



U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005

March 24, 2020

The Hon. Amit P. Mehta
U.S. District Judge

Re: *Marouf v. Azar*, No. 1:18-cv-378 (D.D.C.) – Discovery Disputes

Dear Judge Mehta:

Federal Defendants submit this letter pursuant to the teleconference held on March 17, 2020, and set forth below their positions on the discovery disputes raised in that teleconference.¹

The Scope of Discovery and Plaintiffs' Claim

The purpose of discovery is to gather facts necessary to prove one's claim, and the scope of discovery is limited accordingly. Fed. R. Civ. P. 26(b)(1). Not only must the discovery sought be relevant to a claim, but it must be proportional to Plaintiffs' needs in proving that claim. *Id.*

Plaintiffs' claim is that they were denied an opportunity to foster children under two federal programs. They sought that opportunity only once, in February 2017 (1st Am. Compl. ¶¶ 47-48), and were turned away by one subgrantee (*id.*), in one location (*id.* ¶ 45), based on one religious belief (*id.* ¶ 48). The Amended Complaint does not allege that Plaintiffs were denied such an opportunity at any other time, by any other grantee or subgrantee, in any other location, or on the basis of any other religious belief.

Plaintiffs' legal theory is similarly straightforward. *See id.* ¶¶ 58-74. They argue that the government violated the Establishment Clause when it awarded federal money (*id.* ¶ 59) to a grantee that discriminates based on its own religious criteria (*id.* ¶ 60), of which the government was on notice (*id.* ¶ 61), and against which the government failed to safeguard (*id.* ¶ 62). Plaintiffs believe that those four elements, if proven, would amount to a constitutional violation.

Because those are the only government actions that are alleged to have harmed Plaintiffs, they are the only actions that Plaintiffs have standing to challenge. And Plaintiffs are further limited to challenging those actions only to the extent any alleged unlawful action by the Government actually harmed *them*. The Supreme Court holds that "if the right to complain of one administrative deficiency automatically conferred the right to complain of all administrative deficiencies, any citizen aggrieved in one respect could bring the whole structure of state administration before the courts for review. That is of course not the law." *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996). Thus, "a plaintiff who has been subject to injurious conduct of one kind" does not "possess by virtue of that injury the necessary stake in litigating conduct of another kind, although similar, to which he has not been subject." *Blum v. Yaretsky*, 457 U.S.

¹ Given the informality of these filings, we assume familiarity with the background of the case, pertinent programs and acronyms, etc. And while Federal Defendants are not submitting declarations in support of the review and burden metrics offered below, they would be willing and able to do so, if requested by the Court.

991, 999 (1982); *accord DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 & n.5 (2006).²

Burden & Proportionality

In addition to the relevance objections herein, the Court should deny Plaintiffs' requests on the grounds that they are unduly burdensome and disproportionate to the needs of this case. The elements of Plaintiffs' claims do not require extensive discovery to prove or disprove.³ Indeed, most of the relevant facts have been stipulated by the Parties: there is no dispute whether Federal Defendants awarded a cooperative agreement to USCCB under UAC; whether USCCB was named a replacement designee under URM; whether USCCB holds the religious belief at issue in this case; or whether, on the basis of that religious belief, USCCB's subgrantee refused to consider a foster-parent application from Plaintiffs. Under Plaintiffs' theory of the case, then, the only issues requiring discovery are (1) whether the government was on notice that USCCB would administer the programs consistent with its religious beliefs regarding same-sex parents; and (2) whether the government failed to safeguard against USCCB's doing so.

Yet despite the simplicity of the remaining dispute, Federal Defendants have been inundated by overbroad discovery from the beginning. Plaintiffs propounded *forty-four* requests for production of documents, many with numerous subparts. Most of these requests were patently overbroad, elicited obviously irrelevant information, and were practically unlimited both temporally and substantively. *See generally* Pls Ex. A (ECF No. 71-1). Federal Defendants have also been served with 13 requests for admission and 44 interrogatories. *See generally* Ex. 1 (9/27/2019 Interrogatories).⁴

Notwithstanding the disputes below, Federal Defendants have already borne substantial burdens to comply with their discovery obligations. Not only have they responded to the voluminous written discovery above, but they have undertaken comprehensive steps to identify, collect, review, and produce relevant documents. Federal Defendants have agreed to search 23 custodians, including seven proposed by Plaintiffs through negotiations. To date, Federal Defendants have reviewed more than 40,000 documents and produced more than 1,800 documents across four, rolling productions. And the review is not yet over.

² *See also In re Gee*, 941 F.3d 153, 161-62 (5th Cir. 2019) (holding, in the context of broader "contention that the state of Louisiana is not regulating abortion properly," that plaintiffs lacked standing to challenge either "a bevy of legal provisions that appear incapable of injuring them" or "legal provisions that theoretically *could* apply to them—but without any allegation that they *would*"); *Johnson v. U.S. Office of Pers. Mgmt.*, 783 F.3d 655, 661 (7th Cir. 2015) ("The fact that a plaintiff has suffered an injury that is traceable to one kind of conduct does not grant that plaintiff standing to challenge other, even related, conduct[.]"); *Bauchman v. W. High Sch.*, 132 F.3d 542, 560 (10th Cir. 1997) (limiting "allegations and evidence" of plaintiff's Establishment Clause claim against local high school to the one year in which she, personally, was a member of the allegedly violative school choir); *Kiryas Joel All. v. Vill. of Kiryas Joel*, 495 F. App'x 183, 189 (2d Cir. 2012) (rejecting the argument that, because plaintiff "has standing to pursue one narrow set of claims, it also has standing to litigate in full the equal protection and Establishment Clause claims asserted in the amended complaint.") (quotation marks and alterations omitted).

³ Needless to say, even if these elements are proven, there will remain the *legal* dispute over whether they amount to a constitutional violation.

⁴ Plaintiffs purported to serve 13 interrogatories. In fact, Federal Defendants identified 44 interrogatories, counting the numerous discrete subparts contained in each request. Federal Defendants did not respond to any interrogatories beyond the limit of 25 prescribed by the Federal Rules of Civil Procedure. Plaintiffs have not challenged Federal Defendants' response in this respect.

If Plaintiffs prevail in obtaining the additional discovery they seek, Federal Defendants will likely be obligated to conduct an ESI collection and review from many more custodians, using broader search terms over a far broader timeframe. That could entail review of *hundreds of thousands* of additional documents. That burden is highly disproportionate to the needs of the case, especially when compared to the attenuated relevance of the information sought.

Specific Discovery Disputes

Timeframe. Plaintiffs seek documents related to the first grant period in which USCCB participated as an ORR grantee, as well as the periods after *United States v. Windsor* was decided in 2013. Plaintiffs argue these periods are relevant because they (1) would have “set the terms of USCCB’s initial participation” and (2) would allow comparison of terms pre- and post-*Windsor*.

Neither of those arguments suffices. The 2016 notice of award and cooperative agreement—which were in effect at the time of the events alleged in the Amended Complaint, and which have been produced—speak for themselves: Together they contain the comprehensive list of laws, regulations, terms, and conditions governing USCCB’s execution of long-term residential services under the UAC program. No comparison to a 20-year-old predecessor terms is needed to ascertain whether the 2016 cooperative agreement passes constitutional muster. With regard to *Windsor*, the 2016 agreement either adheres to that decision or it does not. Again, there is no need to compare the 2016 agreement to those in effect before 2013—let alone to go fishing through thousands of contemporary documents from that period.

Although they had not previously used the term in written correspondence, Plaintiffs suggested during the teleconference that the “course of dealing” between the government and USCCB is relevant.⁵ That argument fails for the same reason. The 2016 agreement either allowed USCCB to administer the UAC program consistent with USCCB’s religious beliefs, or it did not. No comparison to predecessor agreements is necessary to answer that question. Nor is discovery into prior grant cycles necessary to ascertain the government’s knowledge with regard to the 2016 agreement. Federal Defendants have not objected on relevance, burden, or proportionality grounds to Plaintiffs’ discovery into the September 2016 selection of USCCB. And indeed, Federal Defendants have collected documents as far back as January 1, 2016, to be sure that all documents relevant to the government’s knowledge would be collected.

Finally, Plaintiffs themselves recognize the temporal limits of their claim. The Amended Complaint refers repeatedly to “the relevant period,” meaning the period during which Plaintiffs were turned away—*i.e.*, February 2017. 1st Am. Compl. ¶¶ 30-31, 33, 36, 38, 56, 61. And Plaintiffs only asked Federal Defendants to stipulate that they “awarded UAC and URM program grants to [USCCB] for the UAC and URM program grant periods encompassing February 2017.”

Geography. Much of this dispute has already been resolved. Plaintiffs have already agreed to limit discovery to two of USCCB’s sub-grantees: CCFW and CCD, both of which

⁵ Plaintiffs also suggested that paragraph 61 of the Amended Complaint alleges knowledge based on that course of dealing. Paragraph 61 merely alleges that “Federal Defendants were on notice at the time that they awarded the URM and UC grants for the relevant period.” And of course, the “relevant period” is 2017, when Plaintiffs allege that they were denied an opportunity to foster children under UAC or URM. The term “course of dealing” appears nowhere in the Amended Complaint, nor do any allegations setting forth such a course of dealing.

operate in Texas only. And Federal Defendants are not objecting categorically to discovery into the 2016 UAC cooperative agreement, which is nationwide in scope. Similarly with regard to written discovery, Federal Defendants have answered questions about policies, practices, etc. on a nationwide basis.

Federal Defendants' only continuing objection is to documents that relate *solely* to USCCB's sub-grantees outside of Texas. Plaintiffs have suggested that "such documents would be responsive and relevant because of their connection to USCCB," which is yet another overbroad definition of relevance. A connection to USCCB is insufficient; the requested documents must be relevant to a claim that Plaintiffs have standing to make. Plaintiffs could not seek redress for violations of law in other states that have nothing to do with them; they cannot seek discovery into such matters accordingly. *See Blum*, 457 U.S. at 999; *supra* note 2.

Religious Beliefs. Plaintiffs' insistence that this case concerns religious beliefs other than about same-sex parenting should also be rejected. Plaintiffs' allegations are expressly and repeatedly limited to that religious belief. *See* 1AC ¶¶ 60, 61, 73; *see also id.* ¶ 1 ("The organizations use religious doctrine regarding same-sex relationships to exclude such couples . . ."). No other religious belief is even mentioned in the Amended Complaint, let alone alleged as the basis for discrimination. Again, Plaintiffs' own conduct is telling: they have not asked Defendants to stipulate to facts regarding any other religious belief, nor have they proposed ESI search terms aimed at any other religious belief. Because Plaintiffs have not stated a claim based on any other religious belief, they cannot seek discovery relating to such beliefs.

At the March 17 teleconference, Plaintiffs suggested that they wished to compare the agency's response to other situations in which prospective foster parents may have been rejected for religious reasons. To begin, there is no reason to pursue this line any further: Federal Defendants have already represented 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." Fed. Defs. Resp. to RFP 15 (emphasis added); *accord* Fed. Defs. Resp. to Interrog. 4(a). To be clear: Federal Defendants are not aware of any other instance in which UAC or URM grantees or sub-grantees have had religious objections to placing children with foster parents—whether based on sexual orientation or any other religious belief.⁶ Requiring fruitless document discovery into something that does not exist would, by definition, be disproportionate to the needs of this case.⁷

Finally, Federal Defendants reiterate that they have not objected categorically to any discovery into the 2016 cooperative agreement; the 2017 selection of USCCB as replacement designee in Texas; the monitoring of USCCB's long-term foster care operations in Texas; the events surrounding Mses. Marouf's and Esplin's interaction with CCFW and ORR; or accommodations made on the basis of religious beliefs regarding same-sex parenting. That scope is tailored to the claims in this case and proportional to Plaintiffs' needs in pursuing those claims.

⁶ Undersigned counsel mistakenly stated during the March 17 teleconference that these discovery responses were more limited. Undersigned counsel has since reviewed the responses and confirmed their accuracy with HHS.

⁷ Even if Plaintiffs could prove that accommodations based on other religious beliefs were made, Plaintiffs would lack standing to challenge such conduct because it would have no relationship to the alleged violation of law that harmed them. *Lewis*, 518 U.S. at 358 n.6; *Blum*, 457 U.S. at 999; *DaimlerChrysler*, 547 U.S. at 353 & n.5.

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Respectfully,



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Exhibit 1

**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 SET OF INTERROGATORIES TO FEDERAL DEFENDANTS

Plaintiffs Fatma Marouf and Bryn Esplin (“Plaintiffs”), by and through their attorneys, hereby serve the following interrogatories on 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”), pursuant to Rule 33 of the Federal Rules of Civil Procedure, to be responded to and produced at the offices 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.

DEFINITIONS AND INSTRUCTIONS

In addition to the definitions and instructions set forth in Rules 26 and 33 of the Federal Rules of Civil Procedure, the following definitions and instructions apply to each of the discovery requests set forth herein and are deemed to be incorporated in each of the requests.

1. The term “Plaintiffs” means Plaintiffs Fatma Marouf and Bryn Esplin in the pending court action, No. 1:18-cv-378 (APM).
2. The terms “Federal Defendants,” “you,” and “your,” as used herein, refer to HHS; ACF; 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, including but not limited to directors, officers, owners, representatives, agents, servants, employees, members, or other persons acting or purporting to act on behalf of Federal Defendants, and any predecessors or successors.
3. 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, owners, representatives, agents, servants, employees, members, or other persons acting or purporting to act on behalf of USCCB, CCFW, or CCD, respectively, and any predecessors or successors.
4. The term “URM Program” means the Unaccompanied Refugee Minors Program and the term “UAC Program” means the Unaccompanied Alien Children Program. The term “Program” means the URM Program, the UAC Program, or both programs.
5. 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.
6. The term “grantee” or “sub-grantee” 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.

7. The term “child placing agency” means any organization, agency, or entity organized (whether wholly or partly) with the purpose of furnishing (whether directly or indirectly) adoption or foster care services, which shall include placing children with foster or adoptive parents or processing foster or adoptive parent applications.
8. The term “LGB” shall refer to lesbian, gay, or bisexual natural persons.
9. The term “describe” means to state all facts of which you are aware concerning the subject, including identifying any dates, any persons involved in or with knowledge of the subject, and any places or locations relevant to the subject.
10. The term “identify” means:
 - a. In connection with persons, to give, to the extent known, the person’s full name, present or last known address, and, when referring to a natural person, the present or last known place of employment;
 - b. In connection with documents, to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s);
 - c. In connection with an oral statement or communication, to the extent known, to (i) state when and where it was made; (ii) identify each of the makers and recipients thereof, in addition to all others present; (iii) indicate the medium of the statement or communication; and (iv) state the substance of the statement or communication.

11. 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.
12. The term “communication” means any transmittal of information (in the form of facts, ideas, inquiries, photographs, drawings, or otherwise), including 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.

13. The terms “relate to,” “related to,” “relating to,” and “regarding” mean mentioning, citing, quoting, involving, representing, constituting, discussing, reflecting, identifying, describing, referring to, containing, enumerating, evidencing, supporting, or in any way concerning, in whole or in part, directly or indirectly.
14. 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.
15. 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”).
16. For purposes of interpreting or construing the scope of these definitions, instructions, and interrogatories, the terms used shall be given their most expansive and inclusive interpretation, including the following rules of construction:
 - 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,” and “every” 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 includes the past and future tenses and vice versa.
17. When asked to identify a document, your response should include such information as is sufficient to enable Plaintiffs to form an intelligible request for production of such document with the degree of specificity required by the Federal Rules of Civil Procedure. If no copy of the document identified is in your possession, custody, or control, you should include the name(s) and address(es) of the person(s) now having possession, custody, or control of the document or any copy thereof.
18. To the extent that you object to any of the following interrogatories, respond to as much of each and every part thereof that is not subject to your objection, and separately state the part that you believe is objectionable and the ground for each objection.
19. If you object to any interrogatory on the basis of attorney-client privilege, work-product doctrine, or any other privilege, state the privilege claimed, and identify the document, communication, or other information for which such privilege is claimed, stating the following:
- a. The date of the document, communication, or information;
 - b. The subject matter of the document, communication, or information;
 - c. A description of the document, communication, or information protected, including the identity of all persons who authored, transmitted, received a copy of, or otherwise engaged with respect to such document, communication, or information and the number of pages, if written; and

- d. The basis on which the privilege is claimed.
20. To the extent all or part of any response to any interrogatory is based upon any document, please identify each document by production number (or describe the document in detail if it has not yet been produced) and indicate the interrogatory or interrogatories to which it is relevant, to the extent not done in each interrogatory response.
21. You are under a duty to supplement your responses to these interrogatories under the circumstances specified in the Federal Rules of Civil Procedure.

PLAINTIFFS' FIRST SET OF INTERROGATORIES

1. Please describe the organizational structure of Federal Defendants as relevant to each Program (i) during the grant period encompassing February 2017 and (ii) at the present time, including:
- a. the hierarchy of authority among positions;
 - b. the responsibilities or duties associated with each position; and
 - c. the names, titles, and dates of service of persons who held those positions, and their responsibilities or duties related to USCCB or any of its sub-grantees (including CCFW or CCD), if any.
2. Please identify all child placing agencies in the State of Texas with a grant or sub-grant to directly or indirectly provide foster care or adoption-related services, including placing children with foster or adoptive parents or processing foster or adoptive parent applications. Include any child placing agency in the State of Texas with a pending grant or sub-grant application. For each of these agencies, please identify:
- a. its name;

- b. its location(s) (*i.e.*, the locality(ies) that it serves);
 - c. the Program or Programs in which it participates;
 - d. the number of children under each Program that it serves annually;
 - e. the number of children under each Program that it serves annually who self-identify as LGB;
 - f. the amount of its grant and the appropriation from which Federal Defendants expended or awarded federal funds with respect to the grant;
 - g. its religious affiliation, if any; and
 - h. whether it discontinued participation in a Program, including the reason(s) therefor and any alternative arrangements that Federal Defendants made with respect to children formerly assigned to it or the foster or adoptive parents processed by it.
3. Please describe the policies and protocols under which Federal Defendants administer each Program, including:
 - a. the policies or protocols under which Federal Defendants solicit, review, or approve applications for grants or sub-grants, including with respect to foster care or adoption-related services;
 - b. the policies or protocols under which grantees or sub-grantees are required, expected, or asked by Federal Defendants to recruit, accept applications from, screen, license, approve, or otherwise process prospective foster or adoptive parents under each Program;

- c. the policies or protocols under which grantees or sub-grantees are required, expected, or asked by Federal Defendants to place children under each Program with foster or adoptive parents;
- d. the policies or protocols under which Federal Defendants seek to ensure that (i) a grantee or sub-grantee, including USCCB or any of its sub-grantees (including CCFW or CCD), will not administer a grant or sub-grant based on the grantee's or sub-grantee's religious beliefs, or (ii) a grant or sub-grant, including any grant or sub-grant administered by USCCB or any of its sub-grantees (including CCFW or CCD), will 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;
- e. the policies or protocols under which Federal Defendants accommodate (including by referral) the religious beliefs of a grantee or sub-grantee with respect to its administration of a grant or sub-grant;
- f. the policies or protocols under which Federal Defendants determine the amount of a grant or sub-grant award, including whether the amount of funding available under a grant is dependent on (a) whether a grantee or sub-grantee processes foster or adoptive parent applications, or how many applications the grantee or sub-grantee processes, or (b) whether a grantee or sub-grantee places children with foster or adoptive parents, or how many children the grantee or sub-grantee places); and

- g. the role that states play in the process of licensing or approving prospective foster or adoptive parents under each Program or placing children under each Program with adoptive or foster parents.

To the extent Federal Defendants' policies or protocols differ depending on whether an entity is located in the State of Texas, please identify and describe such differences.

4. Please identify:

- a. the number of same-sex couples, whether married or unmarried, or LGB individuals who submitted a foster or adoptive parent application under each Program, or sought to do so, in each grant period;
- b. the number of couples or individuals who were approved to serve as foster or adoptive parents under a Program 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 the religious beliefs of a grantee or sub-grantee in each grant period, 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;
- c. the number of same-sex couples, whether married or unmarried, or LGB 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 LGB individuals; marriage of same-sex couples; other same-sex domestic partnerships; LGB 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;

- d. the number of 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 in each grant period, 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;
 - e. the number of same-sex couples, whether married or unmarried, or LGB 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 parenting of children by same-sex couples, whether married or unmarried, or LGB individuals; marriage of same-sex couples; other same-sex domestic partnerships; LGB people; homosexuality, bisexuality, or sexual orientation; or religion in each grant period, 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.
5. Please describe all communications and related documents related to:
- a. any statement (including in any grant or sub-grant application) by any grantee or sub-grantee, including USCCB or any of its sub-grantees (including CCFW or CCD), that it intends to administer a grant or sub-grant in a manner consistent with the grantee's or sub-grantee's religious beliefs (including any communications related to what it means to administer a grant in such a manner);

- b. a grantee's or sub-grantee's, including USCCB's or any of its sub-grantee's (including CCFW's or CCD's) willingness or ability to place children with foster or adoptive parents who are same-sex couples, whether married or unmarried, or LGB individuals or to process foster or adoptive parent applications submitted by such couples or individuals; or
- c. a grantee's or sub-grantee's, including USCCB's or any of its sub-grantee's (including CCFW's or CCD's) religious beliefs related to parenting of children by same-sex couples, whether married or unmarried, or LGB individuals; marriage of same-sex couples; other same-sex domestic partnerships; LGB people; or homosexuality, bisexuality, or sexual orientation.

For each such communication or related document, please identify (a) the individuals or entities involved; (b) the date of the communication or document; and (c) a description of any investigation or other follow-up that resulted from such communication or document.

- 6. Please describe all policies, processes, procedures, guidelines, trainings, monitoring, or oversight programs, or investigation or enforcement protocols under each Program, including those related to the receipt and handling of complaints, that Federal Defendants administer or enforce to prevent; safeguard against; prospectively or retrospectively identify or monitor; or take enforcement or other disciplinary action against grantees or sub-grantees that administer grants or sub-grants consistent with their religious beliefs or engage in discrimination on the basis of their religious beliefs or discrimination on the basis of sexual orientation, sex, or marriage to another individual of the same sex in the administration of grants or sub-grants (including with respect to discrimination against prospective or approved foster or adoptive parents).

7. Please identify all grantees or sub-grantees that have been subject to a formal or informal complaint, investigation, review, sanction, or enforcement or other disciplinary action based on actual or alleged discrimination by the grantee or sub-grantee on the basis of its religious beliefs or on the basis of sexual orientation, sex, or marriage to another individual of the same sex in the administration of a grant or sub-grant; describe the circumstances and disposition of any such complaints, investigations, or reviews; and describe all actions taken by Federal Defendants as a result.
8. Please identify and describe all governmental and/or child welfare interests that you may argue in a dispositive motion or at trial in this action are furthered by allowing grantees or sub-grantees, including USCCB or any of its sub-grantees (including CCFW or CCD), not to accept (including by referral) foster or adoptive parent applications from same-sex couples, whether married or unmarried, or LGB individuals, or not to process or approve such applications, or not to place children with such couples or individuals. Please identify and describe any circumstance, reason, or basis (including any purported scientific, policy, or factual basis) upon which you may rely in support of any such argument.
9. Please state whether Federal Defendants consider a natural person's sexual orientation or same-sex relationship relevant or permissible as a consideration in determining his or her ability or fitness to be a foster or adoptive parent under a Program or in determining the placement of a foster or adoptive child with him or her. If the answer is "yes" with respect to any the foregoing, please explain why you have answered in the affirmative.
10. Please identify and describe all of the ways in which Federal Defendants monitor, oversee, supervise, examine, evaluate, or assess grantees and sub-grantees under each

Program with respect to placing children with foster or adoptive parents and processing foster or adoptive parent applications.

11. Please identify and describe any communications, documents, investigations, or other actions or activities involving Federal Defendants that are related to a grantee's or sub-grantee's, including USCCB's or any of its sub-grantee's (including CCFW's or CCD's), actual or potential use of the grantee's or the sub-grantee's religious beliefs in the administration of a grant or sub-grant (or as part of any grant or sub-grant application process):
 - a. related to or as part of monitoring, overseeing, supervising, examining, evaluating, or assessing a grant or sub-grant;
 - b. related to any formal or informal request for a religious accommodation (including by referral) made by or on behalf of the grantee or sub-grantee; or
 - c. during the course of investigating or responding to any complaints or other inquiries related to potential, actual, or alleged use of the grantee's or sub-grantee's religious beliefs in the administration of a grant of sub-grant.
12. Please describe any communications, documents, investigations, enforcement, or other disciplinary actions, policy or protocol updates or changes, trainings or re-educations, or other actions or activities involving Federal Defendants in response to the communication by Plaintiff Fatma Marouf to Federal Defendants on or about February 22, 2017, reporting the interaction between Plaintiffs and CCFW (or any communications related thereto).
13. Please identify and describe any circumstance, reason, or basis (including any purported scientific, policy, or factual basis) on which you may rely in a dispositive motion or at

trial in this action to support any argument that it is not practicable or desirable to adopt a policy or protocol under which foster or adoptive parent applications are processed by grantees or sub-grantees that do not object to accepting applications based on their religious beliefs, or under which children are placed with foster or adoptive parents without the active involvement of grantees or sub-grantees that object to doing so based on their religious beliefs.

Respectfully,

HOGAN LOVELLS US LLP

/s/ Kenneth Y. Choe

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Date: September 27, 2019

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2019, I caused a true and correct copy of the foregoing Plaintiffs' First Set of Interrogatories to Federal Defendants to be served by email on the following:

James R. Powers
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/s/ Brendan C. Quinn
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