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 9

10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

12 AMERICAN CIVIL LIBERTIES UNION OF
 13 NORTHERN CALIFORNIA,

14 Plaintiff,

15 vs.

16 THOMAS E. PRICE, M.D.,¹ Secretary of
 17 Health and Human Services, *et al.*,

18 Defendants.

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

**DEFENDANTS' MOTION TO
 TRANSFER VENUE**

Date: April 13, 2017
 Time: 9:30 a.m.
 Courtroom: Courtroom C, 15th Floor
 Judge: Hon. Laurel Beeler

27
 28 ¹ Pursuant to Federal Rule of Civil Procedure 25(d), Thomas E. Price, M.D., is automatically substituted as a
 defendant in his official capacity as Secretary of Health and Human Services for Sylvia Mathews Burwell.

NOTICE OF MOTION AND MOTION TO TRANSFER VENUE

1
2 **PLEASE TAKE NOTICE THAT** on April 13, 2017, at 9:30 a.m., before the
3 Honorable Laurel Beeler, Courtroom C, 15th Floor, San Francisco Courthouse, 450 Golden
4 Gate Avenue, San Francisco, California, 94102, Defendants Thomas E. Price, M.D., in his
5 official capacity as Secretary of Health and Human Services (“HHS”), Amanda Barlow, in her
6 official capacity as Acting Assistant Secretary for the Administration for Children and Families,
7 and Kenneth Tota, in his official capacity as Acting Director of the Office of Refugee
8 Resettlement, will and hereby do move for an order transferring this case to the United States
9 District Court for the District of Columbia.

10 Defendants move to transfer this action to the District Court for the District of Columbia
11 pursuant to 28 U.S.C. § 1404(a) for the convenience of the parties and witnesses, and for the
12 interests of justice. The bases for defendants’ Motion to Transfer are this Notice of Motion; the
13 accompanying Memorandum of Points and Authorities; the pleadings and court filings in this
14 action, including plaintiff’s Amended Complaint; the parties’ Initial Disclosures (attached as
15 exhibits); any matter that may be judicially noticed, including September 2016 data from the
16 United States Courts; and any other matter presented before the Court through oral argument,
17 supplemental briefing, or otherwise.

18 **STATEMENT OF ISSUES TO BE DECIDED**

19 Pursuant to N.D. Cal. Civ. R. 7-4(a)(3), defendants identify the following issues to be
20 decided:

- 21 1. Whether venue would otherwise be proper in the District Court for the District of
22 Columbia.
- 23 2. Whether transfer to the District Court for the District of Columbia is more
24 convenient for the parties and the witnesses, and furthers the interests of justice.

MEMORANDUM OF POINTS AND AUTHORITIES**INTRODUCTION**

1
2
3 This case has no meaningful nexus to the Northern District of California and should be
4 transferred under 28 U.S.C. § 1404 to the United States District Court for the District of
5 Columbia. The two federal programs challenged in the Amended Complaint – the
6 unaccompanied alien children program and the human trafficking victims program – are both
7 administered by components of the Department of Health and Human Services (“HHS”) in
8 Washington, D.C. Specifically, the Office of Refugee Resettlement (“ORR”), within the
9 Administration for Children and Families (“ACF”) at HHS, awards and administers grants and
10 cooperative agreements under the unaccompanied alien children program. Similarly, the Office
11 of Trafficking in Persons (“OTIP”), also within ACF, awards and administers grants and
12 cooperative agreements for time-limited comprehensive case management services for certain
13 foreign human trafficking victims. As evidenced by the recently exchanged initial disclosures,
14 all of plaintiff’s and defendants’ witnesses are from ORR or for OTIP in Washington, D.C. The
15 initial disclosures also reveal that the documents that plaintiff intends to use to support its claims
16 were produced by HHS from Washington, D.C. The newly added defendant-intervenor, the
17 United States Conference of Catholic Bishops (“USCCB”), is also located in Washington, D.C.
18 Finally, transferring the case would further the interests of justice: the District Court for the
19 District of Columbia has half as many cases assigned per judge (250) as does the District Court
20 for the Northern District of California (572).

21 In selecting where to litigate on behalf of its taxpayer members, plaintiff picked the
22 Northern District of California, and it has not consented to this transfer motion (USCCB fully
23 consents to the transfer). Under the circumstances, however, plaintiff’s preferred forum should
24 receive little, if any, weight. First, plaintiff proceeds on a theory of associational standing –
25 solely due to its members’ status as taxpayers – and none of its members are required to
26 participate in the suit. Thus, there is no indication or expectation that any members of the
27 American Civil Liberties Union of Northern California will participate in this suit. Moreover, it
28 is hardly in the interests of justice to permit an organization to select any forum in which at least

1 one of its taxpayer members resides. Finally, the links to this forum are even more attenuated
2 because it was the ACLU's national office – not its Northern California branch – that sued
3 under the Freedom of Information Act to obtain documents cited in the Amended Complaint,
4 and those documents appear to have formed the basis for plaintiff's allegations in this action.
5 For these reasons, as elaborated below, this case should be transferred to the United States
6 District Court for the District of Columbia.

7 **ARGUMENT**

8 Motions to transfer under § 1404 are adjudicated based on an “individualized, case-by-
9 case consideration of convenience and fairness.” *Stewart Org. v. Ricoh Corp.*, 487 U.S. 22, 30
10 (1998); *accord Kinney v. Takeuchi*, No. 3:16-cv-2018-LB, 2016 WL 4268673, at *2 (N.D. Cal.
11 Aug. 15, 2016). In conducting the transfer analysis, courts consider several factors, starting
12 with those articulated in statute. By its text, § 1404 permits a transfer to another district in
13 which the action could have been brought “for the convenience of parties and witnesses, in the
14 interest of justice.” 28 U.S.C. § 1404(a). As a supplement, courts rely on common law
15 considerations, which the Ninth Circuit has identified as the following:

- 16 (1) the location where the relevant agreements were negotiated and executed,
- 17 (2) the state that is most familiar with the governing law,
- 18 (3) the plaintiff's choice of forum,
- 19 (4) the respective parties' contacts with the forum,
- 20 (5) the contacts relating to the plaintiff's cause of action in the chosen forum,
- 21 (6) the differences in the costs of litigation in the two forums,
- 22 (7) the availability of compulsory process to compel attendance of unwilling non-party
23 witnesses, and
- 24 (8) the ease of access to sources of proof.

25 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000); *see generally Gulf Oil*
26 *Corp. v. Gilbert*, 330 U.S. 501, 508-09 (1946) (articulating considerations); *Decker Coal Co. v.*
27 *Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986) (same). “Courts may also
28 consider ‘the administrative difficulties flowing from court congestion and the local interest in

1 having localized controversies decided at home.” *Kinney*, 2016 WL 4268673, at *2 (alterations
2 omitted) (quoting *Decker Coal*, 805 F.2d at 843). The weight of these considerations indicates
3 that this case should be transferred to the District of Columbia, where venue would otherwise be
4 appropriate.

5 **I. VENUE IS APPROPRIATE IN THE DISTRICT OF COLUMBIA.**

6 Venue in this matter is permitted in any of three locations: the defendants’ residence, the
7 place in which a substantial portion of the complained of actions or inactions occurred, or the
8 plaintiff’s residence. *See* 28 U.S.C. § 1391(e). Accordingly, venue is plainly is proper in the
9 District of Columbia.

10 First, all defendants in this official-capacity action against the Secretary of HHS, the
11 Administrator of ACF, and the Director of ORR reside in Washington, D.C. Second, a
12 substantial portion of the complained of actions occurred in Washington, D.C. In fact, as
13 documented in the parties’ initial disclosures, the challenged decisions regarding the
14 unaccompanied alien children program and the human trafficking program were made by
15 officials and employees who work at HHS in Washington, D.C. *See* Defs.’ First Suppl. Initial
16 Disclosures at 1-2 (copy attached as Ex. A).

17 Accordingly, this action “might have been brought” in the District of Columbia, and it
18 therefore constitutes a valid transfer venue. 28 U.S.C. § 1404(a).

19 **II. THIS ACTION SHOULD BE TRANSFERRED TO THE DISTRICT OF COLUMBIA.**

20 **A. This action has no meaningful tie to the Northern District of California.**

21 This case challenges decisions made by federal agencies in Washington, D.C., and it
22 should be transferred there for the convenience of the parties and witnesses. Plaintiff identifies
23 nine potential witnesses that it intends to rely on, and each of them works for HHS in
24 Washington, D.C. *See* Pl.’s Suppl. Initial Disclosures at 3-4 (copy attached as Ex. B).
25 Similarly, defendants identify ten potential witnesses that they may use to support their
26 defenses, five of whom appear on plaintiff’s list. *See* Defs.’ First Suppl. Initial Disclosures at 1-
27 2 (copy attached as Ex. A). Each of those witnesses works for HHS in Washington, D.C. The
28 addition of defendant-intervenor USCCB further underscores the appropriateness of transfer to

1 the District of Columbia, as USCCB’s headquarters is located in Washington, D.C. Moreover,
 2 in its initial disclosures, USCCB identifies six witnesses, one of whom works for ACF, and the
 3 others are all tied to USCCB in Washington, D.C. *See* USCCB’s Initial Disclosures at 2-3
 4 (copy attached as Ex. C). Notably, no party has expressed any intention to rely on witnesses
 5 identified in the Northern District of California. Because the “relative convenience to the
 6 witnesses is often recognized as the most important factor to be considered in ruling on a motion
 7 under § 1404(a),” *Saleh v. Titan Corp.*, 361 F. Supp. 2d 1152, 1160 (S.D. Cal. 2005), there is
 8 little reason to maintain this action here, where none of the witnesses are located.

9 As with the witnesses, the remaining sources of proof, identified by the parties in their
 10 initial disclosures, also originate from the District of Columbia. All documents identified on
 11 plaintiff’s and defendants’ initial disclosures are from HHS’s possession in Washington, D.C.
 12 *See* Defs.’ First Suppl. Initial Disclosures at 2-5 (copy attached as Ex. A); Pl.’s Suppl. Initial
 13 Disclosures at 4 (copy attached as Ex. B).² Similarly, USCCB identifies documents that
 14 originate either from HHS or USCCB. *See* USCCB’s Initial Disclosures at 3-4 (copy attached
 15 as Ex. C). Those facts again favor transfer to the District of Columbia. *See Saleh*,
 16 361 F. Supp. 2d at 1167 (citing the fact that relevant documents were “in the possession of the
 17 Defense Department and other agencies located in and around the Eastern District of Virginia”
 18 in transferring the action to that judicial district).

19 **B. Plaintiff’s choice of this judicial district is not entitled to weight.**

20 Although plaintiff is based in this judicial district and has selected this judicial district,
 21 that should receive little, if any, weight. “If the operative facts have not occurred within the
 22 forum and the forum has no interest in the parties or subject matter,’ the plaintiff’s choice ‘is
 23 entitled only minimal consideration.” *Kinney*, 2016 WL 4268673, at *2 (quoting *Lou v.*
 24 *Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987)); *see also Saleh*, 361 F. Supp. 2d at 1157-58
 25 (“numerous courts have given less deference to the plaintiff’s choice of forum where the action
 26

27 ² To the extent that plaintiff has copies of those documents, those were obtained through a FOIA action that has no
 28 nexus to this judicial district: it was initiated by ACLU’s national office, not by the ACLU of Northern California,
 and it was litigated not in the Northern District of California but in the Southern District of New York. *See Am.*
Civil Liberties Union v. Dep’t of Health & Human Servs., No. 15-cv-2645 (S.D.N.Y. filed Apr. 6, 2015).

1 has little connection with the chosen forum” (collecting cases)); 15 CHARLES ALAN WRIGHT,
2 ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3848 (3d ed.
3 1998) (explaining that a plaintiff’s venue choice should be given less weight if it has no obvious
4 connection to the case). “This is true *even if* the plaintiff is a resident of the forum.”
5 *Chesapeake Climate Action Network v. Export-Import Bank of the United States*, No. 13-cv-
6 3532-WHA, 2013 WL 6057824, at *2 (N.D. Cal. Nov. 15, 2013).

7 Here, as demonstrated above, plaintiff has not selected a forum with any “particular
8 interest to the parties or the subject matter.” *Pac. Car & Foundry Co. v. Pence*, 403 F.2d 949,
9 954 (9th Cir. 1968). In addition, given the hundreds of millions of potential plaintiffs for this
10 action – under plaintiff’s theory, any federal taxpayer or any organization with federal taxpayer
11 members could sue – transferring the case to the District of Columbia, which is the judicial
12 district with the greatest connection to the allegations and claims, is most consistent with the
13 purposes of § 1404. *See Koster v. (Am.) Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 524 (1947)
14 (explaining, in the context of a shareholder derivative suit, that plaintiff’s assertion of the
15 appropriate forum is “considerably weakened”); *Lou*, 834 F.2d at 739 (explaining that when a
16 plaintiff brings a derivative suit or represents a class, the plaintiff’s choice of forum is given less
17 weight); *Polaroid Corp. v. Casselman*, 213 F. Supp. 379 (S.D.N.Y. 1962) (explaining that
18 plaintiff’s selection of venue is entitled to no weight whatsoever when it appears that the
19 plaintiff was forum shopping and that the selected forum has little or no connection with the
20 parties or the subject matter). Thus, for many of the same reasons as in *Kinney*, transfer is
21 proper: “defendants . . . work [in the District of Columbia],” the complained of actions occurred
22 there, “and the witnesses are there, [2,845] miles away, outside the reach of [this Court’s]
23 compulsory process.” 2016 WL 4268673, at *2; *see Chesapeake Climate*, 2013 WL 6057824,
24 at *2-3 (granting motion to transfer where the challenged governmental “decisionmaking . . .
25 occurred exclusively in the District of Columbia,” even where two of the plaintiffs were
26 headquartered in the Northern District of California).

Exhibit A

Defendants' First Supplemental
Initial Disclosures

1 CHAD A. READLER
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10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

12 AMERICAN CIVIL LIBERTIES UNION OF
 13 NORTHERN CALIFORNIA,

14 Plaintiff,

15 vs.

16 THOMAS E. PRICE, M.D., Secretary of
 17 Health and Human Services. *et al.*,

18 Defendants.

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

**DEFENDANTS' FIRST
 SUPPLEMENTAL INITIAL
 DISCLOSURES**

1 Pursuant to Federal Rule of Civil Procedure 26(e)(1)(A), defendants Thomas E. Price,
2 M.D., in his official capacity as Secretary of Health and Human Services (“HHS”), Amanda
3 Barlow, in her official capacity as Acting Assistant Secretary for the Administration of
4 Children and Families (“ACF”), and Kenneth Tota, in his official capacity as Director of the
5 Office of Refugee Resettlement (“ORR”), hereby provide the following first supplemental
6 initial disclosures.

7 **A. Identifying information for each individual likely to have discoverable**
8 **information used to support defendants’ defenses along with the subject matter of**
9 **the discoverable information.**

10 Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(i), defendants identify the
11 following persons:

- 12 1. James De La Cruz, Federal Field Specialist Supervisor, ORR, 330 C Street, SW,
13 Washington, D.C. 20201.
14 Knowledge regarding ORR administration and practices.
- 15 2. Jallyn Sualog, Director, Division of Children’s Services, ORR, 330 C Street, SW,
16 Washington, D.C. 20201.
17 Knowledge regarding ORR administration and practices.
- 18 3. Curi Kim, Division of Refugee Health, ORR, 330 C Street, SW, Washington,
19 D.C. 20201.
20 Knowledge regarding ORR medical services.
- 21 4. Elizabeth Sohn, Formerly Policy Analyst, ORR, 330 C Street, SW, Washington
22 D.C. 20201.
23 Knowledge regarding regulations codified at 45 C.F.R. Part 411.
- 24 5. Anna Marie Bena, Director, Division of Policy, ORR, 330 C Street, SW,
25 Washington, D.C. 20201.
26 Knowledge regarding ORR policy and practice.
- 27 6. Toby Biswas, Division of Policy, ORR, 330 C Street, SW, Washington, D.C.
28 20201.
Knowledge regarding ORR policy and practice.

- 1 7. Victor Suh, Policy Division, ORR, 330 C Street, SW, Washington, D.C. 20201.
2 Knowledge regarding statistics for unaccompanied children requests for medical
3 services.
- 4 8. Daphne Weeden, Office of Grants Management, ACF, 330 C Street, SW,
5 Washington, D.C. 20201.
6 Knowledge of review and scoring of grant applications for the provision of
7 residential services to unaccompanied children and victims of trafficking.
- 8 9. Katherine Chon, Director, Office on Trafficking in Persons (OTIP), 330 C
9 Street, SW, Washington, D.C. 20201.
10 Knowledge regarding OTIP policy and practice and USCCB grant for victims of
11 trafficking.
- 12 10. Sherri Harris, Program Specialist, OTIP, 330 C Street, SW, Washington, D.C.
13 20201.
14 Knowledge regarding USCCB grant for victims of trafficking.

15
16
17 **B. Copies or descriptions of documents, electronically stored information, or tangible**
18 **things that defendants have in their possession, custody, or control, that**
19 **defendants may use to support their defenses.**

20 Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(ii), defendants identify the
21 following documents and electronic information:

- 22 • Fiscal Year 2014-2016 Grant Announcements, Applications, and Notices of
23 Award – for grant awardees with potential faith-based objections to providing or
24 referring for abortion or contraception. Daphne Weeden, Office of Grants
25 Management, 330 C Street, SW, Washington, D.C. 20201, and Judith Haron,
26 Office of the General Counsel, 330 Independence Avenue, SW, Washington,
27 D.C. 20201.
- 28 • Fiscal Year 2014-2016 Scoring and Evaluation Data – for grant awardees with
potential faith-based objections to providing or referring for abortion or

1 contraception (to be produced following entry of a protective order). Daphne
2 Weeden, Office of Grants Management, 330 C Street, SW, Washington, D.C.
3 20201.

- 4 • Administration for Children and Families, Office of Refugee Resettlement,
5 Residential services for Unaccompanied Alien Children, HHS-2014-ACF-ORR-
6 ZU-0608; available at: [https://ami.grantsolutions.gov/files/HHS-2014-ACF-
7 ORR-ZU-0608_0.htm](https://ami.grantsolutions.gov/files/HHS-2014-ACF-ORR-ZU-0608_0.htm).
- 8 • ORR Guide: “Children Entering the United States Unaccompanied,” available
9 at [www.acf.hhs.gov/orr/resource/children-entering-the-united-states-
10 unaccompanied](http://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied).
- 11 • ACF Policy on Grants to Faith-Based Organizations, available at:
12 <https://www.acf.hhs.gov/acf-policy-on-grants-to-faith-based-organizations>
- 13 • Memorandum re Medical Services Requiring Heightened ORR Involvement
14 (Mar. 21, 2008), available at
15 [www.acf.hhs.gov/sites/default/files/orr/medical_services_requiring_heightened
16 _orr_involvement.pdf](http://www.acf.hhs.gov/sites/default/files/orr/medical_services_requiring_heightened_orr_involvement.pdf).
- 17 • Congressional Research Service, Unaccompanied Children, An Overview
18 (May 11, 2016) (available at: <https://fas.org/sgp/crs/homsec/R43599.pdf>).
- 19 Office of Refugees Resettlement: Facts and Data, available at
20 <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>.
- 21 • Office of Refugees Resettlement: Unaccompanied Children Frequently Asked
22 Questions, available at [https://www.acf.hhs.gov/orr/unaccompanied-children-
23 frequently-asked-questions](https://www.acf.hhs.gov/orr/unaccompanied-children-frequently-asked-questions).
- 24 • Administration for Children and Families 2017 Justification or Estimates for
25 Appropriations Committees, available at
26 https://www.acf.hhs.gov/sites/default/files/olab/final_cj_2017_print.pdf.

- 1 • TVAP funding Opportunity Announcements (FOA) (2015) Daphne Weeden,
2 Office of Grants Management, 330 C Street, SW, Washington, D.C. 20201.
- 3 • Grant Applications, USCCB (2015, 2015 updated, 2016 continuation application,
4 2016 updated). Daphne Weeden, Office of Grants Management, 330 C Street,
5 SW, Washington, D.C. 20201.
- 6 • Cooperative Agreements for TVAP with USCCB (2015). Daphne Weeden,
7 Office of Grants Management, 330 C Street, SW, Washington, D.C. 20201.
- 8 • Notices of Award, TVAP, USCCB (2015, 2016). Daphne Weeden, Office of
9 Grants Management, 330 C Street, SW, Washington, D.C. 20201.
- 10 • Subgrantees MOU template submitted by USCCB for TVAP. Katherine Chon,
11 Director, OTIP, 330 C Street, SW, Washington, D.C. 20201.
- 12 • USCCB TVAP Brochures. Katherine Chon, Director, OTIP, 330 C Street, SW,
13 Washington, D.C. 20201.
- 14 • USCCB TVAP Program Manual. Katherine Chon, Director, OTIP, 330 C Street,
15 SW, Washington, D.C. 20201.
- 16 • Fiscal Year 2015 USCCB Scoring and Evaluation Data – for grant awardees for
17 victims of trafficking (to be produced following entry of a protective order).
18 Daphne Weeden, Office of Grants Management, 330 C Street, SW, Washington,
19 D.C. 20201.
- 20 • TVAP Funding Decision Package 2015 (to be produced following entry of a
21 protective order). Daphne Weeden, Office of Grants Management, 330 C Street,
22 SW, Washington, D.C. 20201.
- 23 • TVAP Funding Decision Package 2015 (to be produced following entry of a
24 protective order). Daphne Weeden, Office of Grants Management, 330 C Street,
25 SW, Washington, D.C. 20201.
- 26 • TVAP Funding Decision Package 2015 (to be produced following entry of a
27 protective order). Daphne Weeden, Office of Grants Management, 330 C Street,
28 SW, Washington, D.C. 20201.

- USCCB Performance Reports for TVAP 2015 grant. Katherine Chon, Director, OTIP Katherine Chon, Director, OTIP, 330 C Street, SW, Washington, D.C. 20201.
- Federal Human Trafficking Strategic Action Plan.
<https://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf>
- Documents indicating regions serviced by grantees and subgrantees.

C. Computations for each category of damages claimed.

Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(iii), defendants make no disclosure because they have not pleaded any counter-claim, and they seek no damages in this action.

D. Insurance agreements for indemnification.

Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(iv), defendants make no disclosure because they have no insurance agreement for indemnification applicable to this action.

March 8, 2017

Respectfully served,

CHAD A. READLER
Acting Assistant Attorney General

SHEILA M. LIEBER
Deputy Director

/s/ Peter J. Phipps

PETER J. PHIPPS
Senior Trial Counsel
ADAM GROGG
Trial Attorney
Civil Division, Federal Programs Branch
United States Department of Justice

CERTIFICATE OF SERVICE

I hereby certify that I served Defendants' First Supplemental Initial Disclosures upon plaintiff's counsel, through email to bamiri@aclu.org and upon counsel for defendant-intervenor through email to RDunn@gibsondunn.com.

March 8, 2017

/s/ Peter J. Phipps
Peter J. Phipps
Counsel for Defendants

Exhibit B

Plaintiff's Supplemental
Initial Disclosures

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

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

24 AMERICAN CIVIL LIBERTIES UNION OF
25 NORTHERN CALIFORNIA,

26 Plaintiff,

27 v.

28 THOMAS E. PRICE, Secretary of Health and
Human Services, *et al.*

Defendants.

and

U.S. CONFERENCE OF CATHOLIC
BISHOPS,

Defendant-Intervenor

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

**SUPPLEMENT TO PLAINTIFF'S
INITIAL DISCLOSURES PURSUANT TO
FED. R. CIV. P. 26(e)**

1 MELISSA GOODMAN (SBN 289464)
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
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14 Email: *dmach@aclu.org*

15 *Attorneys for Plaintiff*

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Pursuant to Fed. R. Civ. P. 26(e)(1), Plaintiff hereby supplements its initial disclosures, originally served on January 13, 2017. Plaintiff reserves the right to modify or supplement these initial disclosures upon the discovery of new evidence or information or in light of new issues that may arise.

I. Individuals Likely to Have Discoverable Information

Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(i), Plaintiff identifies below the names and contact information of individuals who it believes are likely to have discoverable information that Plaintiff may use to support its claims or defenses in this action (not including individuals who have discoverable information relevant solely for impeachment).

Plaintiff incorporates into its list of persons who may have discoverable information that Plaintiff may rely upon to support its claims or defenses: all persons identified in initial disclosures served by Defendants and Defendant-Intervenor; all persons identified by any party in answers to interrogatories; all persons deposed in this action; all expert witnesses designated by any party; and all persons referred to in documents produced in this litigation. Plaintiff is not presently aware of all of the persons associated with Defendants and Defendant-Intervenor that may have relevant knowledge, but has listed below those of which it is presently aware.

Name	Subject Matter	Contact
Kenneth Tota, Acting Director of Office of Refugee Resettlement, ORR	ORR's policy and procedures related to medical care for unaccompanied immigrant minors/process for considering requests for abortion/placements based on abortion requests, and/or policies related to reproductive health care for trafficking victims	Defendants' counsel
Elizabeth Sohn, Policy Analyst, ORR	Same as above	Defendants' counsel
Tricia Swartz, Associate Deputy Director, ORR	Same as above	Defendants' counsel
Jalyn Sualog, Division Director, Division of Children's Services	Same as above	Defendants' counsel
Toby Biswas, Program	Same as above	Defendants' counsel

1	Specialist, ORR		
2	James De La Cruz, Senior Federal Field Specialist, ORR	Same as above	Defendants' counsel
3	Katherin Chon, Director, Office on Trafficking in Persons	Same as above	Defendants' counsel
4	Maggie Wynne, Director of Victim Assistance Programs, Office on Trafficking in Persons	Same as above	Defendants' counsel
5	Kristyn Peck, Associate Director, Children Services, U.S. Conference of Catholic Bishops	Implementation of USCCB's grant to care for unaccompanied immigrant minors.	USCCB's counsel

9 II. Categories of Relevant Documents

10 Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(ii), Plaintiff has identified the
11 following documents and tangible things in its possession, custody, or control that may be used
12 to support its claims or defenses, unless solely for impeachment:

- 13 • Documents produced in response to a Freedom of Information Act lawsuit relating to
14 Defendants' unaccompanied immigrant minor program, *ACLU v. Department of Health
15 and Human Services*, No. 1:15-cv-02645 (S.D.N.Y. Apr. 6, 2015);
- 16 • Documents program produced in response to a Freedom of Information Act lawsuit
17 relating to Defendants' unaccompanied immigrant minor and trafficking victims
18 programs, *ACLU v. Administration for Children and Families*, No. 1:16-cv-01987
19 (S.D.N.Y. Mar. 17, 2016);

20 III. Computation of Damages

21 Plaintiff no longer seeks nominal damages and therefore make no disclosures pursuant to
22 Federal Rule of Civil Procedure 26(a)(1)(A)(iii).

23 IV. Insurance Agreements

24 Plaintiff is unaware of any insurance agreements applicable to the claims in this action
25 and therefore make no disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(iv).

26
27 Dated: March 9, 2017

Respectfully submitted,

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By: /s/ Brigitte Amiri
Brigitte Amiri*

Attorney for Plaintiff

* *Appearing pro hac vice*

Exhibit C

USCCB's Initial Disclosures

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13 Attorneys for Defendant-Intervenor
UNITED STATES CONFERENCE OF
14 CATHOLIC BISHOPS

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA,

19 Plaintiff,

20 v.

21 THOMAS E. PRICE, Secretary of Health and
22 Human Services, *et al.*,

23 Defendants.
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CASE NO. 3:16-cv-3539-LB

**UNITED STATES CONFERENCE OF
CATHOLIC BISHOPS' INITIAL
DISCLOSURES PURSUANT TO RULE
26(a)(1)**

1 Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, Defendant-Intervenor
2 United States Conference of Catholic Bishops (“USCCB”) provides the following initial disclosures.

3
4 **PRELIMINARY STATEMENT**

5 The following disclosures are based on information reasonably available to USCCB at this
6 time. Because USCCB has not completed its factual investigation in this action, has not completed
7 discovery in this action, and has not completed preparation for trial, it is impossible for USCCB to
8 determine at this time all the witnesses or documents that it may use to support his claims or
9 defenses. As this litigation proceeds, facts, information, evidence, and documents may be discovered
10 that are not set forth in these disclosures. USCCB reserves the right to augment, amend, or
11 supplement these disclosures and the information contained herein pursuant to Rule 26(e) of the
12 Federal Rules of Civil Procedure. Accordingly, USCCB makes these initial disclosures without
13 waiving its right to identify witnesses, information, and documents that it discovers subsequently, and
14 reserves the right to use or rely on such witnesses, information or documents at the time of any
15 hearing or trial in this proceeding.

16 The disclosures made below are provided without waiving USCCB’s rights (1) to object on
17 any appropriate ground to the use of any information disclosed herein for any purpose; and (2) to
18 object to any future discovery requests relating to the subject matter of the disclosures made herein.
19 Further, nothing in these disclosures is intended to waive any protections available pursuant to the
20 attorney-client privilege, the work product doctrine, or any other applicable privileges.

21 **DISCLOSURES**

22 **A. Identification of Individuals**

23 Pursuant to Rule 26(a)(1)(A)(i), and based on the allegations in the First Amended Complaint
24 (“FAC”), USCCB hereby identifies the individuals likely to have discoverable information that
25 USCCB may use to support its defense, excluding individuals likely to have discoverable information
26 that USCCB may use solely for impeachment. A description of the subject of such information each
27 individual may possess is included in the list below.

1 The inclusion of a name on this list is not a statement by USCCB that a named individual
2 necessarily has discoverable information. This list does not include experts and/or consultants who
3 might be retained.

4 USCCB does not authorize communication by Plaintiff or any other party with current or
5 former employees or consultants of USCCB, and nothing herein should be construed to authorize
6 Plaintiff or any other party to contact any individual where such contact would violate applicable law,
7 abridge any rule of professional conduct, induce the breach of any contract, or infringe on any
8 confidentiality agreement.

Name	Contact Information	Subject of Potential Discoverable Information
Johnny Young, (Former) Executive Director, USCCB department of Migration and Refugee Services (MRS)	May be contacted through counsel for USCCB.	Can speak to the following: <ul style="list-style-type: none"> • HHS Notice of Awards to USCCB for services to unaccompanied children in 2014 • USCCB/MRS Proposal for Residential Services for UC for FY14—FY16 • USCCB/MRS Cooperative Agreement for Residential Services for UC for FY11-13 • USCCB’s MOUs with subgrantees for residential services for unaccompanied children for the award period beginning in FY14.
Kristyn Peck, Associate Director of Children’s Services, USCCB/MRS	May be contacted through counsel for USCCB.	Can speak to the following: <ul style="list-style-type: none"> • HHS Notice of Awards to USCCB for services to unaccompanied children in 2014 • USCCB/MRS Proposal for Residential Services for UC for FY14—FY16 • USCCB’s MOUs with subgrantees for residential services for unaccompanied children for the award period beginning in FY14.
Fr. Peter Ryan, SJ, (Former) Executive Director, USCCB Office on Doctrine	May be contacted through counsel for USCCB.	Can speak to preparation and negotiation of the final USCCB/MRS Trafficking Victims Assistance Program (TVAP) application.
Richard Doerflinger, (Retired) Associate Director of the Secretariat of Pro-Life Activities	May be contacted through counsel for USCCB.	Same as above
William Canny,	May be contacted	Same as above

1 2 3 4	Executive Director, USCCB Office on Migration and Refugee Services (MRS).	through counsel for USCCB.	
5 6 7	Hillary Chester , Associate Director of Anti-Trafficking Program, USCCB/MRS	May be contacted through counsel for USCCB.	Can speak to the following: <ul style="list-style-type: none"> • Preparation and negotiation of the final USCCB/MRS TVAP application; • Subsequent program implementation, including development and approval of program forms, policies and procedures.
8 9 10 11 12	Maggie Wynne , (Former) Director, Victim Assistance Program, Office on Trafficking in Persons (OTIP)	Unknown	Same as above.

13 In addition to the individuals identified above, USCCB also reserves the right to call as a
14 witness any witnesses identified in any party's initial disclosures, any witnesses identified in the
15 course of discovery and any witnesses deposed by any party during the course of this litigation.

16 All current and former employees or consultants of USCCB should be contacted only through
17 USCCB's attorneys of record in this action, at Gibson, Dunn & Crutcher LLP, 1881 Page Mill Road,
18 Palo Alto, CA 94304; phone: (650) 849-5300 or individual counsel as indicated above.

19 **B. Identification of Documents**

20 Pursuant to Rule 26(a)(1)(A)(ii), and based on the allegations in the FAC, USCCB identifies
21 the following documents, electronically-stored information, and tangible things potentially in its
22 possession, custody or control that USCCB may use to support its claims or defenses, excluding
23 documents, electronically-stored information, and tangible things that USCCB may use solely for
24 impeachment:

- 25 • USCCB/MRS Proposal for Residential Services for Unaccompanied Children (UC) for
26 FY14—FY16,
- 27 • HHS Notice of Awards to USCCB for services to unaccompanied children in 2014,
- 28 • USCCB/MRS Cooperative Agreement for Residential Services for UC for FY11-13,

- 1 • Public Letter issued by USCCB in response to PREA/VAWA regulation requiring access
2 to reproductive health care for unaccompanied immigrant minors who are subject to
3 sexual assault
- 4 • USCCB's MOUs with subgrantees for residential services for unaccompanied children for
5 the award period beginning in FY14
- 6 • USCCB/MRS Proposal for Services to Foreign National Victims of Trafficking for FY
7 2016-2018
- 8 • Amended Proposal for Services to Foreign National Victims of Trafficking FY 2016-2018
9 (submitted to HHS 4/1/16)
- 10 • HHS Notices of Award to USCCB/MRS for Services to Foreign National Victims of
11 Trafficking in FY 2016 and 2017 Continuation Award
- 12 • USCCB/MRS Cooperative Agreement for Services to Foreign National Victims of
13 Trafficking in FY 2016
- 14 • USCCB/MRS TVAP Client Brochure
- 15 • USCCB/MRS TVAP Client Consent form
- 16 • USCCB/MRS TVAP Program Operation Manual
- 17 • Email communication between HHS OTIP staff and USCCB/MRS Senior Program Staff
18 regarding the final language for the *Amended* Proposal for Services to Foreign National
19 Victims of Trafficking FY 2016-2018 (submitted to HHS 4/1/16)

20 USCCB also intends to rely on documents that other parties will produce through the
21 discovery process in this action or otherwise. USCCB also may rely upon documents and discovery
22 from third parties. USCCB reserves the right to supplement this disclosure should USCCB learn of
23 additional documents, data compilations, and tangible things that it may use in support of his defense.

24 USCCB expressly preserves all objections to the admissibility of any information disclosed
25 under the Federal Rules of Evidence, the Federal Rules of Civil Procedure, and/or the Civil Local
26 Rules of this Court. By identifying the foregoing categories of documents, USCCB does not concede
27 the relevance of specific categories of documents, and specifically reserves all applicable objections,
28 including all privileges and protections (including, but not limited to, the attorney-client privilege
and/or the work product doctrine).

1 **C. Computation of Damages**

2 USCCB anticipates seeking USCCB’s costs for defending this action, but makes no
3 disclosure because it has not pleaded any counter-claim, and seeks no damages in this action.

4 **D. Insurance Agreements**

5 Pursuant to Rule 26(a)(1)(A)(iv), USCCB makes no disclosure because Plaintiff seeks no
6 damages in this action for which an insurance agreement for indemnification would be applicable.

7 Dated: March 9, 2017

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9 GIBSON, DUNN & CRUTCHER LLP

10
11 By: /s/ Robert E. Dunn
12 Robert E. Dunn

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Attorneys for Defendant-Intervenor United States
Conference of Catholic Bishops

PROOF OF SERVICE

I, Robert Dunn, declare as follows:

On March 9, 2017, I caused to be served the following document(s):

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS' INITIAL DISCLOSURES PURSUANT TO RULE 26(a)(1)

upon the counsel and by the means of service stated below:

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official capacity as Secretary of Health and
Human Services; Amanda Barlow, in her
official capacity as Acting Assistant Secretary
for Children and Families; and Kenneth Tota,
in his official capacity as Acting Director of the
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official capacity as Secretary of Health and
Human Services; Amanda Barlow, in her
official capacity as Acting Assistant Secretary
for Children and Families; and Kenneth Tota,
in his official capacity as Acting Director of the
Office of Refugee Resettlement

BY MESSENGER SERVICE: I placed a true copy in a sealed envelope or package addressed to the persons at the addresses listed above and providing them to a professional messenger service for service for delivery before 5:00 p.m. on the above-mentioned date.

BY ELECTRONIC SERVICE: On the above-mentioned date, I caused the documents to be sent to the persons at the electronic notification addresses as shown above.

(FEDERAL) I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 9, 2017.

/s/ Robert Dunn

Robert Dunn
Counsel for USCCB

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 2 SHEILA M. LIEBER
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 9

10 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
 11 **SAN FRANCISCO DIVISION**

<p>12 AMERICAN CIVIL LIBERTIES UNION OF 13 NORTHERN CALIFORNIA, 14 Plaintiff, 15 vs. 16 THOMAS E. PRICE, M.D.,¹ Secretary of Health and Human Services, <i>et al.</i>, 17 Defendants. 18</p>	<p>Civil No. 3:16-cv-3539-LB</p> <p>[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION TO TRANSFER VENUE</p> <p>Date: April 13, 2017 Time: 9:30 a.m. Courtroom: Courtroom C, 15th Floor Judge: Hon. Laurel Beeler</p>
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 28 ¹ Pursuant to Federal Rule of Civil Procedure 25(d), Thomas E. Price, M.D., is automatically substituted as a defendant in his official capacity as Secretary of Health and Human Services for Sylvia Mathews Burwell.

[PROPOSED] ORDER

Defendants' Motion to Transfer Venue, having come before the Court, and the Court having considered that Motion,

IT IS HEREBY ORDERED THAT this action is transferred pursuant to 28 U.S.C. § 1404(a) to the District Court for the District of Columbia.

Dated: _____ UNITED STATES MAGISTRATE JUDGE