the complaint were not known at the time the initial complaint was filed on  
6 June 24, 2016. Between March and August 2016, the ACLU received documents in response to a  
7 FOIA lawsuit that indicated that Defendants had awarded another multi-million dollar grant to  
8 USCCB to care for human trafficking victims. After receipt of thousands of pages of responsive  
9 materials, Plaintiff's counsel endeavored to carefully review them and undertook additional  
10 factual investigation. Amiri Decl. ¶¶ 4-5. Plaintiff moves to amend the complaint now, at an  
11 early stage in the litigation but after the motion to dismiss was adjudicated. This motion comes  
12 before Defendants' answer to the complaint is due and before parties begin discovery.

13 **B. Plaintiff Seeks to Amend Its Complaint in Good Faith.**

14 Plaintiff seeks to amend its complaint to avoid the cost, waste, and delay of duplicative  
15 litigation over similar facts with the same parties and the same questions of law. The proposed  
16 amendments address the same concern as the original Complaint (i.e., Defendants' violation of  
17 the Establishment Clause by authorizing religious restrictions on reproductive health care for  
18 vulnerable populations in government-funded programs) against the same Defendants and raises  
19 the same causes of action and legal theories. Even beyond the significant factual similarities  
20 between the ways in which Defendants' unaccompanied immigrant minor program and  
21 trafficking victims program are administered, they share some of the same funding streams and  
22 authorizing statutes. If leave is not granted, Plaintiff will be forced to bring a separate action to  
23 address the government-authorized religious restrictions being placed on services provided to  
24 trafficking victims. This is precisely the type of inefficient and piecemeal litigation that the  
25 Federal Rules are intended to avoid.

1           **C.       Amendment Will Not Be Futile.**

2           In assessing futility, courts apply the same standard governing a Rule 12(b)(6) motion to  
3 dismiss and a proposed amendment is futile only if it does not “contain sufficient factual matter,  
4 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556  
5 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Here,  
6 the additional facts Plaintiff seeks to amend to the complaint are amply supported by the FOIA  
7 documents Plaintiff received from Defendants themselves.

8           **D.       Plaintiff Has Not Failed to Cure Deficiencies by Previous Amendments.**

9           Defendants have not identified any deficiencies with Plaintiff’s complaint; nor has  
10 Plaintiff previously attempted to amend the complaint. This factor, therefore, has no application  
11 here.

12           **E.       Defendants Will Not Be Unduly Prejudiced by Plaintiff’s Proposed  
13 Amendment.**

14           To justify denial of leave to amend, prejudice to Defendants must be substantial. *See*  
15 *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). Defendants  
16 have stated they do not oppose Plaintiff’s motion to amend its complaint; therefore, it cannot be  
17 the case that Plaintiff’s proposed amendments would unduly prejudice Defendants, let alone  
18 substantially. The additional facts Plaintiff seeks to amend to the complaint would not “radically  
19 shift” the nature of the case, relating as they do to the same Defendants, overlapping statutory  
20 sources of federal funding, and the same constitutional question of whether Defendants’ actions  
21 violate the Establishment Clause. *See id.* (denying leave to amend where new RICO claim  
22 “would have required defendants to [undertake] . . . an entirely new course of defense”).  
23 Plaintiff’s proposed amendments also do not significantly expand the scope of discovery. The  
24 additional facts Plaintiff is proposing to add—like the facts alleged in Plaintiff’s initial  
25 complaint—are grounded in documents that the ACLU received from Defendants in response to  
26 a FOIA lawsuit.

1 **IV. CONCLUSION**

2 This Court should grant Plaintiff leave to amend its complaint because such leave must  
3 be “freely given,” the amendment is timely and proposed in good faith, and Defendants will not  
4 be prejudiced by Plaintiff’s proposed amendment.

5  
6 Dated: February 1, 2017

Respectfully submitted,

7 By: /s/ Brigitte Amiri  
8 Brigitte Amiri\*

9 Attorney for Plaintiff

10 \* Appearing *pro hac vice*

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20 *Attorneys for Plaintiff*  
21 [ADDITIONAL COUNSEL ON FOLLOWING PAGE]

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**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

17 AMERICAN CIVIL LIBERTIES UNION OF )  
18 NORTHERN CALIFORNIA, )  
19 Plaintiff, ) Case No. 3:16-cv-3539-LB  
20 v. ) **DECLARATION OF BRIGITTE**  
21 SYLVIA MATHEWS BURWELL, Secretary ) **AMIRI IN SUPPORT OF PLAINTIFF'S**  
22 of Health and Human Services; MARK ) **MOTION FOR LEAVE TO FILE**  
23 GREENBERG, Acting Assistant Secretary for ) **AMENDED COMPLAINT**  
24 Administration for Children and Families; )  
25 ROBERT CAREY, Director of Office of )  
26 Refugee Resettlement, in their official )  
27 capacities, )  
28 Defendants. )

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2 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
3 OF SOUTHERN CALIFORNIA  
4 1313 West 8th Street  
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6 T: (213) 977-9500  
7 F: (213) 977-5299  
8 Email: *mgoodman@aclusocal.org*

9 DANIEL MACH (*pro hac vice*)  
10 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
11 915 15th Street NW  
12 Washington, DC 20005  
13 T: (202) 675-2330  
14 Email: *dmach@aclu.org*

15 *Attorneys for Plaintiff*

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1 I, Brigitte Amiri, declare as follows:

2 1. I am a Senior Staff Attorney at the American Civil Liberties Union Foundation  
3 and counsel for Plaintiff in the above captioned matter. I have personal knowledge of the facts  
4 stated in this declaration and I could and would testify competently to them, if called to do so.

5 2. At the time Plaintiff filed the complaint in this case, it did not have sufficient  
6 information regarding Defendants' contract with the U.S. Conference of Catholic Bishops  
7 (USCCB) for the care of human trafficking victims to then include the facts and claims it now  
8 seeks to add.

9 3. On November 13, 2015, the ACLU sent a Freedom of Information Act (FOIA)  
10 request to Defendants for documents relating to its human trafficking victims program.  
11 Subsequently, on March 17, 2016, the ACLU filed a lawsuit compelling Defendants to produce  
12 documents pursuant to its FOIA request. *ACLU v. Admin. for Children and Families*, No. 1:16-  
13 cv-01987 (S.D.N.Y. Mar. 17, 2016).

14 4. Between March 18 and August 26, 2016, the ACLU received over two thousand  
15 pages of documents from Defendants in response to its FOIA lawsuit.

16 5. After receipt of these responsive materials, Plaintiff's counsel undertook a careful  
17 review of their contents and conducted additional factual investigation.

18 6. These documents showed that Defendants had provided a grant to USCCB to  
19 provide care for human trafficking victims, and that in the context of this particular federal  
20 program, Defendants were allowing USCCB to object—on religious grounds—to providing  
21 certain assistance to same-sex couples as well as legally required reproductive health care and  
22 services to survivors of human trafficking. They also showed that Defendants allowed USCCB to  
23 subgrant only to entities that shared their religious opposition to reproductive health care access  
24 and certain assistance to same-sex couples.

25 7. After the court denied Defendants' motion to dismiss on November 26, 2016, in  
26 the context of preparing the joint case management order, I indicated to Mr. Phipps that Plaintiff  
27 would likely seek to amend the complaint to add allegations about the trafficking contract.

