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March 24, 2020

By ECF

The Honorable Amit P. Mehta
United States District Judge
United States District Court for the District of Columbia
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, N.W.
Washington, DC 20001

Re: *Marouf v. Azar*, Case No. 1:18-cv-00378-APM (D.D.C.)

Dear Judge Mehta:

Plaintiffs submit this letter in response to the Court's order for written argument with respect to the discovery dispute discussed during the teleconference on March 17, 2020.

A. Plaintiffs' disputed discovery focuses on the course of dealing between Federal Defendants and USCCB that resulted in actual or constructive permission for USCCB to administer government funds in accordance with its religious beliefs.

Plaintiffs assert, among other things, that Federal Defendants violated the Establishment Clause by awarding URM and UAC grant funds to the United States Conference of Catholic Bishops to administer two federal programs under their delegated-authority without adequate safeguards against the use of those funds to advance USCCB's religious beliefs, despite being on notice that the USCCB and its subgrantees would administer those funds based on those beliefs. Dkt. 21 ("Am. Compl.") ¶¶ 30–34, 61, 62, 65. As the Court has recognized, one way to assess this claim is by evaluating the adequacy of any such safeguard as well as Federal Defendants' knowledge of USCCB's intention to act in accordance with its religious beliefs in its administration of the grants. Dkt. 48 at 18–19.

Thus, relevant facts include whether and to what extent Federal Defendants have imposed and enforced meaningful safeguards to protect against discrimination motivated by religious beliefs in the operation of government programs. As such, Plaintiffs have sought discovery about how Federal Defendants have operated these programs, particularly the extent to which they have afforded grantees discretion to administer grants on the basis of their religious beliefs, including what, if anything, Federal Defendants have done to safeguard against such use of program funds.¹ *See, e.g.*, Ex. 1 (RFP Nos. 8, 15, 16, 18–21, 23–25, 29, 30, 34, 36).

¹ As a reasonable compromise, Plaintiffs have voluntarily limited their requests to exclude document specific to grantees other than USCCB, leaving only documents that are USCCB-specific and documents that encompass grantees more generally, inclusive of USCCB (e.g., national policies of general applicability).

B. The relevant time period encompasses at least key periods over the course of the longstanding relationship between Federal Defendants and USCCB.

Plaintiffs initially sought discovery from USCCB's initial participation in the UAC² program to the present. *See* Ex. 1 at 5. In response, Federal Defendants refused to produce documents dated before January 1, 2016.³ As a compromise, Plaintiffs limited their requests to the following time periods:

- (1) The first grant period in which USCCB participated as a grantee in the UAC program, inclusive of the grant application and related documents for such grant period,⁴ and
- (2) The UAC grant periods that encompass June 26, 2013,⁵ through the present, inclusive of the grant applications and related documents for all such grant periods (excluding any period in which USCCB was not a grantee).

Federal Defendants, however, have remained unmoved.

Regarding the first grant period, this time period is particularly relevant because, during that period, Federal Defendants and USCCB likely came to an initial mutual understanding of the "rules of the road" regarding the operation of the program, which may have included an understanding of the extent to which USCCB was permitted to administer the grant in a manner imposing USCCB's religious beliefs as criteria on who may participate in the programs. That understanding likely carried forward such that it informed USCCB's understanding of the extent to which it was permitted to continue to so administer a grant in a subsequent grant period. While Federal Defendants are willing to produce documents with respect to the grant period in which Plaintiffs sought to submit their foster parent application, the prior course of dealing between Federal Defendants and USCCB likely informed USCCB's understanding of Federal Defendants' expectation, including the likelihood, or lack thereof, that any stated non-discrimination policy would be enforced.

The grant periods encompassing June 2013 to present are also particularly relevant, because this is the time period during which Federal Defendants and its grantees likely actively considered how to apply their policies and practices⁶ to exclude same-sex married couples in

² In light of Plaintiffs' concessions, described below, there appears to be no current dispute regarding time with respect to the URM program.

³ *See* Ex. 2 at 4–5 (stating that Federal Defendants will conduct discovery inquiries only “with respect to the period covering the grants in place in February 2017, to the present”); *see also, e.g., id.* (Federal Defendants' objections to RFP Nos. 3, 5–9, 11–15, 17–29, 31–38). Counsel for Federal Defendants explained on the March 17 call with the Court that Federal Defendants have searched for documents dated January 1, 2016, to the present.

⁴ Counsel for Federal Defendants estimated during the March 17 call that this first grant period occurred around 2005. However, Plaintiffs request the Court use the language above, in case produced documents demonstrate a different time frame.

⁵ This is the date of the Supreme Court's decision in *United States v. Windsor*, 570 U.S. 744 (Jun. 26, 2013).

⁶ For Establishment Clause purposes, USCCB's policy is much broader than simply singling out married same-sex couples for exclusion: the actual policy is that USCCB and its grantees will not accept applicants into the government programs that do not “mirror the holy family.” *Amended Complaint*, ECF No. 21 at ¶¶ 48, 51, 88. Plaintiffs understand this policy to have been designed and implemented to allow USCCB and its subgrantees to discriminate in a variety of ways in administering federal programs or complying with government-imposed

light of the Supreme Court's decision in *United States v. Windsor*, 133 S. Ct. 2675 (Jun. 26, 2013). Plaintiffs assume that *Windsor* occasioned opportunities for Federal Defendants to consider or re-consider how USCCB would administer grants given its religious beliefs regarding such relationships, *see, e.g.*, Ex. 1 at 10 (RFP No. 16), yet Federal Defendants' would exclude documents following the highly-consequential *Windsor* decision.

C. The nationwide scope of USCCB's grant should govern discovery's geographic limits.

Plaintiffs have sought discovery related to the administration of the programs in accordance with USCCB's religious beliefs, including how, if at all, Federal Defendants have responded to any instance of religious discrimination against foster parent applicants by USCCB anywhere in which USCCB administers a UAC program grant.⁷ *See, e.g.*, Ex. 1 (RFP Nos. 15, 19, 20, 23). Federal Defendants have repeatedly objected to such requests on the basis of geography and limited the scope of their production to the State of Texas only. *See, e.g.*, Ex. 2 (Federal Defendants' objections to RFP Nos. 2, 3, 5–15, 17–29, 31–34, 36–38).

It is undisputed that Federal Defendants have awarded USCCB grants to operate the UAC program in many states other than Texas. And USCCB has informed Federal Defendants that it will operate the program in accordance with its religious beliefs, without regard to geography. Am. Compl. ¶¶ 30–34; *see also* Dkt. 29 (USCCB Motion to Dismiss) at 4 (“As a Catholic organization, . . . USCCB cannot provide services that would violate its religious beliefs. USCCB has long made the government aware of this fact.”). Thus, any religious discrimination against foster parent applicants by USCCB, and the response, if any, that such discrimination has occasioned by Federal Defendants, likely has not been limited to the State of Texas. Federal Defendants' response to any such discrimination, or lack thereof, is probative of the adequacy of any safeguard against such discrimination that Federal Defendants may have put in place. Simply put, the course of dealing between Federal Defendants and USCCB in one location likely informs USCCB's understanding of how it may administer its program grant in any location.

For example, if other foster parent applicants were rejected because of USCCB's religious beliefs, Federal Defendants' response, if any, would be responsive to Plaintiffs' discovery requests and relevant to Plaintiffs' claims, regardless of where in the country such discrimination occurred. *See, e.g.*, Ex. 1 (RFP Nos. 15, 19, 20, 23). However, Federal Defendants have refused to produce documents concerning such discrimination if the events occurred in a state other than Texas. This arbitrary geographical limitation deprives Plaintiffs of relevant documents concerning the extent to which Federal Defendants have enabled such discrimination by USCCB.

Accordingly, the Court should overrule Federal Defendants' objections to producing documents related to events outside of Texas. *See* Ex. 2 (Federal Defendants' objections to RFP

restrictions on funding. Plaintiffs further understand the policy was being robustly enforced as early as 2015, and likely earlier.

⁷ Because USCCB's participation in the URM program appears to be limited to the State of Texas, there appears to be no current dispute regarding geography with respect to the URM program.

Nos. 2, 3, 5–15, 17–29, 31–34, 36–38).

D. The extent to which Federal Defendants have enabled religious discrimination against foster parent applicants by USCCB is relevant to Plaintiffs' claims.

Plaintiffs allege that Federal Defendants failed to implement adequate safeguards to prevent USCCB or its subgrantees from administering the URM and UAC grants in a discriminatory manner “based on its religious beliefs.” Am. Compl. ¶¶ 62, 63, 66. Federal Defendants object that the only relevant religious beliefs are “those regarding same-sex couples parenting foster children.” *See, e.g.*, Ex. 2 at 32 (Federal Defendants’ objections to RFP Nos. 7, 8, 10, 15, 17–38). As a reasonable compromise, Plaintiffs have voluntarily limited their requests to exclude documents outside of the foster parenting context. Thus, Plaintiffs do not seek documents concerning only the health care provided to children in the programs by USCCB without reference to religious beliefs or religiously based policies that apply equally in the foster parenting context.

The Court should overrule Federal Defendants’ objections because it is probative of whether Federal Defendants have generally enabled USCCB to engage in religious discrimination with respect to foster parent applicants. Once again, if Federal Defendants and USCCB have an established course of dealing under which USCCB is effectively permitted to process foster parent applications in accordance with its religious beliefs, such facts are relevant to Plaintiffs’ claims. For example, if Federal Defendants have permitted USCCB to reject a foster parent based on a religious belief that only a married couple, as opposed to a cohabitating unmarried couple, should foster children, USCCB is likely to understand that it may reject a foster parent based on any other religious belief, too, including a religious belief regarding same-sex relationships. Especially if such a course of dealing developed over years, across the country, and with respect to multiple religiously-motivated foster parent applicant criteria, it would naturally culminate in the rejection of Plaintiffs’ foster parenting application, given USCCB’s religious beliefs regarding same-sex relationships. *See* Am. Compl. ¶¶ 35, 36.

At its core, Federal Defendants’ objection appears to be that Plaintiffs’ claim is limited to religious beliefs regarding same-sex relationships because Plaintiffs would not have *standing* to challenge harm occasioned by Federal Defendants’ discrimination based on other religious beliefs. But Plaintiffs’ *injuries*, which are personal and specific, must not be conflated with Plaintiffs’ *claims*, which allege that the federal government unconstitutionally advanced religion by enabling USCCB to administer grant funds in a manner consistent with its religious beliefs. *See* Am. Compl. ¶ 65. Under *the government’s authority*, using *federal funding*, and without any *safeguards* to prevent it, USCCB has been allowed to implement a policy based on its religious beliefs to exclude persons from participating in two federal programs. The result here may have manifested itself in sexual orientation and sex discrimination, but make no mistake, the challenged policy here more broadly turns away anyone who does not “mirror the holy family.” Plaintiffs seek documents relevant to show that what happened to them was part of a longstanding and widespread pattern traceable to Federal Defendants, which is probative of Plaintiffs’ claims, not their standing.

The Honorable Amit P. Mehta

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March 24, 2020

Respectfully submitted,

/s/ Russell A. Welch

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Attorneys for Plaintiffs

cc: Counsel of record

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FATMA MAROUF AND BRYN ESPLIN,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Case No. 1:18-cv-378 (APM)
)	
ALEX AZAR, in his official capacity as)	
Secretary of the UNITED STATES)	
DEPARTMENT OF HEALTH AND HUMAN)	
SERVICES, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

PLAINTIFFS’ FIRST REQUEST FOR PRODUCTION TO FEDERAL DEFENDANTS

Plaintiffs Fatma Marouf and Bryn Esplin (“Plaintiffs”), by and through their attorneys, hereby submit the following request for production of documents and other tangible items to Defendants United States Department of Health and Human Services (“HHS”); Administration for Children and Families (“ACF”); Office of Refugee Resettlement (“ORR”); Alex Azar, in his official capacity as Secretary of HHS; Lynn Johnson, in her official capacity as Assistant Secretary for ACF; and Jonathan Hayes, in his official capacity as Director of ORR (collectively, “Federal Defendants”¹), pursuant to Rule 34 of the Federal Rules of Civil Procedure, to be responded to and produced at the office of Hogan Lovells US LLP, 555 Thirteenth Street NW, Washington, DC 20004 in accordance with the Federal Rules of Civil Procedure and the definitions and instructions set forth below.

¹ The term “Federal Defendants” includes any directors, officers, representatives, agents, servants, employees, or other persons acting or purporting to act on behalf of Federal Defendants, and any predecessors or successors.

Definitions and Instructions

- A. Documents should be produced as they are kept in the files of Federal Defendants or should be organized and labeled to correspond with the requests below. If documents are produced as they are kept in the files of Federal Defendants, sufficient information should be provided to permit Plaintiffs to identify the source of each document from within the files of Federal Defendants.
- B. The terms “URM Program” and “UAC Program” mean, respectively, the Unaccompanied Refugee Minor Program and the Unaccompanied Alien Children Program, each administered by Federal Defendants. The term “Program” means the URM Program, the UAC Program, or both programs.
- C. The term “USCCB” means Defendant United States Conference of Catholic Bishops, the term “CCFW” means Catholic Charities of Fort Worth, and the term “CCD” means Catholic Charities of Dallas. Such terms include any directors, officers, representatives, agents, servants, employees, or other persons acting or purporting to act on behalf of USCCB, CCFW, or CCD, respectively, and any predecessors or successors.
- D. The term “grantee,” “sub-grantee,” or “child placing agency” means an organization or agency that directly or indirectly receives funding from Federal Defendants through grants, cooperative agreements, or contracts to administer the URM or UAC Program by caring for children under such programs, including by placing such children in private homes for foster care or adoption or by processing applications of prospective foster or adoptive parents with respect to such placement.
- E. The term “grant,” “cooperative agreement,” or “contract” means a grant, cooperative agreement, contract, or other legally binding or enforceable agreement between Federal

Defendants and a grantee with respect to the administration of the URM or UAC Program.

- F. The term “communication” means any transmittal of information (in the form of facts, ideas, inquiries, photographs, drawings, or otherwise), and a request for production of a “communication” includes correspondence, facsimile transmissions, telecopies, electronic mail (“e-mail”), attachments and enclosures thereto, voicemail or other recordings in any medium of oral communication, telephone logs, message logs, posts on or other submissions to social media websites or personal websites (*e.g.*, blogs), and notes or memoranda concerning written or oral communications and any translation thereof.
- G. The term “concerning” means relating to, evidencing, regarding, pertaining to, consisting of, indicating, concerning, being in any way logically or factually connected with the matter discussed, or having a tendency to prove or disprove the matter referred to.
- H. The term “document” has the broadest meaning accorded to it by Rule 34 of the Federal Rules of Civil Procedure. The term includes, without limitation, any writing or any other tangible thing in Federal Defendants’ care, custody, or control, whether printed, recorded, reproduced by any process, written or produced by hand, or generated or stored as electronic data, in any electronic format. It includes, without limitation, the original and any non-identical copy (which is different from the original because of notations on such copy or otherwise) of letters; reports; agreements; contracts (including drafts, proposals, and exhibits thereto); communications; correspondence; e-mails; telegrams; teletype messages; memoranda; internal or external memoranda; summaries; tape recordings; recordings or records of personal conversations; diaries; forecasts; calendars; brochures;

photographs; models; statistical statements; graphs; notebooks; charts; tabulations; computations; plans; drawings; pamphlets; advertisements; circulars; trade letters; press releases; invoices; financial statements; purchase orders; receipts; checks; and any data stored, maintained, published, or organized electronically or magnetically through computer equipment, translated, if necessary, by you into reasonably usable form.

- I. The terms “person,” “people,” and “entity” refer to natural persons and entities including, without limitation, corporations, partnerships, joint ventures, associations, sole proprietorships, other private organizations or businesses, and government agencies.
- J. The term “Plaintiffs” means Plaintiffs Fatma Marouf and Bryn Esplin in the pending court action, No. 1:18-cv-378 (APM).
- K. The terms “you,” “your,” and “yours” refer to Federal Defendants, and any directors, officers, representatives, agents, servants, employees, or other persons acting or purporting to act on behalf of Federal Defendants, and any predecessors or successors.
- L. To bring within the scope of these document requests all information that might otherwise be construed to be outside of their scope, the following rules of construction apply: (a) the singular shall include the plural and vice versa; (b) the masculine, feminine, or neuter pronoun shall not exclude other genders or entities; (c) the connectives “and” and “or” shall be read either disjunctively or conjunctively as necessary to bring within the scope of the document requests all responses that might otherwise be construed to be outside their scope; (d) the terms “any,” “all,” and “each” shall be read to mean any, all, each, and every; (e) the word “including” shall be read to mean including without limitation; and (f) the present tense shall be construed to include the past tense and vice versa.

- M. Unless otherwise indicated, the time period covered by each request is from the date of the first action taken by Federal Defendants to implement or administer the URM or UAC Program, respectively, with respect to the first grant period under such program for which USCCB applied or was otherwise considered, successfully or unsuccessfully, for a grant (including any action taken by Federal Defendants to solicit grant applications for such period) through the present (the “Relevant Period”).
- N. Documents, including, but not limited to, electronically stored information (“ESI”), should be produced as single-page TIFF files, multi-page, color (where applicable), document level text files for the extracted text or OCR, an image load file (“OPT file”), and a Concordance-format database load file (“DAT file”). The load files should contain document unitization and the DAT file should identify parent-child relationships and include document metadata. Documents should be delivered on CD or DVD media or by secure file transfer if feasible, with clearly marked bates numbers in the lower right corner of each page.
- O. Pursuant to the Federal Rules of Civil Procedure, to the extent any document is withheld in whole or part based on the assertion of the attorney-client privilege or any other applicable privilege, the following information shall be provided: (a) the date of the document; (b) the author; (c) the addressee(s); (d) any other recipient(s); (e) the type of document (*e.g.*, letter, report, e-mail, memorandum, etc.); (f) the general subject matter of the document; and (g) the specific privilege claimed with respect to the document. If information is redacted from a document produced pursuant to any privilege, identify the redaction by stamping the word “Redacted” on the document at the place where information has been redacted and separately log each redaction.

- P. If you object to any portion or aspect of a request, produce all documents responsive to the remainder of the request.
- Q. You are under a duty to supplement your responses to these document requests under the circumstances specified in Rule 26(e) of the Federal Rules of Civil Procedure.

PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

1. Documents sufficient to establish the organizational structure of Federal Defendants as relevant to each Program including organizational charts or other documents that identify the hierarchy of authority among positions, the responsibilities or duties associated with each position, and the names, titles, and dates of service of persons who held those positions (i) during the grant period encompassing February 2017 and (ii) at the present time.
2. Documents sufficient to establish the appropriation from which Federal Defendants expended or awarded federal funds to administer each Program with respect to the grant period encompassing February 2017, as well as the current grant period. This request encompasses the amount that Federal Defendants so expended or awarded for each grant period and the amount that each grantee or sub-grantee received as a result of such expenditure or award for each grant period, including the identity of each grantee or sub-grantee.
3. Documents sufficient to establish the extent, if any, to which the amount of funding available under a grant is dependent on (i) whether a grantee or sub-grantee processes foster or adoptive parent applications, or how many applications the grantee or sub-

- grantee processes, or (ii) whether a grantee or sub-grantee places children with foster or adoptive parents, or how many children the grantee or sub-grantee places.
4. Documents sufficient to establish how Federal Defendants care for children in each Program before the children's assignment to a grantee or sub-grantee and how Federal Defendants monitor or track children after the children's assignment to a grantee or sub-grantee (i) during the grant period encompassing February 2017 and (ii) at the present time.
 5. Documents sufficient to establish the number of self-identified gay, lesbian, or bisexual children in each Program in each grant period, both with respect to such children in general and with respect to such children assigned to USCCB or any of its sub-grantees (including CCFW or CCD).
 6. Documents sufficient to establish any factors or criteria that Federal Defendants consider when awarding, maintaining, or terminating a grant, and all documents concerning any additional or different factors or criteria that Federal Defendants consider when awarding, maintaining, or terminating a grant to a religiously affiliated (as opposed to a non-religiously affiliated) person.
 7. All documents concerning any policy or practice under a Program permitting or enabling referrals to another grantee or sub-grantee in whole or in part based on religious considerations, including the terms of such policy or practice, the dates such policy or practice was applicable, and all documents concerning any application of such policy or practice.
 8. All documents concerning any non-discrimination policy or provision (including any concerning parenting of children by same-sex couples, whether married or unmarried, or

gay, lesbian, or bisexual individuals; marriage of same-sex couples; other same-sex domestic partnerships; gay, lesbian, or bisexual people; homosexuality, bisexuality, or sexual orientation; or religion) applicable to a grantee or sub-grantee by virtue of being a grantee or sub-grantee, including its scope and dates of applicability, and any training related thereto.

9. Documents sufficient to establish the number and identities of grantees or sub-grantees that have discontinued participation in each Program (whether at the instigation of a grantee, a sub-grantee, or Federal Defendants) in each grant period, including the reason(s) therefor and the alternative arrangements Federal Defendants made with respect to the children assigned to the grantee or sub-grantee, as well as the foster or adoptive parents processed by the grantee or sub-grantee.
10. Documents sufficient to establish the factors or criteria that Federal Defendants consider to further the best interests of children in each Program (including as related to any issue concerning parenting of children by same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals; marriage of same-sex couples; other same-sex domestic partnerships; gay, lesbian, or bisexual people; homosexuality, bisexuality, or sexual orientation; or religion), as well as the safeguards, monitoring, oversight, policies, or protocols that Federal Defendants have implemented or enforced that seek to ensure that grantees and sub-grantees further the best interests of such children.
11. All documents concerning:
 - a. the policies or procedures (including training and literature) applicable to processing foster or adoptive parent applications under each Program, including the processes for recruiting, accepting applications from, screening, licensing, or

approving prospective foster or adoptive parents (including the roles of Federal Defendants, a grantee or sub-grantee, and any third party) and the factors or criteria that are required, expected, or asked to be considered in doing so;

- b. the communication of such policies or procedures by Federal Defendants to grantees or sub-grantees; and
- c. any policy or protocol concerning reporting and/or compliance by grantees or sub-grantees with respect to processing foster or adoptive parent applications.

Include documents sufficient to establish any additional or different policies or procedures applicable to such processing in the State of Texas.

12. All documents concerning:

- a. the policies or procedures (including training and literature) applicable to placing children with foster or adoptive parents under the Programs, including the processes concerning such placement (including conducting home studies, and including the roles of Federal Defendants, a grantee or sub-grantee, and any third party) and the factors or criteria that are required, expected, or asked to be considered in doing so;
- b. the communication of such policies or procedures by Federal Defendants to grantees or sub-grantees; and
- c. any policy or protocol concerning reporting and/or compliance by grantees or sub-grantees with respect to placing children with foster or adoptive parents.

Include documents sufficient to establish any additional or different policies or procedures applicable to such placement in the State of Texas.

13. All documents concerning any actual or feared shortage of child placing agencies under a Program and any effect of such shortage on children in the Program.
14. All documents concerning any actual or feared shortage of foster or adoptive parents under a Program and any effect of such shortage on children in the Program.
15. All documents concerning any complaint against, or investigation or review of, a grantee or sub-grantee based on:
 - a. an alleged failure to comply with a non-discrimination policy applicable to a Program;
 - b. alleged discrimination against same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals under a Program; or
 - c. alleged administration of the grant based on the grantee's or sub-grantee's religious beliefs, including the identity of the grantee or sub-grantee, the date of the alleged action or inaction, the nature of the alleged action or inaction, any response, decision, or action by Federal Defendants concerning the alleged action or inaction, any material created during the course of the investigation or review, the identity of any person with information concerning the alleged action or inaction, any report related thereto, and any corrective action plan.
16. Documents sufficient to establish Federal Defendants' policies, protocols, or practices with respect to same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals serving as foster or adoptive parents under each Program, including the bases therefor, as well as the impact of any judicial decision—including *United States v. Windsor*, 133 S. Ct. 2675 (2013), or *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)—on such policies, protocols, or practices.

17. Documents sufficient to establish the number of same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals who submitted a foster or adoptive parent application under each Program, or sought to do so, in each grant period.
18. All documents concerning the number of same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals who submitted a foster or adoptive parent application under each Program, or sought to do so, whose application was not processed or not approved for any reason concerning parenting of children by same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals; marriage of same-sex couples; other same-sex domestic partnerships; gay, lesbian, or bisexual people; homosexuality, bisexuality, or sexual orientation; or religion in each grant period, including the identity of the grantee or sub-grantee at issue, the time period at issue, and any response, decision, or action by Federal Defendants related thereto.
19. All documents concerning any request for any exemption from any non-discrimination policy or provision, or for any religious accommodation, under each Program (including permission to refer to another grantee or sub-grantee), including the identity of the requestor, the date of the request, and any response, decision, or action by Federal Defendants related thereto.
20. All documents concerning grantees or sub-grantees that administer grants consistent with their religious beliefs, intend to do so, or Federal Defendants have reason to suspect may do so (including with respect to processing foster or adoptive parent applications or placing children with foster or adoptive parents), including the identities of such grantees or sub-grantees, how they administer grants consistent with their religious beliefs, and all grant or sub-grant documents related thereto.

21. All documents concerning any policy or practice applicable to each Program concerning grantees' or sub-grantees' administration of grants consistent with their religious beliefs (including with respect to processing foster or adoptive parent applications or placing children with foster or adoptive parents), or concerning any decision or action to accommodate a grantee's or sub-grantee's religious beliefs (including by permitting or enabling referral to another grantee or sub-grantee).
22. All documents concerning any grantee or sub-grantee that has discontinued participation in a Program (whether at the instigation of the grantee, a sub-grantee, or Federal Defendants) in whole or in part because Federal Defendants did not accommodate the grantee's or sub-grantee's religious beliefs, including the identity of the grantee or sub-grantee, the date of the discontinuation, the nature of the religious beliefs that Federal Defendants did not accommodate, and the alternative arrangements Federal Defendants made with respect to the children assigned to the grantee or sub-grantee, as well as the foster or adoptive parents processed by the grantee or sub-grantee.
23. All documents concerning any couples or individuals other than Plaintiffs who submitted a foster or adoptive parent application under a Program, or sought to do so, whose application was not processed or not approved for any reason concerning the religious beliefs of a grantee or sub-grantee, including the identity of the grantee or sub-grantee, the time period at issue, and any response, decision, or action by Federal Defendants related thereto.
24. All documents concerning any couples or individuals who were approved to serve as foster or adoptive parents under a Program with whom a child was not placed for any reason concerning the religious beliefs of a grantee or sub-grantee, including the identity

of the grantee or sub-grantee, the time period at issue, and any response, decision, or action by Federal Defendants related thereto.

25. All documents concerning any grantee or sub-grantee that has, or Federal Defendants have reason to suspect has, a policy or practice of not accepting applications from a class of prospective foster or adoptive parents or not placing children with a class of foster or adoptive parents (including same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals) in whole or in part because of the grantee's or sub-grantee's religious beliefs, including the identity of the grantee or sub-grantee, the nature of the class, and any response, decision, or action by Federal Defendants related thereto.
26. Documents sufficient to identify grantees that are willing to place children with same-sex married couples and to process foster parent applications submitted by such couples and, separately, grantees that are not willing to do so, at the present time.
27. All documents concerning the possibility of a grantee or sub-grantee discontinuing participation in a Program if required to place children with same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals or to process foster or adoptive parent applications submitted by such couples or such individuals, including the identity of any grantee or sub-grantee at issue and any decision or action by Federal Defendants related thereto.
28. All documents concerning feedback or comment from any person — including employees of Federal Defendants, grantees or sub-grantees or their employees, legislators or other policymakers, prospective or approved foster or adoptive parents other than Plaintiffs, and child welfare organizations — concerning administration of grants consistent with the religious beliefs (including any religious beliefs concerning parenting

of children by same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals; marriage of same-sex couples; other same-sex domestic partnerships; gay, lesbian, or bisexual people; or homosexuality, bisexuality, or sexual orientation) of a grantee or sub-grantee (including USCCB, CCFW, or CCD), including with respect to processing foster or adoptive parent applications or placing children with foster or adoptive parents.

29. All documents concerning Federal Defendants' actual or purported purpose in permitting or otherwise enabling grantees or sub-grantees (including USCCB, CCFW, or CCD) not to accept or otherwise process foster or adoptive parent applications from same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals or not to place children with such couples or individuals in whole or in part based on the religious beliefs of the grantee or sub-grantee, and all documents and communications identifying and otherwise concerning any child welfare or governmental interest that Federal Defendants believe is advanced by this policy or practice, or may rely on in support of any dispositive motion or at trial in this action.
30. All documents concerning Federal Defendants' awareness or understanding of USCCB's religious beliefs concerning parenting of children by same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals; marriage of same-sex couples; other same-sex domestic partnerships; gay, lesbian, or bisexual people; or homosexuality, bisexuality, or sexual orientation.
31. All documents concerning grants for which USCCB applied or was otherwise considered, successfully or unsuccessfully, including any grant application solicitation, grant application (including any supplement thereto), communication between Federal

Defendants and USCCB concerning any grant application, grant application evaluation, draft grant award, grant award (including any grant terms or conditions or other supplement thereto), document or communication concerning grant administration, grant renewal, or sub-grant award (including any sub-grant terms or conditions or other supplement thereto) concerning:

- a. USCCB or any of its sub-grantees administering or intending to administer a grant consistent with its religious beliefs;
- b. any response, decision, or action by Federal Defendants with respect to USCCB or any of its sub-grantees administering or intending to administer a grant consistent with its religious beliefs;
- c. the religious beliefs of USCCB or any of its sub-grantees concerning parenting of children by same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals; marriage of same-sex couples; other same-sex domestic partnerships; gay, lesbian, or bisexual people; or homosexuality, bisexuality, or sexual orientation; or
- d. marriage of same-sex couples; other same-sex domestic partnerships; gay, lesbian, or bisexual people; or homosexuality, bisexuality, or sexual orientation as related to placement of children with foster or adoptive parents or processing of foster or adoptive parent applications.

If not otherwise produced, with respect to any grant for which USCCB applied or was otherwise considered, successfully or unsuccessfully, any grant application (including any supplement thereto), grant award (including any grant terms or conditions or other

- supplement thereto), or sub-grant award (including any sub-grant terms or conditions or other supplement thereto), with respect to the grant period encompassing February 2017.
32. Documents sufficient to establish the services provided by USCCB or its sub-grantees to children and to prospective or approved foster or adoptive parents that are not offered by other grantees or sub-grantees.
 33. All documents concerning the services to be performed by USCCB or any of its sub-grantees (including CCFW or CCD) under a grant, or the administration of a grant by USCCB or any of its sub-grantees (including CCFW or CCD), during the grant period encompassing February 2017, concerning recruiting, receiving applications from, screening, licensing, approving, or otherwise processing prospective foster or adoptive parents or placing children with foster or adoptive parents, including the factors or criteria that USCCB or any of its sub-grantees (including CCFW or CCD) were required, expected, or asked to consider in doing so.
 34. All documents concerning any safeguard, monitoring, oversight, policy, or protocol Federal Defendants implemented or enforced, with respect to the grant period encompassing February 2017, to seek to ensure that (i) a grantee or sub-grantee, including USCCB or any of its sub-grantees (including CCFW or CCD), would not administer a grant based on the grantee's or sub-grantee's religious beliefs, and (ii) a grant, including any grant administered by USCCB or any of its sub-grantees (including CCFW or CCD), would be administered in compliance with any non-discrimination policy or provision applicable to a Program, including the terms or scope of such non-discrimination policy or provision, and any reporting thereunder.

35. All documents concerning any safeguard, monitoring, oversight, policy, or protocol USCCB implemented or enforced, with respect to the grant period encompassing February 2017, to seek to ensure that (i) USCCB and its sub-grantees (including CCFW or CCD) would not administer a grant based on its or its sub-grantee's religious beliefs, and (ii) a grant administered by USCCB or its sub-grantees (including CCFW or CCD) would be administered in compliance with any non-discrimination policy or provision applicable to a Program, including the terms or scope of such non-discrimination policy or provision, and any reporting thereunder.
36. All documents concerning any instance where USCCB or any of its sub-grantees (including CCFW or CCD) declined to provide a service, including placing a child with a foster or adoptive parent or processing a foster or adoptive parent application, under a grant because such service was not consistent with USCCB's or the sub-grantee's religious beliefs, including any notification of such instance by any person to Federal Defendants, the date of such notification, and any response, decision, or action by Federal Defendants concerning such instance.
37. With respect to children placed with foster or adoptive parents under each Program, documents sufficient to establish the average length of time between when children were assigned to a grantee or sub-grantee and when they were placed, both with respect to such children in general and with respect to such children assigned to USCCB or any of its sub-grantees (including CCFW or CCD).
38. All documents concerning any grant or sub-grant awarded to CCFW or CCD by Federal Defendants or USCCB, including any grant or sub-grant application solicitation, grant or sub-grant application (including any supplement thereto), communication between

CCFW or CCD and Federal Defendants or USCCB concerning any grant or sub-grant application, grant or sub-grant application evaluation, draft grant or sub-grant award, grant or sub-grant award (including any grant or sub-grant terms or conditions or other supplement thereto), document or communication concerning grant or sub-grant administration, or grant or sub-grant renewal concerning:

- a. USCCB, CCFW, or CCD administering or intending to administer a grant consistent with its religious beliefs;
- b. any response, decision, or action by Federal Defendants with respect to USCCB, CCFW, or CCD administering or intending to administer a grant consistent with its religious beliefs;
- c. the religious beliefs of USCCB, CCFW, or CCD concerning parenting of children by same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals; marriage of same-sex couples; other same-sex domestic partnerships; gay, lesbian, or bisexual people; or homosexuality, bisexuality, or sexual orientation; or
- d. marriage of same-sex couples; other same-sex domestic partnerships; gay, lesbian, or bisexual people; or homosexuality, bisexuality, or sexual orientation as related to placement of children with foster or adoptive parents or processing of foster or adoptive parent applications.

If not otherwise produced, with respect to any grant or sub-grant awarded to CCFW or CCD by Federal Defendants or USCCB, any grant or sub-grant application (including any supplement thereto) or grant or sub-grant award (including any grant or sub-grant

terms or conditions or other supplement thereto), with respect to the grant period encompassing February 2017.

39. All documents concerning Plaintiffs, including all such documents internal to Federal Defendants and all such documents also concerning USCCB, CCFW, or CCD.
40. All documents concerning Federal Defendants' investigation into the allegations in Plaintiffs' First Amended Complaint or Plaintiffs' communication with Federal Defendants in February 2017 concerning such allegations.
41. All documents and communications concerning any prospective or approved grantee or sub-grantee that administers or may administer a grant, including by processing foster or adoptive parent applications or placing children with foster or adoptive parents, in the Fort Worth, Texas geographic region at this time or in the future other than USCCB, CCFW, or CCD, including the identity of the grantee or sub-grantee; any grant application (including any supplement thereto), grant award (including any grant terms or conditions or other supplement thereto), or sub-grant award (including any sub-grant terms or conditions or other supplement thereto); and whether the grantee or sub-grantee would process a foster or adoptive parent application submitted by a same-sex married couple or place children with such a couple.
42. All documents and communications not covered by the above Requests concerning Plaintiffs or the allegations in their First Amended Complaint.
43. All documents and communications not covered by the above Requests that substantiate or controvert any allegation set forth in Federal Defendants' Answer.

44. All documents and communications not covered by the above Requests that Federal Defendants intend to offer or rely upon in support of any dispositive motion or at trial in this action.

Respectfully,

HOGAN LOVELLS US LLP

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Supervised by Richard B. Katskee, a
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Date: September 20, 2019

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2019, I caused a true and correct copy of the foregoing Plaintiffs' First Request for Production to Federal Defendants to be served by email on the following:

James R. Powers
U.S. Department of Justice
Federal Programs Branch, Civil Division
1100 L Street NW
Room 11218
Washington, DC 20005
james.r.powers@usdoj.gov

/s/ Brendan C. Quinn
Brendan C. Quinn

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FATMA MAROUF AND BRYN ESPLIN,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Case No. 1:18-cv-378 (APM)
)	
ALEX AZAR, in his official capacity as)	
Secretary of the UNITED STATES)	
DEPARTMENT OF HEALTH AND HUMAN)	
SERVICES, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

**FEDERAL DEFENDANTS’ OBJECTIONS AND RESPONSES TO PLAINTIFFS’
FIRST REQUEST FOR PRODUCTION TO FEDERAL DEFENDANTS**

Defendants United States Department of Health and Human Services (“HHS”); Administration for Children and Families (“ACF”); Office of Refugee Resettlement (“ORR”); Alex Azar, in his official capacity as Secretary of HHS; Lynn Johnson, in her official capacity as Assistant Secretary for ACF; and Jonathan Hayes, in his official capacity as Director of ORR (collectively, “Federal Defendants”¹), hereby respond to Plaintiffs’ First Request for Production (“RFP”) pursuant to Rule 34 of the Federal Rules of Civil Procedure, served on September 20, 2019 (hereinafter “Plaintiffs 1st RFP”).

¹ Plaintiffs’ First Request for Production defined “Federal Defendants” to include all directors, officers, representatives, agents, servants, employees, or other persons acting or purporting to act on behalf of Federal Defendants, and any predecessors or successors. To be clear, those persons are not defendants in this case and thus not amenable in their own right to a Rule 34 request for production. In any case, the Federal Defendants will abide by their discovery obligations as set forth in the Federal Rules of Civil Procedure.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

Federal Defendants respond to Plaintiffs' definitions and instructions in turn, below.

- A. Documents should be produced as they are kept in the files of Federal Defendants or should be organized and labeled to correspond with the requests below. If documents are produced as they are kept in the files of Federal Defendants, sufficient information should be provided to permit Plaintiffs to identify the source of each document from within the files of Federal Defendants.

OBJECTIONS TO DEFINITION A:

Federal Defendants object to this definition because it is redundant in light of Federal Rule of Civil Procedure 34(b)(2)(E)(i) and insofar as it seeks to modify or supersede that rule.

- D. The term "grantee," "sub-grantee," or "child placing agency" means an organization or agency that directly or indirectly receives funding from Federal Defendants through grants, cooperative agreements, or contracts to administer the URM or UAC Program by caring for children under such programs, including by placing such children in private homes for foster care or adoption or by processing applications of prospective foster or adoptive parents with respect to such placement.

OBJECTIONS TO DEFINITION D:

Federal Defendants object to these definitions to the extent that, when applied to requests below, they would require Federal Defendants to produce documents or ESI outside their possession, custody, or control. Federal Defendants will lodge specific objections to individual requests below.

- H. The term "document" has the broadest meaning accorded to it by Rule 34 of the Federal Rules of Civil Procedure. The term includes, without limitation, any writing or any other tangible thing in Federal Defendants' care, custody, or control, whether printed, recorded, reproduced by any process, written or produced by hand, or generated or stored as electronic data, in any electronic format. It includes, without limitation, the original and any non-identical copy (which is different from the original because of notations on such copy or otherwise) of letters; reports; agreements; contracts (including drafts, proposals, and exhibits thereto); communications; correspondence; e-mails; telegrams; teletype messages; memoranda; internal or external memoranda; summaries; tape recordings; recordings or records of personal conversations; diaries; forecasts; calendars; brochures; photographs; models; statistical statements; graphs; notebooks; charts; tabulations; computations; plans; drawings; pamphlets; advertisements; circulars; trade letters; press releases; invoices; financial statements; purchase orders; receipts; checks; and any data

stored, maintained, published, or organized electronically or magnetically through computer equipment, translated, if necessary, by you into reasonably usable form.

OBJECTIONS TO DEFINITION H:

Federal Defendants object to everything after the first sentence in this definition, because it is redundant in light of Federal Rule of Civil Procedure 34(a)(1)(A) and insofar as it would modify or supersede that rule.

- K. The terms “you,” “your,” and “yours” refer to Federal Defendants, and any directors, officers, representatives, agents, servants, employees, or other persons acting or purporting to act on behalf of Federal Defendants, and any predecessors or successors.

OBJECTIONS TO DEFINITION K:

Federal Defendants object to this definition insofar as it suggests that other federal officers, agents, employees, predecessors, or successors are themselves defendants in this case and, as such, amenable in their own right to service of a Rule 34 request for production.

- L. To bring within the scope of these document requests all information that might otherwise be construed to be outside of their scope, the following rules of construction apply: (a) the singular shall include the plural and vice versa; (b) the masculine, feminine, or neuter pronoun shall not exclude other genders or entities; (c) the connectives “and” and “or” shall be read either disjunctively or conjunctively as necessary to bring within the scope of the document requests all responses that might otherwise be construed to be outside their scope; (d) the terms “any,” “all,” and “each” shall be read to mean any, all, each, and every; (e) the word “including” shall be read to mean including without limitation; and (f) the present tense shall be construed to include the past tense and vice versa.

OBJECTIONS TO DEFINITION L:

Federal Defendants object to Definition L(c) insofar as it conflicts with plain English usage by requiring “and” to be read disjunctively and “or” to be read conjunctively. These ungrammatical constructions would make several of Plaintiffs’ requests nonsensical, e.g. RFP 32 (requesting “Documents sufficient to establish the services provided by USCCB or its sub-grantees to children and to prospective or approved foster or adoptive parents that are not offered by other grantees or sub-grantees.”). At a minimum, it would require Federal Defendants to give

at least two different—and contrary—readings to each RFP, which would increase exponentially the number of RFPs propounded to Federal Defendants.² That constitutes an undue burden on Federal Defendants and is disproportionate to the needs of Plaintiffs’ case.

Federal Defendants object to Definition L(d) because it is circular—to the extent that “any,” “all,” and “each,” are defined as themselves—and nonsensical to the extent that those three words are defined as including a fourth word, “every.”

Federal Defendants will read “and” to mean “and”; “or” to mean “or”; “any” to mean “any”; “all” to mean “all”; and “each” to mean “each.” If Plaintiffs wish to request “every” document in a particular category, they should use that word in their request.

M. Unless otherwise indicated, the time period covered by each request is from the date of the first action taken by Federal Defendants to implement or administer the URM or UAC Program, respectively, with respect to the first grant period under such program for which USCCB applied or was otherwise considered, successfully or unsuccessfully, for a grant (including any action taken by Federal Defendants to solicit grant applications for such period) through the present (the “Relevant Period”).

OBJECTIONS TO DEFINITION M:

Federal Defendants object to the timeframe prescribed by Definition M because it is unduly burdensome, not reasonably calculated to discover information relevant to Plaintiff’s

² RFP 32, for example, contains five conjunctions and disjunctions. Reading each as the other would require Defendants to give *thirty-two* different readings of the RFP:

- Documents sufficient to establish the services provided by USCCB **or** its sub-grantees to children **and** to prospective or approved foster **or** adoptive parents that are not offered by other grantees **or** sub-grantees;
- Documents sufficient to establish the services provided by USCCB **and** its sub-grantees to children **and** to prospective or approved foster **or** adoptive parents that are not offered by other grantees **or** sub-grantees;
- Documents sufficient to establish the services provided by USCCB **or** its sub-grantees to children **or** to prospective or approved foster **or** adoptive parents that are not offered by other grantees **or** sub-grantees;
- . . . etc.

claims, and disproportionate to the needs of Plaintiffs' case. Plaintiffs allege that they first approached Catholic Charities of Forth Worth ("CCFW") in February 2017. But Plaintiffs' instruction, as written, would seek documents as far back as 2003. Conducting an inquiry extending back that far—across multiple administrations, numerous personnel changes, and long before the facts alleged in the First Amended Complaint—is not reasonable or proportional to the needs of Plaintiffs' case and it would be unduly burdensome.

Federal Defendants have conducted an inquiry with respect to the period covering the grants in place in February 2017, to the present.

N. Documents, including, but not limited to, electronically stored information ("ESI"), should be produced as single-page TIFF files, multi-page, color (where applicable), document level text files for the extracted text or OCR, an image load file ("OPT file"), and a Concordance-format database load file ("DAT file"). The load files should contain document unitization and the DAT file should identify parent-child relationships and include document metadata. Documents should be delivered on CD or DVD media or by secure file transfer if feasible, with clearly marked bates numbers in the lower right corner of each page.

OBJECTIONS TO INSTRUCTION N:

Federal Defendants object to the first sentence of this definition because it is confusing and seemingly contradictory.

Federal Defendants object to this instruction insofar as it deviates from the routine production specifications employed by the Civil Division, U.S. Department of Justice, and is, therefore, unduly burdensome. Federal Defendants will produce documents in accordance with the Specifications for Production of ESI and Digitized (Scanned) Images, attached hereto as Exhibit A.

O. Pursuant to the Federal Rules of Civil Procedure, to the extent any document is withheld in whole or part based on the assertion of the attorney-client privilege or any other applicable privilege, the following information shall be provided: (a) the date of the document; (b) the author; (c) the addressee(s); (d) any other recipient(s); (e) the type of document (*e.g.*, letter, report, e-mail, memorandum, etc.); (f) the general subject matter of

the document; and (g) the specific privilege claimed with respect to the document. If information is redacted from a document produced pursuant to any privilege, identify the redaction by stamping the word “Redacted” on the document at the place where information has been redacted and separately log each redaction.

OBJECTIONS TO INSTRUCTION O:

Federal Defendants object to this instruction because it is redundant in light of Federal Rule of Civil Procedure 26(b)(5) and insofar as it would modify or supersede Rule 26(b)(5).

P. If you object to any portion or aspect of a request, produce all documents responsive to the remainder of the request.

OBJECTIONS TO INSTRUCTION P:

Federal Defendants object to this instruction because it is redundant in light of Federal Rule of Civil Procedure 34(b)(2)(C) and insofar as it would modify or supersede Rule 34(b)(2)(C).

PLAINTIFFS’ FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Federal Defendants incorporate their objections and responses to the foregoing definitions and instructions into each objection and response below. Each response to an RFP below is tendered subject to, and without waiving, the objection(s) made to that RFP. To the extent that Federal Defendants will be producing documents responsive to any particular RFP, they will only be producing non-privileged documents. Federal Defendants will withhold and log privileged, responsive documents in accordance with Federal Rule of Civil Procedure 26(b)(5). Although Federal Defendants lodge specific objections to several RFPs below, on the ground that they are particularly likely to solicit privileged information, that is not—and should not be construed as—a waiver of Federal Defendants’ right to withhold and log any responsive, privileged document in accordance with Rule 26(b)(5), regardless of the particular RFP(s) to which such documents may be responsive.

Federal Defendants specifically object and respond to the RFPs as follows:

REQUEST NO. 1:

Documents sufficient to establish the organizational structure of Federal Defendants as relevant to each Program including organizational charts or other documents that identify the hierarchy of authority among positions, the responsibilities or duties associated with each position, and the names, titles, and dates of service of persons who held those positions (i) during the grant period encompassing February 2017 and (ii) at the present time.

OBJECTIONS TO REQUEST NO. 1:

Federal Defendants object to this RFP because it is cumulative of other written discovery and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs' case. Specifically, for example, Plaintiffs' Interrogatory No. 1 seeks substantially the same information.

Federal Defendants object to this "sufficient to establish" RFP insofar as it can more easily be answered by interrogatory responses, admissions, or stipulation and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs' case.

RESPONSE TO REQUEST NO. 1:

Federal Defendants will answer this RFP through their forthcoming response to Plaintiff's First Interrogatories to Federal Defendants (served Sept. 27, 2019).

REQUEST NO. 2:

Documents sufficient to establish the appropriation from which Federal Defendants expended or awarded federal funds to administer each Program with respect to the grant period encompassing February 2017, as well as the current grant period. This request encompasses the amount that Federal Defendants so expended or awarded for each grant period and the amount that each grantee or sub-grantee received as a result of such expenditure or award for each grant period, including the identity of each grantee or sub-grantee.

OBJECTIONS TO REQUEST NO. 2:

Federal Defendants object to this "sufficient to establish" RFP insofar as it can more easily be answered by interrogatory responses, admissions, or stipulation and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs' case.

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas.

Federal Defendants object to this RFP because it is cumulative of other written discovery and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs' case. Specifically, for example, Plaintiffs' Interrogatory No. 2(f) seeks substantially the same information with respect to grantees and sub-grantees in the State of Texas.

Federal Defendants object to this RFP insofar as it seeks publicly available information and is, therefore, unduly burdensome. Specifically, for example, the laws appropriating money for the UAC and URM programs are a matter of public record. They were also briefed extensively by the parties and are described in the Court's subsequent Memorandum Opinion (ECF No. 48) at 3-4.

Federal Defendants further object to this RFP because it seeks discovery irrelevant to the claims or defenses in this lawsuit. The Court has dismissed Plaintiffs' invocation of the taxpayer standing doctrine and, accordingly, there is no basis for Plaintiffs to seek discovery regarding this matter.

RESPONSE TO REQUEST NO. 2:

Federal Defendants will answer this RFP through their forthcoming response to Plaintiff's First Interrogatories to Federal Defendants (served Sept. 27, 2019). Beyond this information, Federal Defendants stand on their objections.

REQUEST NO. 3:

Documents sufficient to establish the extent, if any, to which the amount of funding available under a grant is dependent on (i) whether a grantee or sub-grantee processes foster or adoptive parent applications, or how many applications the grantee or sub-

grantee processes, or (ii) whether a grantee or sub-grantee places children with foster or adoptive parents, or how many children the grantee or sub-grantee places.

OBJECTIONS TO REQUEST NO. 3:

Federal Defendants object to this “sufficient to establish” RFP insofar as it can more easily be answered by interrogatory responses, admissions, or stipulation and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs’ case.

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB’s administration of grants or cooperative agreements under either Program outside of Texas.

Federal Defendants object to this RFP because it is cumulative of other written discovery and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs’ case. Specifically, for example, Plaintiffs’ Interrogatory No. 2(f) seeks substantially the same information.

Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Additionally, Federal Defendants do not issue grants for adoption through these Programs.

Federal Defendants object to this RFP because it is particularly likely to solicit privileged information, including, but not limited to (a) attorney work product; (b) communications or information protected by the attorney-client privilege; or (c) communications or information protected by the deliberative process privilege. This RFP appears to specifically target internal deliberations by Federal Defendants and their decision-making process, including communications reflecting advice of counsel. Federal Defendants will provide a privilege log

describing the privileged documents withheld and the basis for the assertion of privilege consistent with Rule 26(b)(5).

RESPONSE TO REQUEST NO. 3:

Federal Defendants will answer this RFP through their forthcoming response to Plaintiff's First Interrogatories to Federal Defendants (served Sept. 27, 2019).

REQUEST NO. 4:

Documents sufficient to establish how Federal Defendants care for children in each Program before the children's assignment to a grantee or sub-grantee and how Federal Defendants monitor or track children after the children's assignment to a grantee or sub-grantee (i) during the grant period encompassing February 2017 and (ii) at the present time.

OBJECTIONS TO REQUEST NO. 4:

Federal Defendants object to this "sufficient to establish" RFP insofar as it can more easily be answered by interrogatory responses, admissions, or stipulation and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs' case.

Federal Defendants object to the undefined term "care," which alone is vague and ambiguous.

Federal Defendants object to this RFP because it overbroad, disproportionate to the needs of Plaintiffs' case, and unduly burdensome. Plaintiffs' claims concern their alleged denial, by a religiously affiliated grant sub-recipient, of the opportunity to be foster parents to a youth in the UAC or URM programs. It is irrelevant to those claims how Federal Defendants care for children pre-assignment, or how they monitor or track children after they are assigned to a grantee. This is particularly so because Plaintiffs lack standing to invoke the rights of third-parties.

RESPONSE TO REQUEST NO. 4:

Given the foregoing, Federal Defendants will not search for or produce documents responsive to this request. No such documents would be relevant to any party's claim or defense, and thus fall outside the scope of discovery. Fed. R. Civ. P. 26(b).

REQUEST NO. 5:

Documents sufficient to establish the number of self-identified gay, lesbian, or bisexual children in each Program in each grant period, both with respect to such children in general and with respect to such children assigned to USCCB or any of its sub-grantees (including CCFW or CCD).

OBJECTIONS TO REQUEST NO. 5:

Federal Defendants object to this "sufficient to establish" RFP insofar as it can more easily be answered by interrogatory responses, admissions, or stipulation and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs' case.

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas.

Federal Defendants object to this RFP because it overbroad, disproportionate to the needs of Plaintiffs' case, and unduly burdensome. Plaintiffs' claims concern their alleged denial, by a religiously affiliated grant sub-recipient, of the opportunity to be foster parents to a youth in the UAC or URM programs. It is immaterial to Plaintiffs' claims how many self-identified gay, lesbian, or bisexual children are in either program in any grant period.

Federal Defendants object to this RFP because it expressly seeks documents outside the relevant time period. As explained above, Federal Defendants are conducting an inquiry with respect to the period covering the grants in place in February 2017, to the present.

RESPONSE TO REQUEST NO. 5:

Given the foregoing, Federal Defendants will not search for or produce documents responsive to this request. No such documents would be relevant to any party's claim or defense, and thus fall outside the scope of discovery. Fed. R. Civ. P. 26(b).

REQUEST NO. 6:

Documents sufficient to establish any factors or criteria that Federal Defendants consider when awarding, maintaining, or terminating a grant, and all documents concerning any additional or different factors or criteria that Federal Defendants consider when awarding, maintaining, or terminating a grant to a religiously affiliated (as opposed to a non-religiously affiliated) person.

OBJECTIONS TO REQUEST NO. 6:

Federal Defendants object to this "sufficient to establish" RFP insofar as it can more easily be answered by interrogatory responses, admissions, or stipulation and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs' case.

Federal Defendants object to this RFP because it is cumulative of other written discovery and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs' case. Specifically, Plaintiffs' Interrogatory No. 3 seeks much of the same information.

Federal Defendants object to this RFP because it is particularly likely to solicit privileged information, including, but not limited to (a) attorney work product; (b) communications or information protected by the attorney-client privilege; or (c) communications or information protected by the deliberative process privilege. This RFP appears to specifically target internal deliberations by Federal Defendants and their decision-making process, including communications reflecting advice of counsel. Federal Defendants will provide a privilege log describing the privileged documents withheld and the basis for the assertion of privilege consistent with Rule 26(b)(5).

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant

to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas.

Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Additionally, Federal Defendants do not issue grants for adoption through these Programs.

Federal Defendants object to this RFP insofar as it seeks publicly available information and is, therefore, unduly burdensome. Specifically, the awarding, maintaining, and terminating of federal grants is highly regulated and subject to various, publicly-available statutes, regulations, and policies.

RESPONSE TO REQUEST NO. 6:

Without waiving the foregoing objections, Federal Defendants respectfully refer Plaintiffs to Federal Defendants' forthcoming response to Plaintiffs' Interrogatory No. 3 and the following, non-exclusive, publicly-available (or already-produced) sources:

- 2 C.F.R. Part 200
- 45 C.F.R. Part 75
- 45 C.F.R. Part 87
- HHS Grants Policy Statement, *available at* <https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf>
- HHS ACF General Terms and Conditions for Mandatory Formula, Block, and Entitlement Grant Programs,
 - Effective Oct. 1, 2017 [HHS00185]
 - Effective Oct. 1, 2018 [HHS00196]
- URM Replacement Designee Checklist [HHS00152]

The terms of a given grant or cooperative agreement themselves, and any preceding funding opportunity announcement (“FOA”), will also be relevant to Federal Defendants’ awarding, maintaining, or terminating the grant or cooperative agreement.

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs’ claims and Federal Defendants’ defenses, including documents that may be responsive to this RFP. Federal Defendants’ discovery plan is tailored to the allegations in Plaintiffs’ First Amended Complaint, which concern Federal Defendants’ selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs’ requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 7:

All documents concerning any policy or practice under a Program permitting or enabling referrals to another grantee or sub-grantee in whole or in part based on religious considerations, including the terms of such policy or practice, the dates such policy or practice was applicable, and all documents concerning any application of such policy or practice.

OBJECTIONS TO REQUEST NO. 7:

Federal Defendants object to this RFP because it expressly seeks documents outside the relevant time period. As explained above, Federal Defendants are conducting an inquiry with respect to the period covering the grants in place in February 2017, to the present.

Federal Defendants object to this RFP because it is particularly likely to solicit privileged information, including, but not limited to (a) attorney work product; (b) communications or

information protected by the attorney-client privilege; or (c) communications or information protected by the deliberative process privilege. This RFP appears to specifically target internal deliberations by Federal Defendants and their decision-making process, including communications reflecting advice of counsel. Federal Defendants will provide a privilege log describing the privileged documents withheld and the basis for the assertion of privilege consistent with Rule 26(b)(5).

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas.

Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Additionally, Federal Defendants do not issue grants for adoption through these Programs.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case. Documents concerning other religious beliefs are categorically outside the scope of discovery. Fed. R. Civ. P. 26(b).

Federal Defendants object to the clause beginning “including,” insofar as it requests information that may not be apparent from a responsive document itself. Federal Defendants are only required to produce documents as they are kept in the usual course of business, and ESI in a form in which it is ordinarily maintained. Fed. R. Civ. P. 34(b)(2)(E). Federal Defendants need not “includ[e]” the additional information that Plaintiffs request.

RESPONSE TO REQUEST NO. 7:

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs’ claims and Federal Defendants’ defenses, including documents that may be responsive to this RFP. Federal Defendants’ discovery plan is tailored to the allegations in Plaintiffs’ First Amended Complaint, which concern Federal Defendants’ selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs’ requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 8:

All documents concerning any non-discrimination policy or provision (including any concerning parenting of children by same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals; marriage of same-sex couples; other same-sex domestic partnerships; gay, lesbian, or bisexual people; homosexuality, bisexuality, or sexual orientation; or religion) applicable to a grantee or sub-grantee by virtue of being a grantee or sub-grantee, including its scope and dates of applicability, and any training related thereto.

OBJECTIONS TO REQUEST NO. 8:

Federal Defendants object to this RFP because it expressly seeks documents outside the relevant time period. As explained above, Federal Defendants are conducting an inquiry with respect to the period covering the grants in place in February 2017, to the present.

Federal Defendants object to this RFP because it is particularly likely to solicit privileged information, including, but not limited to (a) attorney work product; (b) communications or information protected by the attorney-client privilege; or (c) communications or information protected by the deliberative process privilege. This RFP appears to specifically target internal deliberations by Federal Defendants and their decision-making process, including communications reflecting advice of counsel. Federal Defendants will provide a privilege log describing the privileged documents withheld and the basis for the assertion of privilege consistent with Rule 26(b)(5).

Federal Defendants object to this RFP insofar as it seeks publicly available information and is, therefore, unduly burdensome.

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to the clause beginning “including,” insofar as it requests information that may not be apparent from a responsive document itself. Federal Defendants are only required to produce documents as they are kept in the usual course of business, and ESI in a form in which it is ordinarily maintained. Fed. R. Civ. P. 34(b)(2)(E). Federal Defendants need not “includ[e]” the additional information that Plaintiffs request.

RESPONSE TO REQUEST NO. 8:

Federal Defendants incorporate here their response to RFP No. 6, above.

REQUEST NO. 9:

Documents sufficient to establish the number and identities of grantees or sub-grantees that have discontinued participation in each Program (whether at the instigation of a grantee, a sub-grantee, or Federal Defendants) in each grant period, including the reason(s) therefor and the alternative arrangements Federal Defendants made with respect to the children assigned to the grantee or sub-grantee, as well as the foster or adoptive parents processed by the grantee or sub-grantee.

OBJECTIONS TO REQUEST NO. 9:

Federal Defendants object to this “sufficient to establish” RFP insofar as it can more easily be answered by interrogatory responses, admissions, or stipulation and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs’ case.

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB’s administration of grants or cooperative agreements under either Program outside of Texas.

Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Additionally, Federal Defendants do not issue grants for adoption through these Programs.

Federal Defendants object to this RFP because it is cumulative of other written discovery and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs' case. Specifically, for example, Plaintiffs' Interrogatory No. 2(h) seeks substantially the same information with respect to the State of Texas.

RESPONSE TO REQUEST NO. 9:

Federal Defendants will answer this RFP through their forthcoming response to Plaintiff's First Interrogatories to Federal Defendants (served Sept. 27, 2019). As to documents requested beyond that response, Federal Defendants stand on their objections.

REQUEST NO. 10:

Documents sufficient to establish [a] the factors or criteria that Federal Defendants consider to further the best interests of children in each Program (including as related to any issue concerning parenting of children by same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals; marriage of same-sex couples; other same-sex domestic partnerships; gay, lesbian, or bisexual people; homosexuality, bisexuality, or sexual orientation; or religion), [b] as well as the safeguards, monitoring, oversight, policies, or protocols that Federal Defendants have implemented or enforced that seek to ensure that grantees and sub-grantees further the best interests of such children.

OBJECTIONS TO REQUEST NO. 10:

Federal Defendants object to this "sufficient to establish" RFP insofar as it can more easily be answered by interrogatory responses, admissions, or stipulation and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs' case.

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas.

Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief

relevant to this case. Documents concerning other religious beliefs are categorically outside the scope of discovery. Fed. R. Civ. P. 26(b).

Federal Defendants object to this RFP because it overbroad, disproportionate to the needs of Plaintiffs' case, and unduly burdensome. Plaintiffs' claims concern their alleged denial, by a religiously affiliated grant sub-recipient, of the opportunity to be foster parents to a youth in the UAC or URM programs. This request seeks documents that are immaterial to those claims.

RESPONSE TO REQUEST NO. 10:

As to what Plaintiffs have labeled "10[a]" above, Federal Defendants do not consider whether potential foster parents are of the same sex. This representation is "sufficient to establish" that the same-sex nature of a given couple is not a factor considered by Federal Defendants regarding the best interests of children in each Program, and any search for responsive documents would, therefore, be unduly burdensome and not proportional to the needs of the case. As to any other issue concerning the best interests of children in each Program, Federal Defendants will not search for or produce documents responsive to this request. No such documents would be relevant to any party's claim or defense, and thus fall outside the scope of discovery. Fed. R. Civ. P. 26(b).

Regarding what is labeled "10[b]," Federal Defendants incorporate here their response to RFP No. 6, above.

REQUEST NO. 11:

All documents concerning:

- a. the policies or procedures (including training and literature) applicable to processing foster or adoptive parent applications under each Program, including the processes for recruiting, accepting applications from, screening, licensing, or approving prospective foster or adoptive parents (including the roles of Federal Defendants, a grantee or sub-grantee, and any third party) and the factors or criteria that are required, expected, or asked to be considered in doing so;
- b. the communication of such policies or procedures by Federal Defendants to grantees or sub-grantees; and

c. any policy or protocol concerning reporting and/or compliance by grantees or sub-grantees with respect to processing foster or adoptive parent applications. Include documents sufficient to establish any additional or different policies or procedures applicable to such processing in the State of Texas.

OBJECTIONS TO REQUEST NO. 11:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas.

Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Additionally, Federal Defendants do not issue grants for adoption through these Programs.

Federal Defendants object to this RFP because it expressly seeks documents outside the relevant time period. As explained above, Federal Defendants are conducting an inquiry with respect to the period covering the grants in place in February 2017, to the present.

Federal Defendants object to this RFP insofar as it seeks publicly available information and is, therefore, unduly burdensome.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

Federal Defendants object to this "sufficient to establish" RFP insofar as it can more easily be answered by interrogatory responses, admissions, or stipulation and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs' case.

RESPONSE TO REQUEST NO. 11:

Federal Defendants incorporate here their response to RFP No. 6, above.

REQUEST NO. 12:

All documents concerning:

- d. the policies or procedures (including training and literature) applicable to placing children with foster or adoptive parents under the Programs, including the processes concerning such placement (including conducting home studies, and including the roles of Federal Defendants, a grantee or sub-grantee, and any third party) and the factors or criteria that are required, expected, or asked to be considered in doing so;
- e. the communication of such policies or procedures by Federal Defendants to grantees or sub-grantees; and
- f. any policy or protocol concerning reporting and/or compliance by grantees or sub-grantees with respect to placing children with foster or adoptive parents.

Include documents sufficient to establish any additional or different policies or procedures applicable to such placement in the State of Texas.

OBJECTIONS TO REQUEST NO. 12:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas.

Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Additionally, Federal Defendants do not issue grants for adoption through these Programs.

Federal Defendants object to this RFP because it expressly seeks documents outside the relevant time period. As explained above, Federal Defendants are conducting an inquiry with respect to the period covering the grants in place in February 2017, to the present.

Federal Defendants object to this RFP insofar as it seeks publicly available information and is, therefore, unduly burdensome.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

Federal Defendants object to this "sufficient to establish" RFP insofar as it can more easily be answered by interrogatory responses, admissions, or stipulation and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs' case.

RESPONSE TO REQUEST NO. 12:

Federal Defendants incorporate here their response to RFP No. 6, above.

REQUEST NO. 13:

All documents concerning any actual or feared shortage of child placing agencies under a Program and any effect of such shortage on children in the Program.

OBJECTIONS TO REQUEST NO. 13:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas.

Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Additionally, Federal Defendants do not issue grants for adoption through these Programs.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of

documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

Federal Defendants object to this RFP because it is particularly likely to solicit privileged information, including, but not limited to (a) attorney work product; (b) communications or information protected by the attorney-client privilege; or (c) communications or information protected by the deliberative process privilege. This RFP appears to specifically target internal deliberations by Federal Defendants and their decision-making process, including communications reflecting advice of counsel. Federal Defendants will provide a privilege log describing the privileged documents withheld and the basis for the assertion of privilege consistent with Rule 26(b)(5).

Federal Defendants object to the undefined term “effect,” as it does not describe with reasonable particularity the category of documents sought. Fed. R. Civ. P. 34(b)(1)(A).

RESPONSE TO REQUEST NO. 13:

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs’ claims and Federal Defendants’ defenses, including documents that may be responsive to this RFP. Federal Defendants’ discovery plan is tailored to the allegations in Plaintiffs’ First Amended Complaint, which concern Federal Defendants’ selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs’ requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days

from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 14:

All documents concerning any actual or feared shortage of foster or adoptive parents under a Program and any effect of such shortage on children in the Program.

OBJECTIONS TO REQUEST NO. 14:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas.

Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Additionally, Federal Defendants do not issue grants for adoption through these Programs.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

Federal Defendants object to the undefined term "effect," as it does not describe with reasonable particularity the category of documents sought. Fed. R. Civ. P. 34(b)(1)(A).

RESPONSE TO REQUEST NO. 14:

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs' claims and Federal Defendants' defenses, including documents that may be responsive to this RFP. Federal Defendants' discovery plan is tailored to the allegations in Plaintiffs' First Amended Complaint, which

concern Federal Defendants' selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs' requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 15:

All documents concerning any complaint against, or investigation or review of, a grantee or sub-grantee based on:

- g. an alleged failure to comply with a non-discrimination policy applicable to a Program;
- h. alleged discrimination against same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals under a Program; or
- i. alleged administration of the grant based on the grantee's or sub-grantee's religious beliefs, including the identity of the grantee or sub-grantee, the date of the alleged action or inaction, the nature of the alleged action or inaction, any response, decision, or action by Federal Defendants concerning the alleged action or inaction, any material created during the course of the investigation or review, the identity of any person with information concerning the alleged action or inaction, any report related thereto, and any corrective action plan.

OBJECTIONS TO REQUEST NO. 15:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding

same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to the clause beginning “including,” insofar as it requests information that may not be apparent from a responsive document itself. Federal Defendants are only required to produce documents as they are kept in the usual course of business, and ESI in a form in which it is ordinarily maintained. Fed. R. Civ. P. 34(b)(2)(E). Federal Defendants need not “includ[e]” the additional information that Plaintiffs request.

Federal Defendants object to this RFP’s request for “all” documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

Federal Defendants object to this RFP because it is particularly likely to solicit privileged information, including, but not limited to (a) attorney work product; (b) communications or information protected by the attorney-client privilege; or (c) communications or information protected by the deliberative process privilege. On its face, the request seeks all documents concerning agency deliberations regarding certain matters, including advice of counsel and documents prepared in anticipation of litigation, to the extent reflected in such documents. Federal Defendants will provide a privilege log describing the privileged documents withheld and the basis for the assertion of privilege consistent with Rule 26(b)(5).

RESPONSE TO REQUEST NO. 15:

Subject to the foregoing objections, Federal Defendants state that the episode involving Plaintiffs and CCFW alleged in the Complaint is the only responsive instance of which Federal Defendants are aware, concerning objections by a grantee or sub-grantee to working with

prospective foster parents in either Program as a result of religion or sexual orientation. With respect to that episode, Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs' claims and Federal Defendants' defenses, including documents that may be responsive to this RFP. Federal Defendants' discovery plan is tailored to the allegations in Plaintiffs' First Amended Complaint, which concern Federal Defendants' selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs' requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 16:

Documents sufficient to establish Federal Defendants' policies, protocols, or practices with respect to same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals serving as foster or adoptive parents under each Program, including the bases therefor, as well as the impact of any judicial decision—including *United States v. Windsor*, 133 S. Ct. 2675 (2013), or *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)—on such policies, protocols, or practices.

OBJECTIONS TO REQUEST NO. 16:

Federal Defendants object to this RFP insofar as it seeks publicly available information and is, therefore, unduly burdensome.

RESPONSE TO REQUEST NO. 16:

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs' claims and Federal Defendants' defenses, including documents that may be responsive to this RFP. Federal Defendants' discovery plan is tailored to the allegations in Plaintiffs' First Amended Complaint, which

concern Federal Defendants' selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs' requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 17:

Documents sufficient to establish the number of same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals who submitted a foster or adoptive parent application under each Program, or sought to do so, in each grant period.

OBJECTIONS TO REQUEST NO. 17:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to this RFP because it is cumulative of other written discovery and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs' case. Specifically, for example, Plaintiffs' Interrogatory No. 4(a) seeks substantially the same information.

RESPONSE TO REQUEST NO. 17:

Federal Defendants will answer this RFP through their forthcoming response to Plaintiff's First Interrogatories to Federal Defendants (served Sept. 27, 2019).

REQUEST NO. 18:

All documents concerning the number of same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals who submitted a foster or adoptive parent application under each Program, or sought to do so, whose application was not processed or not approved for any reason concerning parenting of children by same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals; marriage of same-sex couples; other same-sex domestic partnerships; gay, lesbian, or bisexual people; homosexuality, bisexuality, or sexual orientation; or religion in each grant period, including the identity of the grantee or sub-grantee at issue, the time period at issue, and any response, decision, or action by Federal Defendants related thereto.

OBJECTIONS TO REQUEST NO. 18:

Federal Defendants object to this "sufficient to establish" RFP insofar as it can more easily be answered by interrogatory responses, admissions, or stipulation and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs' case.

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of

documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

Federal Defendants object to this RFP because it is particularly likely to solicit privileged information, including, but not limited to (a) attorney work product; (b) communications or information protected by the attorney-client privilege; or (c) communications or information protected by the deliberative process privilege. This RFP appears to specifically target internal deliberations by Federal Defendants and their decision-making process, including communications reflecting advice of counsel. Federal Defendants will provide a privilege log describing the privileged documents withheld and the basis for the assertion of privilege consistent with Rule 26(b)(5).

Federal Defendants object to this RFP because it is cumulative of other written discovery and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs' case. Specifically, for example, Plaintiffs' Interrogatory No. 4(c) seeks substantially the same information.

RESPONSE TO REQUEST NO. 18:

Federal Defendants will answer this RFP through their forthcoming response to Plaintiff's First Interrogatories to Federal Defendants (served Sept. 27, 2019).

REQUEST NO. 19:

All documents concerning any request for any exemption from any non-discrimination policy or provision, or for any religious accommodation, under each Program (including permission to refer to another grantee or sub-grantee), including the identity of the requestor, the date of the request, and any response, decision, or action by Federal Defendants related thereto.

OBJECTIONS TO REQUEST NO. 19:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant

to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to the clause beginning "including," insofar as it requests information that may not be apparent from a responsive document itself. Federal Defendants are only required to produce documents as they are kept in the usual course of business, and ESI in a form in which it is ordinarily maintained. Fed. R. Civ. P. 34(b)(2)(E). Federal Defendants need not "includ[e]" the additional information that Plaintiffs request.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

Federal Defendants object to this RFP because it is particularly likely to solicit privileged information, including, but not limited to (a) attorney work product; (b) communications or information protected by the attorney-client privilege; or (c) communications or information protected by the deliberative process privilege. This RFP appears to specifically target internal deliberations by Federal Defendants and their decision-making process, including communications reflecting advice of counsel. Federal Defendants will provide a privilege log

describing the privileged documents withheld and the basis for the assertion of privilege consistent with Rule 26(b)(5).

RESPONSE TO REQUEST NO. 19:

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs' claims and Federal Defendants' defenses, including documents that may be responsive to this RFP. Federal Defendants' discovery plan is tailored to the allegations in Plaintiffs' First Amended Complaint, which concern Federal Defendants' selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs' requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 20:

All documents concerning grantees or sub-grantees that administer grants consistent with their religious beliefs, intend to do so, or Federal Defendants have reason to suspect may do so (including with respect to processing foster or adoptive parent applications or placing children with foster or adoptive parents), including the identities of such grantees or sub-grantees, how they administer grants consistent with their religious beliefs, and all grant or sub-grant documents related thereto.

OBJECTIONS TO REQUEST NO. 20:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs

during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to this RFP as excessively broad, even as narrowed by the foregoing objections. “All documents concerning” USCCB is not nearly tailored to the needs of Plaintiffs’ case, which alleges a specific theory of constitutional harm in a particular place with respect to a particular service.

Federal Defendants object to the clause beginning “including,” insofar as it requests information that may not be apparent from a responsive document itself. Federal Defendants are only required to produce documents as they are kept in the usual course of business, and ESI in a form in which it is ordinarily maintained. Fed. R. Civ. P. 34(b)(2)(E). Federal Defendants need not “includ[e]” the additional information that Plaintiffs request.

Federal Defendants object to this RFP’s request for “all” documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

RESPONSE TO REQUEST NO. 20:

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs’ claims and Federal Defendants’ defenses, including documents that may be responsive to this RFP. Federal Defendants’ discovery plan is tailored to the allegations in Plaintiffs’ First Amended Complaint, which concern Federal Defendants’ selection and monitoring of USCCB as a grantee to provide long-

term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs' requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 21:

All documents concerning any policy or practice applicable to each Program concerning grantees' or sub-grantees' administration of grants consistent with their religious beliefs (including with respect to processing foster or adoptive parent applications or placing children with foster or adoptive parents), or concerning any decision or action to accommodate a grantee's or sub-grantee's religious beliefs (including by permitting or enabling referral to another grantee or sub-grantee).

OBJECTIONS TO REQUEST NO. 21:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to this RFP because it is cumulative of other written discovery and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs' case. Specifically, for example, Plaintiffs' Interrogatory No. 3(e) seeks substantially the same information.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

Federal Defendants object to this RFP because it is particularly likely to solicit privileged information, including, but not limited to (a) attorney work product; (b) communications or information protected by the attorney-client privilege; or (c) communications or information protected by the deliberative process privilege. This RFP appears to specifically target internal deliberations by Federal Defendants and their decision-making process, including communications reflecting advice of counsel. Federal Defendants will provide a privilege log describing the privileged documents withheld and the basis for the assertion of privilege consistent with Rule 26(b)(5).

RESPONSE TO REQUEST NO. 21:

Federal Defendants will answer this RFP through their forthcoming response to Plaintiff's First Interrogatories to Federal Defendants (served Sept. 27, 2019).

REQUEST NO. 22:

All documents concerning any grantee or sub-grantee that has discontinued participation in a Program (whether at the instigation of the grantee, a sub-grantee, or Federal Defendants) in whole or in part because Federal Defendants did not accommodate the grantee's or sub-grantee's religious beliefs, including the identity of the grantee or sub-grantee, the date of the discontinuation, the nature of the religious beliefs that Federal Defendants did not accommodate, and the alternative arrangements Federal Defendants made with respect to the children assigned to the grantee or sub-grantee, as well as the foster or adoptive parents processed by the grantee or sub-grantee.

OBJECTIONS TO REQUEST NO. 22:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative

agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

Federal Defendants object to this RFP because it is cumulative of other written discovery and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs' case. Specifically, for example, Plaintiffs' Interrogatory No. 2(h) seeks substantially the same information.

RESPONSE TO REQUEST NO. 22:

Federal Defendants will answer this RFP through their forthcoming response to Plaintiff's First Interrogatories to Federal Defendants (served Sept. 27, 2019). As to information beyond Federal Defendants' response to Plaintiffs' Interrogatory No. 2(h), Federal Defendants stand on their objections.

REQUEST NO. 23:

All documents concerning any couples or individuals other than Plaintiffs who submitted a foster or adoptive parent application under a Program, or sought to do so, whose application was not processed or not approved for any reason concerning the religious beliefs of a grantee or sub-grantee, including the identity of the grantee or sub-grantee, the time period at issue, and any response, decision, or action by Federal Defendants related thereto.

OBJECTIONS TO REQUEST NO. 23:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

Federal Defendants object to this RFP because it is particularly likely to solicit privileged information, including, but not limited to (a) attorney work product; (b) communications or information protected by the attorney-client privilege; or (c) communications or information protected by the deliberative process privilege. This RFP appears to specifically target internal deliberations by Federal Defendants and their decision-making process, including communications reflecting advice of counsel. Federal Defendants will provide a privilege log describing the privileged documents withheld and the basis for the assertion of privilege consistent with Rule 26(b)(5).

RESPONSE TO REQUEST NO. 23:

Federal Defendants incorporate here their response to RFP No. 15.

REQUEST NO. 24:

All documents concerning any couples or individuals who were approved to serve as foster or adoptive parents under a Program with whom a child was not placed for any reason concerning the religious beliefs of a grantee or sub-grantee, including the identity of the grantee or sub-grantee, the time period at issue, and any response, decision, or action by Federal Defendants related thereto.

OBJECTIONS TO REQUEST NO. 24:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

Federal Defendants object to this RFP because it is particularly likely to solicit privileged information, including, but not limited to (a) attorney work product; (b) communications or information protected by the attorney-client privilege; or (c) communications or information protected by the deliberative process privilege. This RFP appears to specifically target internal deliberations by Federal Defendants and their decision-making process, including communications reflecting advice of counsel. Federal Defendants will provide a privilege log

describing the privileged documents withheld and the basis for the assertion of privilege consistent with Rule 26(b)(5).

RESPONSE TO REQUEST NO. 24:

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs' claims and Federal Defendants' defenses, including documents that may be responsive to this RFP. Federal Defendants' discovery plan is tailored to the allegations in Plaintiffs' First Amended Complaint, which concern Federal Defendants' selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs' requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 25:

All documents concerning any grantee or sub-grantee that has, or Federal Defendants have reason to suspect has, a policy or practice of not accepting applications from a class of prospective foster or adoptive parents or not placing children with a class of foster or adoptive parents (including same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals) in whole or in part because of the grantee's or sub-grantee's religious beliefs, including the identity of the grantee or sub-grantee, the nature of the class, and any response, decision, or action by Federal Defendants related thereto.

OBJECTIONS TO REQUEST NO. 25:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP

insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

Federal Defendants object to this RFP because it is particularly likely to solicit privileged information, including, but not limited to (a) attorney work product; (b) communications or information protected by the attorney-client privilege; or (c) communications or information protected by the deliberative process privilege. This RFP appears to specifically target internal deliberations by Federal Defendants and their decision-making process, including communications reflecting advice of counsel. Federal Defendants will provide a privilege log describing the privileged documents withheld and the basis for the assertion of privilege consistent with Rule 26(b)(5).

Federal Defendants object to the clause beginning "including," insofar as it requests information that may not be apparent from a responsive document itself. Federal Defendants are only required to produce documents as they are kept in the usual course of business, and ESI in a form in which it is ordinarily maintained. Fed. R. Civ. P. 34(b)(2)(E). Federal Defendants need not "includ[e]" the additional information that Plaintiffs request.

RESPONSE TO REQUEST NO. 25:

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs' claims and Federal Defendants' defenses, including documents that may be responsive to this RFP. Federal Defendants' discovery plan is tailored to the allegations in Plaintiffs' First Amended Complaint, which concern Federal Defendants' selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs' requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 26:

Documents sufficient to identify grantees that are willing to place children with same-sex married couples and to process foster parent applications submitted by such couples and, separately, grantees that are not willing to do so, at the present time.

OBJECTIONS TO REQUEST NO. 26:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case.

RESPONSE TO REQUEST NO. 26:

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs' claims and Federal Defendants' defenses, including documents that may be responsive to this RFP. Federal Defendants' discovery plan is tailored to the allegations in Plaintiffs' First Amended Complaint, which concern Federal Defendants' selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs' requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 27:

All documents concerning the possibility of a grantee or sub-grantee discontinuing participation in a Program if required to place children with same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals or to process foster or adoptive parent applications submitted by such couples or such individuals, including the identity of any grantee or sub-grantee at issue and any decision or action by Federal Defendants related thereto.

OBJECTIONS TO REQUEST NO. 27:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding

same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to the clause beginning “including,” insofar as it requests information that may not be apparent from a responsive document itself. Federal Defendants are only required to produce documents as they are kept in the usual course of business, and ESI in a form in which it is ordinarily maintained. Fed. R. Civ. P. 34(b)(2)(E). Federal Defendants need not “includ[e]” the additional information that Plaintiffs request.

Federal Defendants object to this RFP’s request for “all” documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

RESPONSE TO REQUEST NO. 27:

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs’ claims and Federal Defendants’ defenses, including documents that may be responsive to this RFP. Federal Defendants’ discovery plan is tailored to the allegations in Plaintiffs’ First Amended Complaint, which concern Federal Defendants’ selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs’ requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 28:

All documents concerning feedback or comment from any person — including employees of Federal Defendants, grantees or sub-grantees or their employees, legislators or other policymakers, prospective or approved foster or adoptive parents other than Plaintiffs, and child welfare organizations — concerning administration of grants consistent with the religious beliefs (including any religious beliefs concerning parenting of children by same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals; marriage of same-sex couples; other same-sex domestic partnerships; gay, lesbian, or bisexual people; or homosexuality, bisexuality, or sexual orientation) of a grantee or sub-grantee (including USCCB, CCFW, or CCD), including with respect to processing foster or adoptive parent applications or placing children with foster or adoptive parents.

OBJECTIONS TO REQUEST NO. 28:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

RESPONSE TO REQUEST NO. 28:

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs' claims and Federal Defendants'

defenses, including documents that may be responsive to this RFP. Federal Defendants' discovery plan is tailored to the allegations in Plaintiffs' First Amended Complaint, which concern Federal Defendants' selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs' requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 29:

[a] All documents concerning Federal Defendants' actual or purported purpose in permitting or otherwise enabling grantees or sub-grantees (including USCCB, CCFW, or CCD) not to accept or otherwise process foster or adoptive parent applications from same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals or not to place children with such couples or individuals in whole or in part based on the religious beliefs of the grantee or sub-grantee, and [b] all documents and communications identifying and otherwise concerning any child welfare or governmental interest that Federal Defendants believe is advanced by this policy or practice, or may rely on in support of any dispositive motion or at trial in this action.

OBJECTIONS TO REQUEST NO. 29:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding

same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

Federal Defendants object to this RFP because it is particularly likely to solicit privileged information, including, but not limited to (a) attorney work product; (b) communications or information protected by the attorney-client privilege; or (c) communications or information protected by the deliberative process privilege. This RFP appears to specifically target internal deliberations by Federal Defendants and their decision-making process, including communications reflecting advice of counsel. Federal Defendants will provide a privilege log describing the privileged documents withheld and the basis for the assertion of privilege consistent with Rule 26(b)(5).

RESPONSE TO REQUEST NO. 29:

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs' claims and Federal Defendants' defenses, including documents that may be responsive to this RFP. Federal Defendants' discovery plan is tailored to the allegations in Plaintiffs' First Amended Complaint, which concern Federal Defendants' selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs' requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants

anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 30:

All documents concerning Federal Defendants' awareness or understanding of USCCB's religious beliefs concerning parenting of children by same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals; marriage of same-sex couples; other same-sex domestic partnerships; gay, lesbian, or bisexual people; or homosexuality, bisexuality, or sexual orientation.

OBJECTIONS TO REQUEST NO. 30:

Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case. Documents concerning other religious beliefs are categorically outside the scope of discovery. Fed. R. Civ. P. 26(b).

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

RESPONSE TO REQUEST NO. 30:

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs' claims and Federal Defendants' defenses, including documents that may be responsive to this RFP. Federal Defendants' discovery plan is tailored to the allegations in Plaintiffs' First Amended Complaint, which concern Federal Defendants' selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs' requests seek information beyond this

scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 31:

All documents concerning grants for which USCCB applied or was otherwise considered, successfully or unsuccessfully, including any grant application solicitation, grant application (including any supplement thereto), communication between Federal Defendants and USCCB concerning any grant application, grant application evaluation, draft grant award, grant award (including any grant terms or conditions or other supplement thereto), document or communication concerning grant administration, grant renewal, or sub-grant award (including any sub-grant terms or conditions or other supplement thereto) concerning:

- j. USCCB or any of its sub-grantees administering or intending to administer a grant consistent with its religious beliefs;
- k. any response, decision, or action by Federal Defendants with respect to USCCB or any of its sub-grantees administering or intending to administer a grant consistent with its religious beliefs;
- l. the religious beliefs of USCCB or any of its sub-grantees concerning parenting of children by same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals; marriage of same-sex couples; other same-sex domestic partnerships; gay, lesbian, or bisexual people; or homosexuality, bisexuality, or sexual orientation; or
- m. marriage of same-sex couples; other same-sex domestic partnerships; gay, lesbian, or bisexual people; or homosexuality, bisexuality, or sexual orientation as related to placement of children with foster or adoptive parents or processing of foster or adoptive parent applications.

If not otherwise produced, with respect to any grant for which USCCB applied or was otherwise considered, successfully or unsuccessfully, any grant application (including any supplement thereto), grant award (including any grant terms or conditions or other supplement thereto), or sub-grant award (including any sub-grant terms or conditions or other supplement thereto), with respect to the grant period encompassing February 2017.

OBJECTIONS TO REQUEST NO. 31:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP

insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

RESPONSE TO REQUEST NO. 31:

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs' claims and Federal Defendants' defenses, including documents that may be responsive to this RFP. Federal Defendants' discovery plan is tailored to the allegations in Plaintiffs' First Amended Complaint, which concern Federal Defendants' selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs' requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 32:

Documents sufficient to establish the services provided by USCCB or its sub-grantees to children and to prospective or approved foster or adoptive parents that are not offered by other grantees or sub-grantees.

OBJECTIONS TO REQUEST NO. 32:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to this RFP because it overbroad, disproportionate to the needs of Plaintiffs' case, and unduly burdensome. Plaintiffs' claims concern their alleged denial, by a religiously affiliated grant sub-recipient, of the opportunity to be foster parents to a youth in the UAC or URM programs. This RFP on its face would require Federal Defendants to compare USCCB to every other grantee, under both the UAC and URM programs, regarding a host of services not remotely relevant to Plaintiffs' case. It would similarly require Federal Defendants to compare CCFW and CCD to every other sub-grantee, under both the UAC and URM programs, regarding a host of services not remotely relevant to Plaintiffs' case. It is unclear how Federal Defendants could search in response to this request, but it is clear that any such search would be unduly burdensome and disproportionate to the needs of Plaintiffs' case.

RESPONSE TO REQUEST NO. 32:

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs' claims and Federal Defendants'

defenses, including documents that may be responsive to this RFP. Federal Defendants' discovery plan is tailored to the allegations in Plaintiffs' First Amended Complaint, which concern Federal Defendants' selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs' requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 33:

All documents concerning the services to be performed by USCCB or any of its sub-grantees (including CCFW or CCD) under a grant, or the administration of a grant by USCCB or any of its sub-grantees (including CCFW or CCD), during the grant period encompassing February 2017, concerning recruiting, receiving applications from, screening, licensing, approving, or otherwise processing prospective foster or adoptive parents or placing children with foster or adoptive parents, including the factors or criteria that USCCB or any of its sub-grantees (including CCFW or CCD) were required, expected, or asked to consider in doing so.

OBJECTIONS TO REQUEST NO. 33:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

RESPONSE TO REQUEST NO. 33:

The services to be performed by a grantee under a grant are evident from the grant itself, which Federal Defendants will produce (to the extent not already produced). Among those services, the responsibility to determine which measures are performed by a sub-grantee is a matter between the grantee and sub-grantee; any request for a description of such services should be directed, in this case, to Defendant USCCB.

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs' claims and Federal Defendants' defenses, including documents that may be responsive to this RFP. Federal Defendants' discovery plan is tailored to the allegations in Plaintiffs' First Amended Complaint, which concern Federal Defendants' selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs' requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 34:

All documents concerning any safeguard, monitoring, oversight, policy, or protocol Federal Defendants implemented or enforced, with respect to the grant period encompassing February 2017, to seek to ensure that (i) a grantee or sub-grantee,

including USCCB or any of its sub-grantees (including CCFW or CCD), would not administer a grant based on the grantee's or sub-grantee's religious beliefs, and (ii) a grant, including any grant administered by USCCB or any of its sub-grantees (including CCFW or CCD), would be administered in compliance with any non-discrimination policy or provision applicable to a Program, including the terms or scope of such non-discrimination policy or provision, and any reporting thereunder.

OBJECTIONS TO REQUEST NO. 34:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to the clause beginning "including," insofar as it requests information that may not be apparent from a responsive document itself. Federal Defendants are only required to produce documents as they are kept in the usual course of business, and ESI in a form in which it is ordinarily maintained. Fed. R. Civ. P. 34(b)(2)(E). Federal Defendants need not "includ[e]" the additional information that Plaintiffs request.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

Federal Defendants object to this RFP because it is cumulative of other written discovery and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs' case. Specifically, for example, Plaintiffs' Interrogatory No. 3(d) seeks substantially the same information.

Federal Defendants object to this RFP because it is particularly likely to solicit privileged information, including, but not limited to (a) attorney work product; (b) communications or information protected by the attorney-client privilege; or (c) communications or information protected by the deliberative process privilege. This RFP appears to specifically target internal deliberations by Federal Defendants and their decision-making process, including communications reflecting advice of counsel. Federal Defendants will provide a privilege log describing the privileged documents withheld and the basis for the assertion of privilege consistent with Rule 26(b)(5).

RESPONSE TO REQUEST NO. 34:

Federal Defendants incorporate here their response to RFP No. 6, above.

REQUEST NO. 35:

All documents concerning any safeguard, monitoring, oversight, policy, or protocol USCCB implemented or enforced, with respect to the grant period encompassing February 2017, to seek to ensure that (i) USCCB and its sub-grantees (including CCFW or CCD) would not administer a grant based on its or its sub-grantee's religious beliefs, and (ii) a grant administered by USCCB or its sub-grantees (including CCFW or CCD) would be administered in compliance with any non-discrimination policy or provision applicable to a Program, including the terms or scope of such non-discrimination policy or provision, and any reporting thereunder.

OBJECTIONS TO REQUEST NO. 35:

Federal Defendants object to this RFP because it is more properly directed at Defendant USCCB and is, therefore, unduly burdensome as directed at Federal Defendants. This RFP mimics RFP No. 34 exactly, except that "Federal Defendants implemented or enforced" is replaced with "USCCB implemented or enforced." Thus, RFP No. 35 seems only to seek

safeguards, monitoring, oversight, policies, and protocols that USCCB imposes in addition to those imposed by Federal Defendants. Such documents are, therefore, more properly sought from USCCB, who is already a party to this case (and thus amenable to service of Rule 34 requests for production).

Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Additionally, Federal Defendants do not issue grants for adoption through these Programs.

Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case. Documents concerning other religious beliefs are categorically outside the scope of discovery. Fed. R. Civ. P. 26(b).

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

RESPONSE TO REQUEST NO. 35:

Federal Defendants incorporate here their response to RFP No. 34, above.

REQUEST NO. 36:

All documents concerning any instance where USCCB or any of its sub-grantees (including CCFW or CCD) declined to provide a service, including placing a child with a foster or adoptive parent or processing a foster or adoptive parent application, under a grant because such service was not consistent with USCCB's or the sub-grantee's religious beliefs, including any notification of such instance by any person to Federal Defendants, the date of such notification, and any response, decision, or action by Federal Defendants concerning such instance.

OBJECTIONS TO REQUEST NO. 36:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

RESPONSE TO REQUEST NO. 36:

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs' claims and Federal Defendants' defenses, including documents that may be responsive to this RFP. Federal Defendants' discovery plan is tailored to the allegations in Plaintiffs' First Amended Complaint, which concern Federal Defendants' selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs' requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days

from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 37:

With respect to children placed with foster or adoptive parents under each Program, documents sufficient to establish the average length of time between when children were assigned to a grantee or sub-grantee and when they were placed, both with respect to such children in general and with respect to such children assigned to USCCB or any of its sub-grantees (including CCFW or CCD).

OBJECTIONS TO REQUEST NO. 37:

Federal Defendants object to this “sufficient to establish” RFP insofar as it can more easily be answered by interrogatory responses, admissions, or stipulation and is, therefore, unduly burdensome and disproportionate to the needs of Plaintiffs’ case.

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB’s administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to this RFP because it overbroad, disproportionate to the needs of Plaintiffs’ case, and unduly burdensome. Plaintiffs’ claims concern their alleged denial, by a religiously affiliated grant sub-recipient, of the opportunity to be foster parents to a youth in the UAC or URM programs. This RFP seeks documents that are immaterial to those claims.

RESPONSE TO REQUEST NO. 37:

Given the foregoing, Federal Defendants will not search for or produce documents responsive to this request. No such documents would be relevant to any party's claim or defense, and thus fall outside the scope of discovery. Fed. R. Civ. P. 26(b).

REQUEST NO. 38:

All documents concerning any grant or sub-grant awarded to CCFW or CCD by Federal Defendants or USCCB, including any grant or sub-grant application solicitation, grant or sub-grant application (including any supplement thereto), communication between CCFW or CCD and Federal Defendants or USCCB concerning any grant or sub-grant application, grant or sub-grant application evaluation, draft grant or sub-grant award, grant or sub-grant award (including any grant or sub-grant terms or conditions or other supplement thereto), document or communication concerning grant or sub-grant administration, or grant or sub-grant renewal concerning:

- n. USCCB, CCFW, or CCD administering or intending to administer a grant consistent with its religious beliefs;
- o. any response, decision, or action by Federal Defendants with respect to USCCB, CCFW, or CCD administering or intending to administer a grant consistent with its religious beliefs;
- p. the religious beliefs of USCCB, CCFW, or CCD concerning parenting of children by same-sex couples, whether married or unmarried, or gay, lesbian, or bisexual individuals; marriage of same-sex couples; other same-sex domestic partnerships; gay, lesbian, or bisexual people; or homosexuality, bisexuality, or sexual orientation; or
- q. marriage of same-sex couples; other same-sex domestic partnerships; gay, lesbian, or bisexual people; or homosexuality, bisexuality, or sexual orientation as related to placement of children with foster or adoptive parents or processing of foster or adoptive parent applications.

If not otherwise produced, with respect to any grant or sub-grant awarded to CCFW or CCD by Federal Defendants or USCCB, any grant or sub-grant application (including any supplement thereto) or grant or sub-grant award (including any grant or sub-grant terms or conditions or other supplement thereto), with respect to the grant period encompassing February 2017.

OBJECTIONS TO REQUEST NO. 38:

Federal Defendants object to this RFP insofar as it concerns grantees other than USCCB, or sub-grantees other than CCFW or CCD, which are the only grantee and sub-grantees relevant to this case, and insofar as it concerns USCCB's administration of grants or cooperative agreements under either Program outside of Texas. Federal Defendants object to this RFP insofar as it concerns services other than long-term foster care in the URM and UAC programs

during the grant period covering February 2017, which are not relevant to this case. Federal Defendants object to this RFP insofar as it concerns religious beliefs other than those regarding same-sex couples parenting foster children, which is the only religious belief relevant to this case.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

Federal Defendants object to this RFP because it is more properly directed at Defendant USCCB and is, therefore, unduly burdensome as directed at Federal Defendants. Distilled to its unobjectionable component, this RFP seeks documents concerning sub-grants by USCCB to CCFW and CCD. The sub-grant relationship is between USCCB and its sub-grantees; Federal Defendants are not a party to sub-grants. Such documents are, therefore, more properly sought from USCCB, who is already a party to this case (and thus amenable to service of Rule 34 requests for production).

RESPONSE TO REQUEST NO. 38:

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs' claims and Federal Defendants' defenses, including documents that may be responsive to this RFP. Federal Defendants' discovery plan is tailored to the allegations in Plaintiffs' First Amended Complaint, which concern Federal Defendants' selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs' requests seek information beyond this

scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 39:

All documents concerning Plaintiffs, including all such documents internal to Federal Defendants and all such documents also concerning USCCB, CCFW, or CCD.

OBJECTIONS TO REQUEST NO. 39:

Federal Defendants object to this RFP insofar as it is overbroad and seeks documents not relevant to any party's claim or defense.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

Federal Defendants object to this RFP because it is particularly likely to solicit privileged information, including, but not limited to (a) attorney work product; (b) communications or information protected by the attorney-client privilege; or (c) communications or information protected by the deliberative process privilege. This RFP appears to specifically target internal deliberations by Federal Defendants and their decision-making process, including communications reflecting advice of counsel. Federal Defendants will provide a privilege log describing the privileged documents withheld and the basis for the assertion of privilege consistent with Rule 26(b)(5).

RESPONSE TO REQUEST NO. 39:

Federal Defendants are conducting a reasonable, proportional search specifically for documents that refer to Plaintiffs. Federal Defendants will review and produce any such non-privileged documents that are relevant to a party's claim or defense in this case.

REQUEST NO. 40:

All documents concerning Federal Defendants' investigation into the allegations in Plaintiffs' First Amended Complaint or Plaintiffs' communication with Federal Defendants in February 2017 concerning such allegations.

OBJECTIONS TO REQUEST NO. 40:

Federal Defendants object to this RFP because it is subsumed by RFP No. 39, above. Federal Defendants incorporate here their objections to RFP No. 39.

RESPONSE TO REQUEST NO. 40:

Federal Defendants incorporate here their response to RFP No. 39, above.

REQUEST NO. 41:

All documents and communications concerning any prospective or approved grantee or sub-grantee that administers or may administer a grant, including by processing foster or adoptive parent applications or placing children with foster or adoptive parents, in the Fort Worth, Texas geographic region at this time or in the future other than USCCB, CCFW, or CCD, including the identity of the grantee or sub-grantee; any grant application (including any supplement thereto), grant award (including any grant terms or conditions or other supplement thereto), or sub-grant award (including any sub-grant terms or conditions or other supplement thereto); and whether the grantee or sub-grantee would process a foster or adoptive parent application submitted by a same-sex married couple or place children with such a couple.

OBJECTIONS TO REQUEST NO. 41:

Federal Defendants object to the clause beginning "including," insofar as it requests information that may not be apparent from a responsive document itself. Federal Defendants are only required to produce documents as they are kept in the usual course of business, and ESI in a form in which it is ordinarily maintained. Fed. R. Civ. P. 34(b)(2)(E). Federal Defendants need not "includ[e]" the additional information that Plaintiffs request.

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

Federal Defendants object to this RFP insofar as it calls for predictions about "prospective" grantees that "may administer a grant . . . in the future."

RESPONSE TO REQUEST NO. 41:

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs' claims and Federal Defendants' defenses, including documents that may be responsive to this RFP. Federal Defendants' discovery plan is tailored to the allegations in Plaintiffs' First Amended Complaint, which concern Federal Defendants' selection and monitoring of USCCB as a grantee to provide long-term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs' requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 42:

All documents and communications not covered by the above Requests concerning Plaintiffs or the allegations in their First Amended Complaint.

OBJECTIONS TO REQUEST NO. 42:

Federal Defendants object to this RFP because it does not describe with reasonable particularity the category of documents sought. Fed. R. Civ. P. 34(b)(1)(A). Indeed, this is

essentially a request for everything that could possibly be discovered under Rules 26(b) and 34(a), without regard to burden or proportionality.

Federal Defendants object to this RFP because it is subsumed by RFP No. 39, above.

RESPONSE TO REQUEST NO. 42:

Federal Defendants incorporate here their response to RFP No. 39, above.

REQUEST NO. 43:

All documents and communications not covered by the above Requests that substantiate or controvert any allegation set forth in Federal Defendants' Answer.

OBJECTIONS TO REQUEST NO. 43:

Federal Defendants object to this RFP because it does not describe with reasonable particularity the category of documents sought. Fed. R. Civ. P. 26(b)(1)(A). Specifically, Plaintiffs point to no "allegation" in Federal Defendants' Answer. As with RFP No. 42, this is essentially a request for everything that could possibly be discovered under Rules 26(b) and 34(a).

Federal Defendants object to this RFP's request for "all" documents because it calls for a burdensome search of, for example, every employee of ACF or ORR, or it calls for production of documents regardless of whether they are duplicative or relevant to the claims or defenses in this case. The scope of discovery is limited to that which is proportionate to the needs of this case.

RESPONSE TO REQUEST NO. 43:

Federal Defendants are executing a reasonable and proportional plan to collect, review, and produce non-privileged documents relevant to Plaintiffs' claims and Federal Defendants' defenses, including documents that may be responsive to this RFP. Federal Defendants' discovery plan is tailored to the allegations in Plaintiffs' First Amended Complaint, which concern Federal Defendants' selection and monitoring of USCCB as a grantee to provide long-

term foster care in the UAC and URM programs in Texas, over the period encompassing February 2017 to the present. To the extent Plaintiffs' requests seek information beyond this scope, documents may not be searched for or produced in response. Federal Defendants anticipate producing relevant, non-privileged documents on a rolling basis, beginning 30 days from service of these responses. Federal Defendants anticipate producing privilege logs to support any claim of privilege within 15 days of each production of documents.

REQUEST NO. 44:

All documents and communications not covered by the above Requests that Federal Defendants intend to offer or rely upon in support of any dispositive motion or at trial in this action.

OBJECTIONS TO REQUEST NO. 44:

Federal Defendants object to this RFP insofar as it purports to impose burdens on them in addition to or inconsistent with the Federal Rules of Civil Procedure, the local rules of the Court, and the Scheduling Order issued in this matter. Indeed, this request appears prematurely to call for Federal Defendants to determine the materials upon which they will rely in a dispositive motion or at trial. Federal Defendants will comply with their obligations to file a dispositive motion by the deadline set by the Court and will make pre-trial disclosures at the requisite time.

RESPONSE TO REQUEST NO. 44:

Federal Defendants incorporate by reference their response to RFP Nos. 1–43. Federal Defendants anticipate producing all materials upon which they will rely within a timeframe permitted by the rules and the Court.

Dated: November 4, 2019

Respectfully submitted,

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MICHELLE BENNETT
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/s/ Jason C. Lynch

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Objections and Responses to Plaintiffs' First Requests for Admission upon the following counsel of record by email.

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CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2020, this letter was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

Date: March 24, 2020

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