

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION**

EDEN ROGERS, *et al.*

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES, *et al.*,

Defendants.

Case No. 6:19-cv-1567 (TMC)

**FEDERAL DEFENDANTS’ MOTION FOR PROTECTIVE ORDER**

Defendants United States Department of Health and Human Services (“HHS”); Administration for Children and Families (“ACF”); Alex Azar, II, in his official capacity as Secretary of HHS; Lynn Johnson, in her official capacity as Assistant Secretary for ACF; and Scott Lekan, in his official capacity as Principal Deputy Assistant Secretary of ACF (collectively the “Federal Defendants”), file this Motion for Protective Order under Federal Rule of Civil Procedure 26(c).

For the reasons set forth in the attached Memorandum, the Federal Defendants respectfully request that the Court enter a protective order prohibiting Plaintiffs from seeking discovery from the Federal Defendants in this case beyond the limitations of the Administrative Procedure Act (“APA”), including a requirement that discovery may only be served with leave of Court obtained under APA standards after the Federal Defendants produce the administrative record. In the alternative, the Federal Defendants request that the Court enter a protective order as to Request for Production Nos. 5, 6, and 11–15—*see* Ex. A at 10, 12, 13—as well as any other discovery requests now pending or that may be served seeking information related to any federal program or state

other than the South Carolina foster care system funded under Title IV-E of the Social Security Act.

Dated: July 10, 2020

Respectfully submitted,

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**FEDERAL DEFENDANTS’ MEMORANDUM IN SUPPORT OF  
MOTION FOR PROTECTIVE ORDER**

Plaintiffs’ claims against the Federal Defendants challenge the constitutionality of a discrete agency action: the January 2019 conditional exception issued to South Carolina regarding the participation of certain faith-based entities in the State’s foster care system. The Court’s review of that agency action is properly based on the record compiled by the agency, without additional discovery, per the requirements of the Administrative Procedure Act (“APA”).

Plaintiffs’ decision to pursue their claims directly under the Constitution, rather than the cause of action provided by the APA, does not provide any basis to permit discovery beyond the record, as shown by the Supreme Court’s recent decision in *Department of Commerce v. New York*, 139 S. Ct. 2551 (2019). That case similarly involved claims that the challenged Government action violated the constitutional guarantee of equal protection (as well as other APA and statutory claims). But the Supreme Court nonetheless held that the district court “should not have ordered extra-record discovery when it did” because the plaintiffs had not made the “strong showing of bad faith or improper behavior” needed to justify such a step. *Id.* at 2574.

Accordingly, the only “discovery” that is either necessary or appropriate in this action is the production of the agency record supporting the January 2019 conditional exception. The Federal Defendants are in the process of compiling the record and expect to produce it to Plaintiffs no later than August 13, 2020. But already, Plaintiffs have issued a wide-ranging set of 26 requests for production to the Federal Defendants. The Court should issue a protective order halting this discovery in accord with the APA.

In the alternative if the Court concludes that discovery may proceed, the Federal Defendants ask the Court to issue a protective order to limit the scope of discovery to that which is permitted by Federal Rule of Civil Procedure 26. Plaintiffs’ first set of requests for production broadly seek information about officials and entities in states across the nation, even though such information plainly has no relevance to this case, which involves only South Carolina’s foster care system. In accord with the relevance and proportionality requirements of the Federal Rules, the Court should issue a protective order limiting discovery in this case to the issues actually raised in the pleadings.

The Federal Defendants conferred with Plaintiffs’ counsel regarding the relief sought in this motion. Plaintiffs oppose.

## **STATEMENT OF FACTS**

### **I. Factual and Legal Background**

Plaintiffs’ claims against the Federal Defendants concern a regulatory exception issued to South Carolina in January 2019. That exception arises out of HHS’ award of grants to South Carolina under Title IV-E of the Social Security Act, which authorizes federal funding to states “[f]or the purpose of enabling each State to provide, in appropriate cases, foster care” programs for eligible children. 42 U.S.C. § 670. To be eligible for Title IV-E payments, a state must submit

a foster care plan containing certain features for HHS approval. *Id.* § 671(a). Title IV-E grants may encompass reimbursement to states for administrative expenses necessary for the provision of child placement services and the proper and efficient administration of the Title IV-E foster care program. *Id.* § 674(a)(3). Such expenses may include activities like training, case management, and recruitment and licensing of foster homes. 45 C.F.R. § 1356.60(c). States have discretion to engage third parties to provide many of these services.

HHS has promulgated a regulation that no person may be “denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on . . . religion.” 45 C.F.R. § 75.300(c). In response to a request from the State, HHS granted South Carolina an exception from section 75.300(c)’s religious non-discrimination provision on January 23, 2019. *See* ECF No. 50-2 at 4. South Carolina sought the exception in connection with its use of federal funds to reimburse faith-based organizations that provide services under the State’s Title IV-E foster care program (“the SC Foster Care Program”). In particular, the State rooted its request in the experience of Miracle Hill Ministries, a licensed child-placing agency in South Carolina that, among other things, recruits people to serve as foster parents in the SC Foster Care Program and assists them in obtaining foster-care licenses. ECF No. 50-2 at 1.

HHS granted South Carolina’s requested exception as to “Miracle Hill or any other subgrantee in the SC Foster Care Program that uses similar religious criteria in selecting among prospective foster care parents.” ECF No. 50-2 at 4. HHS determined that the burden imposed on the free exercise rights of Miracle Hill and similarly situated religious entities by section 75.300(c)’s religious non-discrimination provision was not justifiable under the Religious Freedom Restoration Act (“RFRA”), and that enforcing section 75.300(c) in a manner that could result in Miracle Hill withdrawing from the SC Foster Care Program “would . . . cause a significant

programmatic burden . . . by impeding the placement of children into foster care.” ECF No. 50-2 at 3.

## **II. Plaintiffs and Their Claims Against the Federal Defendants**

Plaintiffs, a married couple and Greenville-area residents, allege that they reached out to Miracle Hill in April 2019 to inquire about working with the organization to seek State licensure as foster parents. Compl. ¶¶ 72, 73, 78–80, ECF No. 1. Miracle Hill ultimately declined to assist Plaintiffs with obtaining State licensure because of its religious conviction that it should work only with foster parents who share Miracle Hill’s religious beliefs. *Id.* ¶ 81. Plaintiffs allege that they have been denied the same opportunities to be foster parents in the SC Foster Care Program as families with whom Miracle Hill will work, that they have suffered stigma, and that they have been coerced to support Miracle Hill’s religious beliefs. *Id.* ¶¶ 120, 134.

On the basis of these allegations, Plaintiffs bring Establishment Clause and equal protection claims against the Federal Defendants in Counts II and IV of the Complaint. Plaintiffs support their claims by alleging that the January 2019 conditional exception issued to South Carolina is constitutionally infirm in various ways. *See* Compl. ¶ 115 (alleging that the Federal Defendants have “exempt[ed] the State from a federal regulation”); *id.* ¶ 143 (alleging discrimination as a result of the “HHS Waiver”).

## **III. Relevant Procedural History**

Defendants filed motions to dismiss the Complaint, which this Court granted in part and denied in part. Order (D.S.C. May 8, 2020), ECF No. 81. The Court held that Plaintiffs had adequately alleged standing to sue, concluding, *inter alia*, that Plaintiffs’ alleged injuries could be redressed through their requested “mandate of equal treatment with respect to participation in South Carolina’s public child welfare and foster program.” Order at 28. The Court also held,

however, that any “alleged injury regarding the government’s use of [Plaintiffs’] tax dollars” to fund child-placing agencies could not support standing. *See* Order at 18 (holding “such injury is not particularized to Plaintiffs and cannot support standing”). On the merits, the Court held that Plaintiffs had stated an Establishment Clause claim as to the January 2019 conditional exception, as well as a claim for sexual orientation discrimination on the basis of this agency action. *See* Order at 30–46. The Court dismissed Plaintiffs’ equal protection claim based on religious discrimination, however. Order at 40–45.

Following the Court’s order, Plaintiffs have begun to serve discovery. As relevant here, Plaintiffs served on the Federal Defendants a first set of requests for production (“RFPs”) on June 4. *See* Ex. A. By consent, the Federal Defendants’ responses and objections to these RFPs are due July 21. Plaintiffs’ 26 RFPs expansively seek information regarding foster care systems in every state in the country, including specific requests for information about officials and agencies in Texas and Pennsylvania. Ex. A at 10, 12, RFP Nos. 5, 6, 11. The RFPs also seek documents regarding religious accommodations of any kind for faith-based foster care or adoption agencies anywhere in the country. Ex. A at 12, 13, RFP Nos. 12–15.

### **STANDARD OF REVIEW**

The Court has wide discretion to control the nature and timing of discovery and “should not hesitate to exercise appropriate control over the discovery process.” *Herbert v. Lando*, 441 U.S. 153, 177 (1979); *cf. Clinton v. Jones*, 520 U.S. 681, 706–07 (1997) (“The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket.” (citation omitted)). Courts have discretion to issue a protective order under Federal Rule of Civil Procedure 26(c) upon a showing of good cause in order to “protect a party from annoyance, embarrassment, oppression or undue burden or expense.” Fed. R. Civ. P. 26(c)(1); *see also Seattle Times Co. v.*

*Rhinehart*, 467 U.S. 20, 36 (1984) (stating that “Rule 26(c) confers broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required”); *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998) (“Rule 26 vests the trial judge with broad discretion to tailor discovery narrowly and to dictate the sequence of discovery.”). This discretion includes orders forbidding the requested discovery altogether. Fed. R. Civ. P. 26(c)(1)(A).

## ARGUMENT

Discovery as to the Federal Defendants is inappropriate in this case. At the least, the discovery served by Plaintiffs to date is inappropriate and out of bounds under the Federal Rules of Civil Procedure. A protective order is therefore warranted and supported by good cause.

On the former point, Plaintiffs’ Complaint challenges the January 2019 conditional exception issued to South Carolina, an agency action supported by an administrative record. In making its determination whether that action was “contrary to constitutional right,” 5 U.S.C. § 706(2)(B), the Court’s review should be limited to “the full administrative record that was before the Secretary at the time he made his decision.” *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971).

Moreover, even without this foundational principle of administrative law, Plaintiffs’ RFPs are far broader than would be permitted by the Rules even in a garden variety civil suit not involving a challenge to agency action. Plaintiffs’ requests for information about events bearing no relationship to them and their claims go far beyond the proper scope of discovery.

### **I. The APA Instructs That This Challenge to Agency Action Be Reviewed on the Basis of the Administrative Record.**

Plaintiffs’ claims against the Federal Defendants should be governed by the judicial review provisions of the Administrative Procedure Act. *See* 5 U.S.C. § 706(2)(B) (encompassing constitutional claims). Under the APA, “the focal point for judicial review should be the

administrative record already in existence, not some new record made initially in the reviewing court.” *Camp v. Pitts*, 411 U.S. 138, 142 (1973) (per curiam). And in APA actions, the agency supplies the court with the record of the materials that were considered by the agency at the time of the challenged action. See *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985) (explaining that the APA provides for review “based on the record the agency presents to the reviewing court” (citing *Citizens to Preserve Overton Park*, 401 U.S. 402)).

A corollary of these principles is that “courts will ordinarily assume that the administrative record is complete and exclusive for purposes of judicial review. A party challenging an agency bears a special burden of demonstrating that the court should reach beyond the record . . . .” *Sanitary Bd. v. Wheeler*, 918 F.3d 324, 334 (4th Cir. 2019); *Audubon Naturalist Soc’y of the Cent. Atl. States v. U.S. Dep’t of Transp.*, 524 F. Supp. 2d 642, 660 (D. Md. 2007) (“[C]laims brought under the APA are adjudicated without a trial or discovery, on the basis of an existing administrative record . . . .”). Thus, the Government is entitled to a strong presumption of regularity in its designation of the administrative record for review. See, e.g., *Outdoor Amusement Bus. Ass’n, Inc. v. Dep’t of Homeland Security*, Civ. No. ELH-16-1015, 2017 WL 3189446, \*12 (D. Md. July 27, 2017).

These fundamental principles of administrative law are not discarded simply because Plaintiffs’ claims rely on the Constitution. Judicial review under the APA, after all, expressly includes claims that agency action is “contrary to constitutional right.” 5 U.S.C. § 706(2)(B). And the opposite result cannot be squared with the Supreme Court’s recent decision in *Department of Commerce v. New York*, 139 S. Ct. 2551 (2019). There, a group of plaintiffs challenged a decision by the Department of Commerce related to the Census and raised both statutory and constitutional claims, including a claim based on the equal protection component of the Due Process Clause. See

*id.* at 2563–64. The Supreme Court held that the district court “should not have ordered extra-record discovery when it did” because the plaintiffs had not made the “strong showing of bad faith or improper behavior” needed to justify such a step. *Id.* at 2574. The Court further explained that although extra-record discovery was ultimately justified in the case, it became proper only after the plaintiffs had identified material in the administrative record that justified extra-record discovery. *Id.* Before that point, discovery outside the agency record was “premature.” *Id.*

Consistent with *Department of Commerce*, numerous courts across the country have restricted review to the administrative record in cases that raise constitutional claims. *See, e.g., Bellion Spirits, LLC v. United States*, 335 F. Supp. 3d 32, 44 (D.D.C. 2018); *Chiayu Chang v. U.S. Citizenship & Immigration Servs.*, 254 F. Supp. 3d 160, 161 (D.D.C. 2017); *Ketcham v. U.S. Nat’l Park Serv.*, No. 16-CV-17-SWS, 2016 WL 4268346, at \*1-2 (D. Wyo. Mar. 29, 2016); *Jarita Mesa Livestock Grazing Ass’n v. U.S. Forest Serv.*, 58 F. Supp. 3d 1191, 1237–38 (D.N.M. 2014); *Tafas v. Dudas*, 530 F. Supp. 2d 786, 803 (E.D. Va. 2008); *Harvard Pilgrim Health Care of New England v. Thompson*, 318 F. Supp. 2d 1, 10 (D.R.I. 2004).

Indeed, this outcome is a necessary result of Congress’s direction in the APA. The Supreme Court has instructed that the “power of federal courts of equity to enjoin unlawful executive action is subject to express and implied statutory limitations.” *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015). In accord with that principle, the APA limits courts’ equitable jurisdiction by dictating what evidence courts are to evaluate in suits for nonmonetary relief by a “person suffering legal wrong because of agency action,” 5 U.S.C. § 702, even when that challenged agency action is allegedly “contrary to constitutional right,” *id.* § 706(2)(B). In such cases, as in all challenges to agency action, “the court shall review the whole record or those parts of it cited by a party.” 5 U.S.C. § 706; *see also Harkness v. Sec’y of Navy*, 858 F.3d 437,

451 n.9 (6th Cir. 2017) (holding an Establishment Clause claim “properly reviewed on the administrative record”).

Even if the text of the APA standing alone could be understood to permit some leeway for the consideration of additional non-record evidence, it would plainly subvert the purpose of the APA to permit plaintiffs to avoid the APA’s strictures and pursue wide-ranging discovery simply by casting their claim as a “constitutional” one. *See Ketcham*, 2016 WL 4268346, at \*2 (“To distinguish between a ‘stand-alone constitutional challenge’ and an ‘APA challenge[]’ . . . would run afoul of Congress’s intent.”). That is because a contrary rule would “incentivize every unsuccessful party to agency action to allege bad faith, retaliatory animus, and constitutional violations to trade in the APA’s restrictive procedures for the more even-handed ones of the Federal Rules of Civil Procedure.” *Jarita Mesa*, 58 F. Supp. 3d at 1238. As one district court explained, “[t]he APA’s restriction of judicial review to the administrative record would be meaningless if any party seeking review based on statutory or constitutional deficiencies was entitled to broad-ranging discovery.” *Harvard Pilgrim Health Care*, 318 F. Supp. 2d at 10. Thus, in cases where Congress has provided for judicial review under a statute “without setting forth the standards to be used or the procedures to be followed,” the Supreme Court “has held that consideration is to be confined to the administrative record and that no de novo proceeding may be held.” *United States v. Carlo Bianchi & Co.*, 373 U.S. 709, 715 (1963). The same principle should be applied in this litigation.

Plaintiffs will likely respond by citing decisions from some district courts permitting discovery in some circumstances on review of constitutional challenges to agency action. *See* Rule 26(f) Report at 5, ECF No. 91. But many of those cases predate the Supreme Court’s 2019 decision in *Department of Commerce*. And regardless, even where courts have recognized narrow

circumstances where extra-record evidence is permissible, “wide-ranging discovery is not blindly authorized.” *See Puerto Rico Pub. Hous. Admin. v. U.S. Dep’t of House. & Urban Dev.*, 59 F. Supp. 2d 310, 327 (D.P.R. 1999). Instead, some courts have recognized that limited discovery or consideration of non-record evidence may be permitted where the record is inadequate for judicial review. *See id.* at 328 (permitting discovery because there was “no administrative record” to review); *Almaklani v. Trump*, ---F. Supp. 3d---, 2020 WL 1282920, at \*6–7 (E.D.N.Y. Mar. 17, 2020) (observing that some form of discovery could be permissible “where the record was devoid of any information relating to certain agency decisions,” but rejecting as “inappropriate” “broad ranging discovery under Rule 26”); *Tafas*, 530 F. Supp. 2d at 802–03 (rejecting the “wide-ranging discovery” sought because “the administrative record is sufficient for the Court to render a final decision as to the constitutionality of the Final Rules”). But that is a far cry from treating a Constitutional challenge to federal agency action like any other civil litigation, an approach that cannot be squared with Congressional intent in passing the APA or the Supreme Court’s decision in *Department of Commerce*. *See* 139 S. Ct. at 2574 (recognizing that any discovery should have been preceded by an “order to complete the administrative record”).

Here, the Federal Defendants have not even had an opportunity to produce an administrative record, although they plan to do so by August 13, 2020. Plaintiffs are nonetheless already seeking broad and intrusive discovery. For example, Plaintiffs seek documents regarding foster care programs in other states, as well as documents regarding requests by faith-based foster care or adoption agencies for religious accommodations in *any* context, regardless of their relationship to South Carolina or Title IV-E-funded foster care programs. *See infra* Pt. II. Such broad-ranging discovery has no place in a case challenging discrete federal agency action pertaining to a single program in a single state. The proper course, instead, is for Plaintiffs to seek

this Court’s leave to serve discovery after production of the administrative record, with the requirement to show the need for such discovery under the principles of APA review. *See, e.g., Carlsson v. U.S. Citizenship & Immigration Servs.*, No. 2:12-cv-7893-CAS, 2015 WL 1467174, at \*10–13 (C.D. Cal. Mar. 23, 2015) (permitting only limited discovery pertaining to particular claims after a showing of need).

In short, “when a constitutional challenge to agency action requires evaluating the substance of an agency’s decision made on an administrative record, that challenge must be judged on the record before the agency.” *Bellion Spirits*, 335 F. Supp. 3d at 43. No matter how Plaintiffs frame this case, this Court will ultimately be called on to “evaluat[e] the substance of an agency’s decision,” namely the January 2019 conditional exception. That evaluation should rest on the administrative record, just as the APA requires.

## **II. The Discovery Plaintiffs Seek Goes Well Beyond Rule 26.**

Plaintiffs’ RFPs also far exceed permissible bounds even under the Federal Rules of Civil Procedure. Therefore, even if the Court concludes that discovery may proceed as to the Federal Defendants notwithstanding the APA, it should issue a protective order limiting the scope of discovery as set forth below.

Rule 26 limits discovery to information that is both “relevant” to a party’s claims or defenses and “proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1). Among other factors, the proportionality analysis turns on the “importance of the discovery in resolving the issues” and whether the likely benefit of the discovery outweighs the burden or expense of responding. *Id.* Although “relevance for discovery purposes is broadly construed,” the requirement is “not without bite,” and discovery should be deemed impermissible where there is no “reasonable likelihood that allowing discovery . . . will lead to discovery of evidence relevant”

to the litigation. *Food Lion, Inc. v. United Food & Commercial Workers Int’l Union AFL-CIO-CLC*, 103 F.3d 1007, 1012–1013 (D.C. Cir. 1997); *see also Epstein v. MCA, Inc.*, 54 F.3d 1422, 1423–24 (9th Cir. 1995) (vacating discovery-related contempt order because the information sought was irrelevant; it “would have no bearing on either the merits of the case or on the motion for class certification”).

Despite these restrictions on the scope of discovery, a large number of Plaintiffs’ RFPs have no relevance at all to their challenge to the January 2019 conditional exception issued to South Carolina in relation to the SC Foster Care Program. The information sought is certainly so attenuated from the issues at play that it is not proportional to the needs of the case. Protection is therefore warranted at the outset.<sup>1</sup>

Plaintiffs seek discovery regarding foster care programs and agencies in other states and as to programs other than federal funding of state foster care under Title IV-E of the Social Security Act. For example, Plaintiffs have specifically sought documents related to requests for regulatory exceptions made by government officials in Texas and Pennsylvania as to HHS’s regulation of funding for the foster care programs in those states. Ex. A at 10, RFP Nos. 5, 6. Plaintiffs have also more generally sought documents related to any request by any state or local government official across the United States for exceptions from 45 C.F.R. § 75.300(c) on behalf of faith-based foster care or adoption agencies. Ex. A at 12, RFP No. 11. More broadly still, Plaintiffs seek documents concerning *any* religious accommodation of *any* kind related to faith-based foster care or adoption agencies anywhere in the United States, regardless of the relationship of any such

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<sup>1</sup> Federal Defendants anticipate raising with Plaintiffs additional objections regarding their first set of RFPs. They reserve their rights to raise these objections with the Court at a later date, should any disputes sufficiently ripen for the Court’s review.

accommodation to South Carolina or Title IV-E funding of state foster care systems. Ex. A at 12, 13, RFP Nos. 12–15.

These discovery requests do not seek information relevant to any claim or defense in this litigation. Plaintiffs allege that they are South Carolina residents and that they seek to become foster parents in the South Carolina foster care system. Compl. ¶¶ 8, 73. On that basis, they seek relief as to the January 2019 exception issued by the Federal Defendants to South Carolina in relation to funding of the State’s foster care program under Title IV-E, based on facts particular to the State. *See* Compl., Prayer for Relief (seeking relief as to the “HHS Waiver to South Carolina”); *see also* ECF No. 50-2 (letter from HHS to Governor McMaster). It makes no difference to those South Carolina-based claims whether any state or local government or faith-based entity has sought a regulatory accommodation or exception in the state foster care systems of Texas or Pennsylvania (to say nothing of every other state from Hawaii to Maine). Nor would the existence of a request for religious accommodation by a faith-based foster care placement agency in some other, non-Title IV-E federal program have any bearing on those claims. This case is not a class action involving residents of other states, and Plaintiffs do not have taxpayer standing to broadly challenge the Federal Defendants’ administration of grants under the Title IV-E program (or in other programs for that matter), nor do Plaintiffs purport to do so. *See* Order at 18.

It makes no difference that the Court has held Plaintiffs have adequately alleged standing to sue and that they have stated a claim against the Federal Defendants at the motion to dismiss stage. That is because “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. 991, 999 (1982). Were it otherwise, and “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.” *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996). But as the Court stated in *Lewis*, “[t]hat is of course not the law.” *Id.*

That rule precludes Plaintiffs’ requested non-South Carolina and non-Title IV-E discovery. Even if Plaintiffs could somehow use their requested discovery to prove a violation of law in another state or in another federal program, that would not advance their claim that the Federal Defendants have violated the law in their actions as to *South Carolina* and its receipt of federal funding under Title IV-E. And equitable relief as to some other agency action in some other state would not redress Plaintiffs’ injuries. Plaintiffs, for example, do not seek to become foster parents in any other state but, rather, seek to “participat[e] in South Carolina’s public child welfare and foster program.” *See* Order at 28 (finding redressability because Plaintiffs seek a “mandate of equal treatment with respect to participation in South Carolina’s public child welfare and foster program”); Compl. ¶ 8. The Court should therefore limit discovery as to the Federal Defendants to the only issue raised in the Complaint: the January 2019 conditional exception regarding federal funding of South Carolina’s foster care system under Title IV-E of the Social Security Act.

### CONCLUSION

For the foregoing reasons, the Federal Defendants respectfully request that the Court enter a protective order prohibiting Plaintiffs from seeking discovery from the Federal Defendants in this case beyond the limitations of the Administrative Procedure Act, including a requirement that discovery may only be served with leave of Court obtained under APA standards after the Federal Defendants produce the administrative record. In the alternative, the Federal Defendants request that the Court enter a protective order as to RFP Nos. 5, 6, and 11–15—*see* Ex. A at 10, 12, 13—

as well as any other discovery requests now pending or that may be served seeking information related to any federal program or state other than the South Carolina foster care system funded under Title IV-E of the Social Security Act.

Dated: July 10, 2020

Respectfully submitted,

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**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION**

EDEN ROGERS and

BRANDY WELCH,

Plaintiffs,

-against-

UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES;

ALEX AZAR, in his official capacity as  
Secretary of the UNITED STATES  
DEPARTMENT OF HEALTH AND  
HUMAN SERVICES;

ADMINISTRATION FOR CHILDREN  
AND FAMILIES;

LYNN JOHNSON, in her official capacity  
as Assistant Secretary of the  
ADMINISTRATION FOR CHILDREN  
AND FAMILIES;

SCOTT LEKAN, in his official capacity as  
Principal Deputy Assistant Secretary of the  
ADMINISTRATION FOR CHILDREN  
AND FAMILIES;

HENRY MCMASTER, in his official  
capacity as Governor of the STATE OF  
SOUTH CAROLINA; and

MICHAEL LEACH, in his official capacity  
as State Director of the SOUTH  
CAROLINA DEPARTMENT OF SOCIAL  
SERVICES,

Defendants.

Case No. 6:19-cv-01567-TMC

**PLAINTIFFS' FIRST SET OF  
REQUESTS FOR PRODUCTION  
TO FEDERAL DEFENDANTS**

## **PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiffs serve their First Set of Requests for Production (collectively, the “Requests” or “RFPs”, and each individually, a “Request” or an “RFP”), dated June 2, 2020, on Defendants United States Department of Health and Human Services (“HHS”); Administration for Children and Families (“ACF”); Alex Azar; Lynn Johnson; and Scott Lekan (collectively, the “Federal Defendants”). Plaintiffs hereby request that these Federal Defendants produce the following documents and tangible things in their possession, custody or control in accordance with the definitions and instructions contained herein to the undersigned attorneys at the offices of Cravath, Swaine & Moore LLP, Worldwide Plaza, 825 Eighth Avenue, New York, New York 10019, within 30 days of service of this First Set of Requests for Production or as otherwise set forth in Rules 26 and 34 of the Federal Rules of Civil Procedure. Each of the document requests is to be read in accordance with the definitions and instructions that follow.

### **DEFINITIONS**

1. The term “ACF” shall mean the Administration for Children and Families and all of its offices, divisions and departments, including, but not limited to, the Administration on Children, Youth and Families, the Children’s Bureau and the Office of Regional Operations for Region 4.

2. The term “ACF Letter” shall mean the January 23, 2019 letter from ACF to South Carolina Governor Henry McMaster regarding “Request for Deviation or Exception from HHS Regulations 45 CFR § 75.300(c)”.

3. The terms “and” and “or” as used herein, where the context permits, shall be construed to mean “and/or” as necessary to bring within the scope of these RFPs any information or documents that might otherwise be construed to be outside their scope.

4. The term “any” is to be understood to include and encompass “all”; the word “all” also includes “each” and vice versa.

5. The term “Bernstine Request” shall mean the March 27, 2019 letter sent by Pennsylvania State Representative Aaron J. Bernstine on behalf of himself and other members of the Pennsylvania House of Representatives to the Assistant Secretary of ACF supporting the Pennsylvania Catholic Charities’ and other faith-based agencies’ requests for “relief” from the HHS Grants Rule.

6. The term “Case” shall mean *Rogers v. United States Department of Health and Human Services, et al.*, No. 6:19-cv-01567-TMC.

7. The term “Communication” means any transmittal and/or receipt of information, whether such was oral or written, and whether such was by chance, prearranged, formal or informal, and specifically includes, but is not limited to, conversations in person, telephone conversations, any documents relating to any in-person or telephone conversations (including, but not limited to, any notes thereof), electronic communications (including email, instant messages and text messages), voicemail, letters, memoranda, statements, media releases, magazine and newspaper articles, and video and audio transmissions.

8. The term “concerning” when referring to any given subject matter, shall mean any document that constitutes, comprises, involves, contains, embodies, reflects, relates to, identifies, states, mentions, alludes to, refers directly or indirectly to, or is in any way relevant to the particular subject matter identified.

9. The term “Cook Letter” shall mean the November 19, 2018 letter from M. Currey Cook on behalf of child welfare and civil rights organizations to Secretary of HHS Alex Azar urging HHS to reject the McMaster Request.

10. The terms “Document” and “Documents” shall have the broadest meaning ascribed to them by Federal Rule of Civil Procedure 34. This includes copies which differ from the original in any way, including handwritten notations or other written or printed matter. It also includes information stored electronically, whether in a computer database or otherwise, regardless of whether such documents are currently also in non-electronic form. “Document” or “Documents” shall include, but are not limited to, any “Communication” as defined herein.

11. The term “DSS” shall mean the South Carolina Department of Social Services and all of its offices, divisions and departments.

12. The term “HHS” shall mean the United States Department of Health and Human Services and all of its offices, divisions and departments, including, but not limited to, the Administration for Children and Families, the Executive Secretariat, the Office of Civil Rights, the Office of the General Counsel, the Office of Intergovernmental and External Affairs and the Office of the Secretary.

13. The term “HHS Grants Rule” shall mean the HHS regulations at 45 C.F.R. § 75.300(c) that prohibit subgrantees from selecting among prospective foster parents on the basis of, *inter alia*, their religion and sexual orientation.

14. The term “LGBT” shall mean individuals and/or couples who identify as lesbian, gay, bisexual and/or transgender.

15. The term “McMaster Request” shall mean the February 27, 2018 letter sent by South Carolina Governor Henry McMaster to the Acting Assistant Secretary of ACF for a “deviation or waiver” from the HHS Grants Rule on the basis that compliance with the HHS Grants Rule would conflict with a subgrantee’s religious exercise.

16. The term “Nonenforcement Policy” shall mean HHS’s Notification of Nonenforcement of Health and Human Services Grants Regulation, published at 84 Fed. Reg. 63,809 (Nov. 19, 2019), notifying the public that HHS would not enforce the HHS Grants Rule pending the finalization of a proposed rule to eliminate the HHS Grants Rule’s provision that prohibits subgrantees from selecting among prospective foster parents on the basis of, *inter alia*, their religion and sexual orientation.

17. The term “Paxton Request” shall mean the December 17, 2018 letter from Texas Attorney General Ken Paxton to the Assistant Secretary of ACF, requesting rulemaking to repeal the HHS Grants Rule or, in the alternative, an exception from that rule.

18. The term “Proposed Rulemaking” shall mean HHS’s proposed rulemaking, published at 84 Fed. Reg. 63,831 (Nov. 19, 2019), to modify the HHS Grants Rule by eliminating the HHS Grants Rule’s provision that prohibits subgrantees from selecting among prospective foster parents on the basis of, *inter alia*, their religion and sexual orientation.

19. The terms “relating to” or “related to” shall mean regarding, referring to, concerning, mentioning, reflecting, pertaining to, evidencing, identifying, involving, describing, discussing, commenting on, embodying, responding to, supporting, contradicting, containing or constituting (in whole or in part).

20. The term “RFRA” shall mean the Religious Freedom Restoration Act, Pub. L. No. 103-141, 107 Stat. 1488 (November 16, 1993) (codified at 42 U.S.C. §§ 2000bb to 2000bb-4).

21. The term “Scott Letter” shall mean the April 10, 2018 letter sent by Senator Tim Scott and 11 other senators urging HHS to rescind the HHS Grants Rule.

22. The term “Timmons Letter” shall mean the July 25, 2018 letter sent by Jay Timmons on behalf of himself and the National Association of Manufacturers to Secretary of HHS Alex Azar regarding the McMaster Request and an event at which an HHS staffer urged faith-based adoption agencies to request waivers of or exceptions from the HHS Grants Rule.

23. The term “Wagner and Severino Memo” shall mean the January 23, 2019 memorandum from Principal Deputy Assistant Secretary of ACF Steven Wagner and Director of the Office of Civil Rights Roger Severino to Deputy Secretary of HHS Eric Hargan regarding their recommendation to grant the McMaster Request.

24. The term “Wyden Letter” shall mean the October 3, 2018 letter sent by Senator Ron Wyden to Secretary of HHS Alex Azar concerning the McMaster Request.

25. The terms “You” and “Your” shall mean HHS and ACF and all of their employees (including, but not limited to, Alex Azar, Lynn Johnson and Scott Lekan), offices, divisions and departments, as defined herein.

26. The singular form of any word shall be interpreted as plural and the plural as singular as necessary to bring within the scope of these RFPs any information or documents which might otherwise be construed to be outside their scope.

### **INSTRUCTIONS**

1. Each Request shall be construed independently and not with reference to any other Request for the purpose of limitation or exclusion.

2. You are required to produce all responsive Documents in Your possession, custody or control, which includes Documents in the possession, custody or control of Your lawyers, agents and other representatives.

3. Each Document and thing requested shall be produced in its entirety. If a Document or thing responsive to any request cannot be produced in full, it shall be produced to the extent possible with an explanation stating why production of the remainder is not possible.

4. If any part of a Document or thing is responsive to any of the following requests, the entire Document or thing should be produced without deletion or redaction.

5. You shall supplement Your responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure within a reasonable time if You obtain or become aware of any further Documents and things responsive to these RFPs.

6. If You withhold any Document or thing from discovery on the basis of the attorney-client privilege, work-product protection or other ground of privilege or immunity, You shall describe in accordance with Federal Rule of Civil Procedure 45(e)(2) the nature of the privilege claimed, and provide the information required by Rule 45(e)(2), and describe the nature of the information in a manner that will enable Plaintiffs to assess the applicability of the claimed privilege or immunity.

7. If a Document exists and several copies or additional copies have been made that are non-identical (or are no longer identical by reason of any subsequent additions or notations or other modifications of such copy), each copy is to be construed as a separate Document.

8. If You are aware that a Document or thing once existed but has been destroyed, You shall state when the Document or tangible thing was destroyed, why it was destroyed and the circumstances under which it was destroyed.

9. Definitions or usages of words or phrases in these Requests are not intended to be, and shall not be, construed as admissions as to the meaning of words or phrases at issue in the action, and shall have no binding effect on Plaintiffs in this or in any other proceeding.

10. Unless otherwise stated in a specific Request, these Requests seek responsive information and Documents authored, generated, disseminated, drafted, produced, reproduced, received, obtained or otherwise created or distributed, concerning, or in effect during the period from January 1, 2017 to the present.

11. For the purpose of reading, interpreting or construing the scope of these Requests, the terms used shall be given their most expansive and inclusive interpretation.

12. You must answer each RFP separately and fully, unless it is objected to, in which event the reason for objection should be specifically and separately stated. If You object to part of a Request, You must produce all Documents responsive to the part of the Request to which You did not object.

13. You must produce responsive Documents as they have been kept in the usual course of business or organize or label them to correspond to these enumerated Requests.

14. You must produce responsive Documents in Your control pursuant to Your authority in Your official capacity, including all responsive Documents at HHS.

15. If in answering these Requests, You claim any ambiguity in interpreting either a Request or a definition or instruction applicable thereto, You should not use that claim as a basis for refusing to respond, but rather You shall set forth as part of Your response to such Request the language deemed to be ambiguous and the interpretation chosen to be used in responding to the Request.

### **REQUESTS FOR PRODUCTION**

**REQUEST NO. 1:** Documents concerning the McMaster Request and/or the granting thereof, including, but not limited to, Communications between (i) any person at HHS and any person at Governor McMaster’s office, including, but not limited to, Governor McMaster; (ii) any person at HHS and any person at DSS; (iii) any person at HHS and any person in any other agency of the federal government or the White House; (iv) any person at HHS and any person in Congress; (v) any person at HHS and any representative of Miracle Hill Ministries (“Miracle Hill”); (vi) any person at HHS and any member of the public, including, but not limited to, child welfare professionals or representatives of child welfare agencies or advocacy organizations; and (vii) internal Communications among any persons at HHS.

**REQUEST NO. 2:** Documents concerning the McMaster Request and/or the granting thereof, including, but not limited to, Communications between any person at HHS and any person at Governor McMaster’s office, including, but not limited to, Governor McMaster, regarding the scope of the McMaster Request including, but not limited to, “follow-up telephone calls” clarifying that the McMaster Request sought “an exception from [HHS] regulations at 45 CFR § 75.300(c), prohibiting subgrantees from selecting among prospective foster parents on the basis of religion, to the extent that such prohibition conflicts with a subgrantee’s religious exercise”, as referenced in the ACF Letter.

**REQUEST NO. 3:** Documents concerning the McMaster Request and/or the granting thereof, including, but not limited to, draft exceptions, waivers, deviations, notices, proposed rulemakings and responses.

**REQUEST NO. 4:** Documents reflecting Communications between the Federal Defendants and DSS or the Federal Defendants and Governor McMaster’s office regarding the legality of granting the McMaster Request, including, but not limited to, analyses or memoranda.

**REQUEST NO. 5:** Documents concerning the Paxton Request, including, but not limited to, (i) Communications between any person at HHS and representatives of the Texas Attorney General's office, (ii) Communications between any person at HHS and any person in any other agency of the federal government, or the White House, (iii) Communications between any person at HHS and any person in Congress, (iv) Communications between any person at HHS and any member of the public, (v) internal Communications among any persons at HHS, (vi) any and all draft exceptions, waivers, deviations, notices, proposed rulemakings and responses relevant to the Paxton Request and (vii) any and all analyses or memoranda regarding the legality of granting the Paxton Request.

**REQUEST NO. 6:** Documents concerning the Bernstine Request, including, but not limited to, (i) Communications between any person at HHS and representatives of the Pennsylvania House of Representatives, (ii) Communications between any person at HHS and any person in any other agency of the federal government, or the White House, (iii) Communications between any person at HHS and any person in Congress, (iv) Communications between any person at HHS and any member of the public, (v) internal Communications among any persons at HHS, (vi) any and all draft exceptions, waivers, deviations, notices, proposed rulemakings and responses relevant to the Bernstine Request and (vii) any and all analyses or memoranda regarding the legality of granting the Bernstine Request.

**REQUEST NO. 7:** Documents concerning the Cook Letter, including, but not limited to, (i) Communications between any person at HHS and any child welfare, civil rights or religious liberty organizations, (ii) Communications between any person at HHS and any person in any other agency of the federal government, or the White House, (iii) Communications between any person at HHS and any person in Congress, (iv) Communications between any person at HHS

and any person at DSS, including, but not limited to, Michael Leach, (v) Communications between any person at HHS and any person in Governor McMaster's office, including, but not limited to, Governor McMaster, (vi) Communications between any person at HHS and any member of the public, (vii) internal Communications among any persons at HHS, (viii) any and all draft responses relevant to the Cook Letter and (ix) any and all analyses or memoranda regarding the legality of granting the McMaster Request.

**REQUEST NO. 8:** Documents concerning the Scott Letter, including, but not limited to, (i) Communications between any person at HHS and any person in any other agency of the federal government, or the White House, (ii) Communications between any person at HHS and any person in Congress, (iii) Communications between any person at HHS and any member of the public, (iv) internal Communications among any persons at HHS, (v) any and all draft exceptions, waivers, deviations, notices, proposed rulemakings and responses relevant to the Scott Letter and (vi) any and all analyses or memoranda regarding the legality of rescinding the HHS Grants Rule.

**REQUEST NO. 9:** Documents concerning the Timmons Letter, including, but not limited to, (i) Communications between any person at HHS, including Secretary Alex Azar, and representatives of the National Association of Manufacturers, (ii) Communications between any person at HHS and any person in any other agency of the federal government, or the White House, (iii) Communications between any person at HHS and any person in Congress, (iv) Communications between any person at HHS and any member of the public, (v) internal Communications among any persons at HHS, (vi) any and all draft responses relevant to the Timmons Letter and (vii) any and all analyses or memoranda regarding the legality of granting the McMaster Request.

**REQUEST NO. 10:** Documents concerning the Wyden Letter, including, but not limited to, (i) Communications between any person at HHS and any person in any other agency of the federal government, or the White House, (ii) Communications between any person at HHS and any person in Congress, (iii) Communications between any person at HHS and any member of the public, (iv) internal Communications among any persons at HHS, (v) any and all draft responses relevant to the Wyden Letter and (vi) copies of any and all analyses or memoranda regarding the legality of granting the McMaster Request.

**REQUEST NO. 11:** Documents concerning requests for exceptions to any part of the HHS Grants Rule or other religious accommodations for faith-based foster care or adoption agencies received by HHS from state or local government officials in other states, including, but not limited to, (i) Communications between any person at HHS and state officials, (ii) Communications between any person at HHS and any person in any other agency of the federal government, or the White House, (iii) Communications between any person at HHS and any person in Congress, (iv) Communications between any person at HHS and any member of the public, (v) internal Communications among any persons at HHS, (vi) any and all draft exceptions, waivers, deviations, notices, proposed rulemakings and responses relevant to the requests and (vii) any and all analyses or memoranda regarding the legality of granting the requests.

**REQUEST NO. 12:** Documents between any representative or employee of a faith-based foster care or adoption agency and any person at HHS, including, but not limited to, (i) Communications concerning the HHS Grants Rule; and (ii) requests from or on behalf of any private faith-based foster care and/or adoption agency seeking or inquiring about a religious accommodation under the RFRA.

**REQUEST NO. 13:** Documents regarding religious accommodations for private faith-based foster care and/or adoption agencies, including, but not limited to, (i) Communications between any person at HHS and any person in any other agency of the federal government, or the White House; (ii) Communications between any person at HHS and any person in Congress; (iii) Communications between any person at HHS and any person at DSS; (iv) Communications between any person at HHS and any person in Governor McMaster's office; (v) Communications between any person at HHS and any member of the public; and (vi) internal Communications among any persons at HHS.

**REQUEST NO. 14:** Draft accommodations, exceptions, waivers, deviations, notices, proposed rulemakings and responses addressed to or concerning private faith-based foster care and/or adoption agencies.

**REQUEST NO. 15:** Analyses or memoranda regarding the provision of religious accommodations to private faith-based foster care and/or adoption agencies pursuant to the RFRA or any other law or regulation.

**REQUEST NO. 16:** Documents concerning the Wagner and Severino Memo, including, but not limited to, (i) Communications between any person at HHS and any person in any other agency of the federal government, or the White House; (ii) Communications between any person at HHS and any person in Congress; (iii) Communications between any person at HHS and any person in DSS; (iv) Communications between any person at HHS and any person in Governor McMaster's office; (v) Communications between any person at HHS and any member of the public; and (vi) internal Communications among any persons at HHS.

**REQUEST NO. 17:** Documents concerning the HHS Grants Rule, the Proposed Rulemaking or the Nonenforcement Policy, including, but not limited to, Communications

between (i) any person at HHS and any person at Governor McMaster's office, including, but not limited to, Governor McMaster; (ii) any person at HHS and any person at DSS; (iii) any person at HHS and any person in the government of any state; (iv) any person at HHS and any person in any other agency of the federal government or the White House; (v) any person at HHS and any person in Congress; (vi) any person at HHS and any representative of Miracle Hill Ministries ("Miracle Hill"); (vii) any person at HHS and any member of the public, including, but not limited to, representatives of child welfare agencies or advocacy organizations; and (viii) internal Communications among any persons at HHS.

**REQUEST NO. 18:** Drafts, in whole or in part, of the Proposed Rulemaking, the Nonenforcement Policy or any proposed changes to the HHS Grants Rule.

**REQUEST NO. 19:** Documents regarding the decision to undertake the Proposed Rulemaking or the Nonenforcement Policy, including, but not limited to, analyses, memoranda and Communications between any person at HHS and any person at DSS or at Governor McMaster's office.

**REQUEST NO. 20:** Documents reflecting Communications between any person at HHS and (i) any other person at HHS, including, but not limited to, Shannon Royce, (ii) any person in any other agency of the federal government, or the White House, (iii) any person in Congress or (iv) any member of the public regarding efforts to encourage faith-based foster care and/or adoption agencies to request from HHS religious accommodations under the RFRA including, but not limited to, public remarks made by HHS staff member Shannon Royce at a May 23, 2018 event.

**REQUEST NO. 21:** Documents concerning the impact of the granting of the McMaster Request on (i) the availability of foster families, (ii) the diversity of eligible, willing

and able foster families, (iii) the ability of non-Christian and/or LGBT families to serve as foster parents and (iv) individual exercise of religious freedom.

**REQUEST NO. 22:** Documents concerning the impact of the Nonenforcement Policy on (i) the availability of foster families, (ii) the diversity of eligible, willing and able foster families, (iii) the ability of non-Christian and/or LGBT families to serve as foster parents and (iv) individual exercise of religious freedom.

**REQUEST NO. 23:** Documents concerning the impact of the Proposed Rulemaking on (i) the availability of foster families, (ii) the diversity of eligible, willing and able foster families, (iii) the ability of non-Christian and/or LGBT families to serve as foster parents and (iv) individual exercise of religious freedom.

**REQUEST NO. 24:** Documents concerning any factual or legal bases for, or any other evidence You considered and/or relied on in reaching, the conclusion that the application of the HHS Grants Rule would “cause a significant programmatic burden for the SC Foster Care Program” (ACF Letter at 3), including, but not limited to, evidence that there would be fewer families available for children in foster care if Miracle Hill is not permitted to exclude families that are not Protestant Christians.

**REQUEST NO. 25:** Documents concerning any investigation You conducted regarding what other agencies would be available to assist non-Protestant Christians and LGBT families in Region 1 in obtaining foster care licenses, and whether such agencies are comparable to Miracle Hill.

**REQUEST NO. 26:** Documents concerning the requirement that Miracle Hill and any other subgrantee making use of the exception granted in the ACF Letter “refer potential foster parents that do not adhere to the subgrantee’s religious beliefs to other subgrantees in the SC Foster

Care Program, or to . . . the SC Foster Care Program staff themselves” (ACF Letter at 4), including, but not limited to, plans and processes for making such referrals, and evidence of such referrals since the exception took effect.



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*Attorneys for Plaintiffs*

June 4, 2020

Columbia, South Carolina

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION**

EDEN ROGERS and

BRANDY WELCH,

Plaintiffs,

-against-

UNITED STATES DEPARTMENT OF HEALTH  
AND HUMAN SERVICES;

ALEX AZAR, in his official capacity as Secretary  
of the UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES;

ADMINISTRATION FOR CHILDREN AND  
FAMILIES;

LYNN JOHNSON, in her official capacity as  
Assistant Secretary of the ADMINISTRATION  
FOR CHILDREN AND FAMILIES;

SCOTT LEKAN, in his official capacity as  
Principal Deputy Assistant Secretary of the  
ADMINISTRATION FOR CHILDREN AND  
FAMILIES;

HENRY MCMASTER, in his official capacity as  
Governor of the STATE OF SOUTH CAROLINA;  
and

MICHAEL LEACH, in his official capacity as State  
Director of the SOUTH CAROLINA  
DEPARTMENT OF SOCIAL SERVICES,

Defendants.

Case No. 6:19-cv-01567-TMC

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the following as indicated herein below, by mailing a copy a copy of same on the date below by First Class U.S. Mail, postage pre-paid, addressed to the following:

**DOCUMENT SERVED: PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION TO FEDERAL DEFENDANTS**

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June 4, 2020  
  
Columbia, South Carolina