

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

Brianna Boe, *et al.*, )  
 )  
 *Plaintiffs,* )  
 )  
 United States of America, )  
 )  
 *Plaintiff-Intervenor,* )  
 )  
 v. ) No. 2:22-cv-00184-LCB-CWB  
 )  
 Hon. Steve Marshall, in his official )  
 capacity as Attorney General of the )  
 State of Alabama, *et al.*, )  
 )  
 *Defendants.* )

**RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO COMPEL  
PRODUCTION OF PLAINTIFF-INTERVENOR'S RECORDS**

## INTRODUCTION

Defendants' demands are based on the premise that a lawsuit brought by the Department of Justice and authorized by the Attorney General is somehow brought on behalf of every federal agency within the executive branch. That is not accurate. By intervening in this lawsuit on behalf of the United States, the Attorney General did not open the doors of every federal agency to an unfettered exploration of their records. Such a rule is not supported by the relevant legal precedent and, as a practical matter, would grind operations of the federal government to a halt if uniformly applied in every civil action in which the United States is a party. While courts have sometimes permitted discovery from non-party federal agencies—in situations, for example, where there was a joint investigation or the non-party agency was otherwise heavily involved in the litigation—none of those special circumstances are present here.

Defendants seek an order compelling the United States to: (1) require the Attorney General to respond to discovery requests on behalf of non-party federal agencies that he does not represent and that are not involved in this action, and (2) wade through millions of pages of records, the vast majority of which are pre-decisional drafts and communications, so that it may produce information that is publicly available or has already been produced.

Defendants demand the United States satisfy these unwieldy requests for communications and documents that do not speak to the constitutionality of the Alabama Vulnerable Child Compassion and Protection Act (VCAP). This Court has observed that this case “rises and falls” on certain documents issued by the World Professional Association for Transgender Health. February 8, 2023 Tr. of Motion Hearing at 64. The same *cannot* be said for documents within the Department of Health and Human Services (HHS), as HHS does not establish or maintain medical standards of care for transgender youth experiencing gender dysphoria. And it most certainly cannot be said for the categories of documents Defendants seek here, including “all informed consent forms, all educational materials, all minutes and notes from any meetings with any NIH staff,” “all board meeting minutes, all FCOI requests,” of three specific studies (*see* Ex. A, Requests 18, 19, & 20) or all “primary data” concerning the “Food and Drug Administration’s decision to add a warning about the risk of pseudotumor cerebri (idiopathic intracranial hypertension) to the labeling for gonadotropin-releasing hormone agonists” (*Id.* at Request 23).

The United States has been transparent about its position and cooperated fully throughout discovery. To date, the United States has produced nearly 2,000 pages of documents and remains committed to producing all non-privileged, responsive information and records properly within the scope of discovery.

For the reasons set forth herein, the United States requests that the Court deny Defendants' motion.

### **DEFENDANTS' REQUESTS FOR PRODUCTION**

Defendants served 45 requests for production on the United States, which seek vast amounts of information from the United States that go far beyond the parameters of this case. Defendants seek, for example, all *communications* and documents in every single one of their 45 requests, even though internal emails, memoranda, and other similar communications are privileged and irrelevant. *See generally* Ex. A. Most of Defendants' requests impose no limitations on timeframe while some seek to reach back six years, far before the passage of VCAP. *See id.* Many of the requests cover a broad subject matter area without limitation—seeking for example, all communications and documents generally on “Transition or the treatment of Minors for Gender Dysphoria or a Related Condition.” *See id.* at Request 6. Defendants' requests are not only overbroad but they expect responses from HHS and *any* executive agency or department where responsive information may be found. *See id.* at “Definitions,” ¶4.

In its objections and responses to Defendants' requests for production, the United States agreed to produce non-privileged, responsive records within its

possession, custody, and control,<sup>1</sup> but objected to producing documents from other agencies since they are not parties to this litigation. *See generally* Ex. B. After the parties reached agreement on the ESI protocol, the United States produced nearly 2,000 pages of documents.

After reviewing the United States' objections and responses, Defendants raised only one concern in their Motion to Compel: that the United States had not committed to producing documents on behalf of other federal agencies—specifically, HHS, including two of its sub-agencies, the Food and Drug Administration (FDA) and the National Institutes of Health (NIH). During meet and confer discussions, the United States repeatedly and consistently made clear that HHS is not a party to the case and that it does not have control over its records. *See* ECF No. 227-1, Ex. 3. Notwithstanding, in an effort to continue good-faith discussions with Defendants, the United States sought to understand what, specifically, Defendants were seeking from HHS through their broad requests. *See id.* To that end, Defendants confirmed that HHS was being asked to respond to all but two requests for production. *See id.* But when asked to articulate what they were specifically looking for, Defendants only stated that they sought “evidence

---

<sup>1</sup> The United States responded to each of Defendants' requests for production based on information within the possession, custody, and control of the three offices within the Department of Justice acting as counsel and handling this litigation on behalf of the United States. Defendants have not raised any concerns with this definition in meet and confer discussions.

relevant to the safety and efficacy of the treatments that are the subject of the lawsuit” and failed to provide any specifics or further guidance. *See id.*

Nonetheless, in the interest of facilitating a resolution and heading off motion practice, the United States reiterated that it remained open to the possibility of attempting to facilitate a production of responsive documents on behalf of HHS if the parties were able to come to an agreement on reasonable boundaries of a narrowed scope of requests. *See id.*

During meet and confer discussions, Defendants agreed to withdraw 10 requests for production.<sup>2</sup> *See id.* However, they continued to insist that HHS and its sub-agencies must respond to the 33 remaining requests. *See id.* Defendants suggested that the United States start by identifying HHS custodians and search terms for seven requests that they wanted to prioritize, which are now included in the group of 14 that are the subject of their motion.<sup>3</sup> *See id.* However, Defendants made clear that this prioritization was only intended to guide the meet and confer discussions and that they were not withdrawing any other requests.<sup>4</sup> *See id.*

Because Defendants were unable to narrow their overly broad requests or provide

---

<sup>2</sup> Specifically, Defendants agreed to withdraw Requests 2, 3, 17, 21, 26, 27, 32, 33, 44, and 45.

<sup>3</sup> The seven requests for production that Defendants suggested should be used to identify custodians are Requests 18, 19, 20, 23, 24, 29, and 30.

<sup>4</sup> Defendants only moved to compel on 14 requests for production: the seven requests they asked to prioritize, *see supra* n.3, plus Requests 6, 7, 8, 22, 25, 28, and 36. At no time during meet and confer discussions did Defendants indicate they would accept production of only these requests.

any specificity as to what materials they were actually seeking, the parties were unable to reach agreement.

## ARGUMENT

### **I. The United States' Discovery Obligations in this Case Do Not Extend to Federal Agencies Beyond the Department of Justice.**

Defendants contend that their requests for production are proper because the entire federal government is a party to this lawsuit and that the records of every federal agency are within the Attorney General's possession, custody, or control. The Court should reject these arguments.

#### **A. The Attorney General, and Not the Entire Federal Government, is the Party to the Lawsuit.**

The Attorney General did not intervene in this matter on behalf of the entire federal government. The Attorney General intervened in this lawsuit under the authority set forth in Section 902 of the Civil Rights Act of 1964, which states: “Whenever an action has been commenced . . . seeking relief from the denial of equal protection of the laws under the fourteenth amendment . . . *the Attorney General for or in the name of the United States* may intervene in such action. . . .” 42 U.S.C. § 2000h-2 (emphasis added).<sup>5</sup> For a district court to permit party

---

<sup>5</sup> Defendants contend that Congress conferred the authority granted by 42 U.S.C. § 2000h-2 “because of the federal government’s *collective* expertise,” ECF No. 227 at 14 (emphasis in original), but they offer no support for this interpretation, which belies the text and legislative history of the statute. The text of the statute clearly distinguishes between the United States and the Attorney General as to which will be acting on behalf of the federal government (the

discovery on other federal agencies that are not parties to this lawsuit, special circumstances—germane to their involvement—must be present.

Indeed, when the United States files or intervenes in a lawsuit to enforce federal law, the *Department of Justice* is the plaintiff even though the case is titled in the name of the United States. *See United States v. City of New York*, No. 07-CV-2067, 2012 WL 1999860, \*11 (E.D.N.Y. Jun. 3, 2012) (in case brought under Title VII of the Civil Rights Act of 1964, “[i]t is the Department of Justice that, for all practical effect, is the Plaintiff in this case, not the United States government in a collective sense.”). During the compensatory relief phase of *City of New York*, a dispute arose over which party should bear the cost for information from the Social Security Administration (SSA), which was necessary for calculating monetary damages. *Id.* The City argued that obtaining the information from SSA was akin to party discovery since both SSA and DOJ were agencies of the federal government. *Id.* The court concluded, however, that since SSA was not a party to the lawsuit and the two agencies did not share information freely with one another, that the

---

Attorney General) and which entity (the United States) is entitled to relief. Further, the legislative history of the statute makes clear that the purpose for the Attorney General’s authority to intervene in equal protection cases was to assign responsibility for enforcing the Civil Rights Act of 1964. As Senator Hubert Humphrey, a major proponent of the language in Section 902, noted in committee, “it permits a responsible officer or instrumentality of Government to seek out the areas of difficult[y], and to propose remedies, solutions or adjustments. I think that if you really want to get at the problem you have got to have that kind of authority.” *Hearings Before the Subcommittee on Employment and Manpower, Committee on Labor and Public Welfare*, 88th Cong. 144 (1963), <https://congressional.proquest.com/congressional/docview/t29.d30.hrg-1963-lpw-0024?accountid=14740>.

records were third-party materials and the cost should fall on the party with the burden of proof on damages—the City. *Id.* When one federal agency files suit, other federal agencies do not automatically become parties to the litigation simply by virtue of being part of the executive branch. *See SEC v. Biopure Corp.*, No. 05-506, 2006 WL 2789002, \*4 (D.D.C. Jan. 20, 2006) (“finding no support for Biopure’s proposition that because the SEC [Government] is a party, then other branches of the Government such as the FDA should also be treated as a party”) (brackets in original); *cf. Texas v. Holder*, No. 1:12-cv-128, 2012 WL 13070110, \*2 (D.D.C. June 8, 2012) (plaintiff fails to meet burden of establishing Attorney General has legal right to obtain documents from federal agencies that are not parties to the litigation).

When courts *have* permitted party discovery of non-party federal agencies, special circumstances have been required, such as a close coordination among certain agencies or a joint investigation involving case-specific issues. Such circumstances are not present here. For instance, in *United States v. UBS Securities LLC*, which Defendants rely upon, the district court found that the Departments of Housing and Urban Development and Treasury were part of the United States for discovery purposes because these agencies had a close working relationship in addressing the financial fraud at issue in the case, including serving on an interagency task force where they shared information and coordinated enforcement

efforts. No. 1:18-cv-6369, 2020 WL 7062789, at \*6 (E.D.N.Y. Nov. 30, 2020). As discussed below, this type of coordination between the Department of Justice and HHS was not present here.

The other cases Defendants cite can be similarly distinguished. In *Deane v. Dynasplint Systems*, the district court ordered that the United States included HHS and the Centers for Medicare & Medicaid Services (CMS) for purposes of responding to discovery because the Department of Justice had itself identified that HHS and CMS had responsibility for the program at issue in the complaint. No. 10-2085, 2015 WL 1638022, \*5 (E.D. La. Apr. 13, 2015). Likewise, in *Tri-State Hospital Supply Corp. v. United States*, the district court found that the plaintiff was entitled to discovery about resources spent by agencies other than Customs, the defendant, because it related directly to Customs employees' motives for allegedly pursuing the baseless penalty claim. 226 F.R.D. 118, 127-28 (D.D.C. 2005); *see also North Dakota v. United States*, No. 1:19-cv-150, 2021 WL 6278456, \*3 (D.N.D. Mar. 24, 2021) (plaintiff permitted discovery where four federal agencies were alleged to have acted in concert leading to civil unrest that required large expenditures of State of North Dakota's resources to contain); *Trane Co. v. Klutznick*, 87 F.R.D. 473, 477 (W.D. Wis. 1980) (ordering the President to provide supplemental interrogatory responses from non-party federal agencies because the President "benefited from information provided by the [Departments]"

in setting policies, rules, and regulations under the Act at issue in the case).

Defendants also rely on the oft-quoted holding in *United States v. American Telephone & Telegraph Co.*, 461 F. Supp. 1314 (D.D.C. 1978), but that case also involved special circumstances not present here. *AT&T* was an antitrust case in which the court found that the “theory of the government’s case and the relief requested [were] national in scope” and that it was “likely to involve the documents and the activities of a great number of government departments.” *Id.* at 1334. But the court made clear that its holding was limited to the specific circumstances of that case. *Id.* (“The Court today holds only that on these peculiar facts, which involve massive and wide-ranging allegations, and in this peculiar action, which involves many departments and their evidence, the United States, having filed the action, cannot claim to be merely the Department of Justice.”).

The special circumstances involved in the cases cited by Defendants are not present here. This lawsuit is challenging an Alabama law and is not national in scope. The Attorney General exercised his independent authority to intervene in this action and was not acting on behalf of any other executive agency. The Department of Justice did not conduct a joint investigation with HHS, FDA, or NIH, nor did these agencies refer this matter to the Department of Justice for enforcement. Contrary to Defendants’ assertion, the Attorney General did not rely heavily on the scientific expertise of HHS, FDA, and NIH in his decision to

intervene and in the United States’ various pleadings. Indeed, the decision to intervene and the ensuing pleadings have been informed by the overwhelming evidence in the medical and scientific community that the treatments at issue in this case are both appropriate and safe for minors suffering from gender dysphoria. HHS and its sub-agencies are not part of the United States’ Complaint in Intervention (ECF No. 58-3) or Amended Complaint in Intervention (ECF No. 92), nor are any individuals who work for these agencies listed as potential witnesses on the United States’ Rule 26(a) disclosures, Exs. C and D. The United States simply cited some of the agencies’ publicly available work,<sup>6</sup> to which Defendants have equal access.

**B. The Attorney General Does Not Control Other Federal Agencies’ Records.**

Information available to HHS, FDA, and NIH, and records created or maintained by these agencies, are not within the “possession, custody, or control” of the Department of Justice. *See* Fed. R. Civ. 34(a). “Control is defined not only

---

<sup>6</sup> Defendants’ claim that the United States is relying on HHS materials or work product is simply false. A non-exhaustive list of sources the United States has reviewed include the clinical practice guidelines of the American Academy of Child and Adolescent Psychiatry, American Psychiatric Association, American Psychological Association, World Health Organization, World Professional Association for Transgender Health; public statements made by representatives of the American Academy of Pediatrics, the American Medical Association, World Professional Association for Transgender Health; and studies found in major publications such as *Journal of Pediatrics*, *Journal of Clinical Endocrinology and Metabolism*, *Yale School of Medicine*, *Archives of Sexual Behavior*, *European Child and Adolescent Psychiatry*, and *International Journal of Transgender Health*. While it would be impossible to assign a value to represent the weight each of these sources has on the overall picture, HHS, FDA, and NIH are but three sources in a very long list.

as possession, but as the legal right to obtain the documents requested upon demand.” *Searock v. Stripling*, 736 F.2d 650, 653 (11th Cir. 1984). There is no basis for Defendants’ contention that the Attorney General has legal authority to direct an agency to produce documents to him in response to discovery requests in litigation to which those agencies are not parties. *Cf. Lujan v. Defenders of Wildlife*, 504 U.S. 555, 570 n.4 (1992) (“We need not linger over the dissent’s facially impracticable suggestion . . . that one agency of the Government can acquire the power to direct other agencies by simply claiming that power . . . in litigation to which the other agencies are not parties.”); *see Texas*, 2012 WL 13070110 at \*2 (Department of Justice does not have legal right to obtain documents on demand from other federal agencies).

Because the Attorney General is the only proper plaintiff-intervenor in this action and does not have possession, custody, or control of information that resides with non-party agencies, the Court should deny Defendants’ motion.<sup>7</sup>

---

<sup>7</sup> Because HHS is not a part of the United States for purposes of this litigation, Rule 34 does not apply here, but rather Rule 45. A litigant seeking information from a non-party federal agency must subpoena that federal agency and comply with the *Touhy* regulations that govern the agency’s participation in litigation to which it is not named a party. *See Moore v. Armour Pharma. Co.*, 927 F.2d 1194, 1197 (11th Cir. 1991) (acknowledging validity of the *Touhy* regulations).

**II. Defendants Seek Irrelevant Communications and Records that are Disproportional to the Needs of the Case.**

Defendants’ requests for production pursue discovery that is neither relevant nor proportional to the needs of this litigation. Discovery, “like all matters of procedure, has ultimate and necessary boundaries.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978). Defendants’ requests are plainly beyond the bounds of permissible discovery.

**A. Defendants Seek Communications and Records That Are Not Relevant to Any Party’s Claim or Defense.**

While courts construe relevance broadly, *see, e.g., Coker v. Duke & Co.*, 177 F.R.D. 682, 685 (M.D. Ala. 1998), much of what Defendants request fails even this low bar. The question of whether “discovery material is relevant is ultimately a fact-specific inquiry.” *McCreight v. AuburnBank*, No. 3:19-cv-865, 2021 WL 6926816, at \*2 (M.D. Ala. Mar. 10, 2021). In this case, the Court has considered questions of relevance and recognized that it is limited: “[W]e’re talking about whether this statute is constitutional or not . . . That’s really just all we’re talking about.” Oct. 14, 2022 Tr. of Hearing at 16; *see also* ECF No. 192, at 5 (the “fundamental issue in this case, which is whether Section 4(a)(1)-(3) of [VCAP] is constitutional under the Fourteenth Amendment.”). Defendants have seemingly agreed and articulated how they believe cases like this are to proceed:

We’re looking at publicly available information. That’s how these inquiries usually proceed, just like they proceeded at the preliminary

injunction, where we came forward with expert testimony. They cited certain studies. We produced certain studies as exhibits. Plaintiffs and the Department of Justice did the same thing. That's how we think that this case will ultimately be adjudicated when we get to final judgment. You will hear from experts. Studies will be put forward.

Oct. 14, 2022 Tr. at 37-38.

But through their discovery requests and this motion, Defendants contradict themselves. Every request seeks “[a]ll *Communications* and *Documents*” (emphasis added). *See generally* Ex. A. With “Communication” broadly defined as “any transmission, receipt, or exchange of information, whether orally, electronically, or in writing,” *id.* at “Definitions,” ¶1, Defendants’ requests extend beyond publicly available information to include pre-decisional, deliberative, internal agency exchanges.

As noted earlier, the United States’ equal protection claim is informed by the overwhelming evidence in the medical and scientific community that supports gender-affirming care for transgender youth. Scientific studies and other resources put forth by the parties in this case speak for themselves, including the conclusions that those studies or resources provide. HHS’s internal communications about agency grant programs have absolutely no bearing on VCAP’s constitutionality, and neither do internal deliberative exchanges made in advance of the agency issuing a public document. *Cf.* Oct. 14, 2022 Tr. at 37 (Defendants noting that cases such as this “usually proceed” through looking at “publicly available

information”). This case simply does not rise or fall on non-party federal agencies’ internal communications and documents.

The compelling public policy reasons for protecting internal federal agency communications and documents from disclosure underscore their lack of relevance to this lawsuit.<sup>8</sup> Discussing the deliberative process privilege under the Freedom of Information Act, the Supreme Court observed that in order to “protect agencies from being forced to operate in a fishbowl, . . . the deliberative process privilege shields from disclosure documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *United States Fish & Wildlife Serv. v. Sierra Club, Inc.*, 141 S. Ct. 777, 785 (2021). The privilege “blunts the chilling effect that accompanies the prospect of disclosure” to encourage candor that in turn improves agency decision-making. *Id.* The open dialogue between individual HHS staff should remain in the safety of thoughtful and informed agency decision-making; it would be misleading and damaging to remove and individually assess these communications and documents outside the context in which they were made.

Internal agency materials are not on par with official publications or peer-reviewed

---

<sup>8</sup> In *Coker*, the court denied a request to compel production of personnel files where there was a strong public policy reason against disclosure, as the party seeking the information “ma[de] only a general showing of relevance and no showing as to why the material which they seek [was] not available from other sources.” 177 F.R.D. at 685. Defendants similarly have not made a sufficient showing to justify compelling production in light of these public policy concerns with releasing internal federal agency documents.

studies, and they certainly have no relation to the constitutionality of VCAP.

HHS's decisions, and the processes to form them, are not at issue in this case.

Beyond seeking internal agency deliberations, Defendants' requests stretch to the outermost boundaries of conceivable relevance, capturing records of minimal, if any, importance to the core issue of VCAP's constitutionality. Defendants demand far-flung categories of documents regarding work by specific researchers such as "all minutes and notes from any meetings with any NIH agency staff," "all board meeting minutes," "all letters of support," "all funding documents," and "all extensions or requests for extensions." *See* Ex. A, Requests 18, 19, 20. In their motion, Defendants make no attempt to explain how these *specific* types of records are at all relevant to VCAP's constitutionality, or bear on the claims or defenses in this case. *See Ham-Let, USA, Inc. v. Guthrie*, No. 3:18-CV-679, 2020 WL 5755764, at \*3 (M.D. Ala. Jan. 13, 2020) (the party seeking discovery "has the threshold burden of demonstrating that the discovery requested is relevant."); *see also Coker*, 177 F.R.D. 685-86 (the requesting party had "made no showing of specific relevance" for personnel files and that a "general statement does not translate into an entitlement [to] the broad information").

Request 6, for example, seeks "[a]ll Communications and Documents since January 1, 2017, concerning Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition." Ex. A, Request 6. By the request's own

wording, Defendants seek any communication or document since 2017 related to “transitioning”—not the *efficacy* or *safety* of gender-affirming care as Defendants maintain—just the very notion of transitioning itself. Not only is this request incredibly expansive, but it is also deeply invasive as it would demand production of personal, private medical information about individual DOJ and HHS employees. *Cf. In re Blue Cross Blue Shield Antitrust Litig.*, No. 2:13-cv-20000, 2017 WL 11681948, at \*2 (N.D. Ala. Aug. 30, 2017) (noting that, in a case with “gigantic monetary and social stakes” the court was “not persuaded that discovery of every expense transaction, every general ledger entry, every income notation, every payment, and every assumption made in calculating [insurer’s] annual financial statement for each of the last ten years is proportionate to the needs of this case”). Similarly, Defendants are seeking from HHS “[a]ll Communications and Documents relating to the *appropriate age* for beginning Transitioning treatment *in Minors*” (emphasis added). Ex. A, Request 28. Even assuming such communications and documents would fall under a liberal definition of relevance, this information would be of little importance to the claims and defenses of this case since VCAP prohibits medical transitioning treatment for *all* transgender minors under 19 in Alabama.

Defendants’ requests for internal communications and documents seek information that is not relevant to any party’s claims or defenses and their motion

should be denied. *See McConico v. Wal-Mart Stores, Inc.*, No. 7:19-CV-1600, 2020 WL 10223232, at \*1 n.1 (N.D. Ala. Dec. 2, 2020) (“While the standard of relevancy is a liberal one, it is not so liberal as to allow a party to roam in shadow zones of relevancy and to explore matter which does not presently appear germane on the theory that it might conceivably become so.”).

**B. The Sweeping Discovery Defendants Seek Would Be Unduly Burdensome.**

Defendants’ requests for production to HHS, including FDA and NIH, fail Rule 26’s proportionality requirement. *See* Fed. R. Civ. P. 26(b)(1). Proportionality concerns “include the importance of the requested discovery, the parties’ relative access to the information, and ‘whether the burden or expense of the proposed discovery outweighs its likely benefit.’” *Taylor v. Farm Credit of N. Fla. ACA*, No. 21-13807, 2022 WL 4493044, at \*3 (11th Cir. Sept. 28, 2022). A court must weigh these proportionality factors “in conjunction with the potential relevance of the requested information.” *Garber v. Nationwide Mut. Ins. Co.*, No. 5:21-cv-00546, 2022 WL 1420916, at \*9 (N.D. Ala. Mar. 24, 2022). The lesser an information’s relevance, the more likely its discovery will be found disproportionate. *Cf. id.*

Defendants discount the complications that discovery coordination between the Department of Justice, HHS, FDA, and NIH would involve. According to HHS’s Chief Information Officer, responding to even just the subset of requests at issue in the instant motion would pose vast technical and resource obstacles. Ex. E

(Declaration of Dr. Karl Mathias). HHS cannot conduct one single HHS-wide search because every sub-agency (or “Operating Division”), like NIH and FDA, has their own data storage systems run by their own technical personnel who cannot access information beyond their specific Operating Division. *Id.* at ¶¶ 12-19, 24-25. Each Operating Division will need to run searches of their multiple storage systems, and each will need to assemble their own team of attorneys and support staff to screen the documents for information such as trade secrets and confidential commercial information which cannot be disclosed by law. *Id.* at ¶¶ 13-19, 21, 31, 34-37. The act of collecting data will impact the performance capacity of each particular system—for example, running a large collection of emails will interrupt email access for all personnel, and so such searches must be conducted in multiple rounds after hours to minimize disruption to agency functions. *Id.* at ¶ 20. As many of Defendants’ requests lack a timeframe, staff will also have to manually search for and process hardcopy documents that predate current data storage systems. *Id.* at ¶ 26. Collecting and processing the information sought will likely take months and result in several terabytes of data, comprising multiple millions of pages of documents. *Id.* at ¶¶ 8-9, 23, 27-30, 39.

The burden of this monumental endeavor massively outweighs any possible need for this information. While “the safety and efficacy of the treatment at issue” as a general concept certainly touches on this case, Defendants provide no hint as

to what specifically they are looking for that is not already publicly available. To the extent that Defendants question HHS's publicly available information and are trying to pierce internal communications, that is not a legitimate reason to force HHS's technology teams to halt their normal operations and spend months of time and resources to collect a mountain of information that no party could feasibly review before the August trial date. It is not enough to rely on a "mere suspicion," without more, that already available materials fail to provide the information Defendants need to present their case. *See In re Blue Cross Blue Shield Antitrust Litig.*, 2017 WL 11681948, at \*2 (denying motion to compel underlying financial data used to calculate insurer's annual financial statements, as the "burden and expense of such a massive discovery request outweighs the speculative belief that the requested financial data may reveal a rosier picture of [the insurer] than it lets on in its annual statements.").

Given the nature of Defendants' requests, the burden of production on the United States substantially outweighs any marginal benefit that the overly broad swath of HHS communications and documents would have to resolving the question of VCAP's constitutionality.

### **CONCLUSION**

For the foregoing reasons, the United States respectfully requests that the Court deny Defendants' motion to compel.

Dated: February 13, 2023

Respectfully submitted,

SANDRA J. STEWART  
United States Attorney  
Middle District of Alabama

KRISTEN CLARKE  
Assistant Attorney General  
Civil Rights Division

PRIM F. ESCALONA  
United States Attorney  
Northern District of Alabama

JOHN POWERS (DC Bar No. 1024831)  
Counsel to the Assistant Attorney General  
Civil Rights Division

LANE H. WOODKE  
Chief, Civil Division  
Northern District of Alabama

CHRISTINE STONEMAN  
Chief, Federal Coordination and Compliance  
Section

JASON R. CHEEK  
Deputy Chief, Civil Division  
MARGARET L. MARSHALL  
Assistant U.S. Attorney  
U.S. Attorney's Office  
Northern District of Alabama  
1801 Fourth Avenue North  
Birmingham, AL 35203  
Tel.: (205) 244-2104  
Jason.Cheek@usdoj.gov  
Margaret.Marshall@usdoj.gov

COTY MONTAG (DC Bar No. 498357)  
Deputy Chief, Federal Coordination and  
Compliance Section

RENEE WILLIAMS (CA Bar No. 284855)  
KAITLIN TOYAMA (CA Bar No. 318993)  
Trial Attorneys  
United States Department of Justice  
Civil Rights Division  
Federal Coordination and Compliance Section  
950 Pennsylvania Avenue NW – 4CON  
Washington, DC 20530  
Tel.: (202) 305-2222  
Renee.Williams3@usdoj.gov  
Kaitlin.Toyama@usdoj.gov

STEPHEN D. WADSWORTH  
Assistant United States Attorney  
U.S. Attorney's Office  
Middle District of Alabama  
Post Office Box 197  
Montgomery, AL 36101-0197  
Tel.: (334) 223-7280  
Stephen.Wadsworth@usdoj.gov

s/ Amie S. Murphy  
AMIE S. MURPHY (NY Bar No. 4147401)  
Trial Attorney  
United States Department of Justice  
Civil Rights Division  
Housing and Civil Enforcement Section  
950 Pennsylvania Avenue NW – 4CON  
Washington, DC 20530  
Tel.: (202) 353-1285  
Amie.Murphy2@usdoj.gov

*Attorneys for Plaintiff-Intervenor United  
States of America*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 13, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record.

Respectfully submitted,

*s/ Amie Murphy*

---

Trial Attorney, Housing and Civil  
Enforcement Section  
Civil Rights Division  
U.S. Department of Justice

## **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

Rev. Paul A. Eknes-Tucker, <i>et al.</i> ,	)	
	)	
<i>Plaintiffs,</i>	)	
	)	
United States of America,	)	
	)	
<i>Intervenor Plaintiff,</i>	)	
	)	
v.	)	No. 2:22-cv-00184-LCB-SRW
	)	
Hon. Steve Marshall, in his official	)	
capacity as Attorney General of the	)	
State of Alabama, <i>et al.</i> ,	)	
	)	
<i>Defendants.</i>	)	

**DEFENDANTS’ FIRST REQUESTS FOR PRODUCTION TO  
INTERVENOR-PLAINTIFF UNITED STATES OF AMERICA**

Pursuant to Fed. R. Civ. P. 26 and Fed. R. Civ. P. 34, Alabama Attorney General Steve Marshall, Montgomery County District Attorney Daryl D. Bailey, Cullman County District Attorney C. Wilson Blaylock, Lee County District Attorney Jessica Ventiere, Twelfth Judicial Circuit District Attorney Tom Anderson, and Jefferson County District Attorney Danny Carr, collectively the Defendants, hereby propound the following Requests for Production to Intervenor-Plaintiff United States of America.

## INSTRUCTIONS

Your responses should include all information, knowledge, or belief available not only to You, but also to any attorneys, investigators, consultants, agents, and other representatives acting on Your behalf. Please respond in accordance with the following instructions:

1. **Claims of Privilege and Exception to Discovery.** If any claim of privilege is asserted, in whole or in part, with respect to any Request, or if You refuse to disclose any requested information or Document, in whole or in part, based on any claim of privilege or immunity, please identify the specific privilege or protection claimed and state the basis for the claim, identifying the pertinent circumstances with sufficient specificity to permit Defendants to assess the basis of any such claim for privilege or protection.

2. **Continuing Nature.** These Requests are intended to be and shall be answered or responded to fully as of the date of response and shall be deemed to be continuing thereafter until the conclusion of this matter. If You should subsequently acquire any further responsive information or Documents called for by these Requests, You should promptly furnish such information or Documents to the undersigned counsel.

3. **Answer to the Fullest Extent Possible.** If any of the Requests cannot be fulfilled in full, please answer to the fullest extent possible, explaining why you

cannot answer the remainder of the Request, and stating any information or knowledge which You have concerning the unanswered portion.

4. **Objections.** If You have a good-faith objection to any of these Requests, or any part thereof, the specific nature of the objection and whether it applies to the entire Request or to a certain portion thereof shall be clearly stated. If there is an objection to any part of a Request, then the part or parts objected to should be indicated and information responsive to the remaining unobjectionable parts should be provided.

5. **Language.** The use of the singular form of any word includes the plural and vice versa. Reference to one gender includes the other gender(s). The word “all” means any and all. The word “including” means “including without limitation.”

6. **Production.** The documents must be produced in their native format, unless otherwise agreed by the parties. Specifically, the documents must be produced as they are kept in the usual course of business. Documents should not be converted to a different format or otherwise produced in a manner where metadata is removed, unless otherwise agreed by the parties.

## DEFINITIONS

1. The word “**Communication**” refers to any transmission, receipt, or exchange of information, whether orally, electronically, or in writing, including, without limitation, any conversation or discussion by means of Documents, letters, notes,

in-person conversations, memoranda, reports, statements, voicemail, audio or video transmission, telephone calls, telegraph, telex, telecopier, facsimile, email, text message, list-serv posting, electronic or other instant message, cable, Social Media post or message, Internet post or message, or any other form or medium of transmission or exchange.

2. The words “**Document**” and “**Documents**” are used in the most comprehensive and inclusive sense permitted by Rule 34 of the Federal Rules of Civil Procedure and therefore include, but are not limited to, all forms of recorded information in Your actual or constructive possession, custody, or control, whether handwritten, typed, printed, recorded or stored on computer or personal data storage devices, diskettes, videotapes, audio tapes, or photographic film, as well as electronically stored information and data compilations. The terms “Document” and “Documents” also include any drafts or versions thereof, and all copies on which any mark, alteration, writing, attachment, or any other change from the original appears. By way of example and not limitation, the terms “Document” and “Documents” include: letters, correspondence, memoranda, email and other electronic communications, voice-mail recordings, facsimile transmissions, telegrams, film or photographic prints, video or audio recordings, blueprints, drawings, charts, specimens, models, word processing files, PowerPoint files, spreadsheets, images, metadata, programs, databases and data compilations.

3. The terms “**regarding**,” “**with regards to**,” “**relate**,” “**relating**,” “**relating to**,” “**concerning**,” and/or “**related to**” mean recording, summarizing, embodying, constituting, reflecting, digesting, referring to, commenting upon, describing, reporting, listing, analyzing, studying, or otherwise discussing in any way a subject matter identified in the Request, and is defined so as to reach all matters within the scope of discovery under the Federal Rules of Civil Procedure, including all information which, though inadmissible at trial, is reasonably calculated to lead to the discovery of admissible evidence.

4. The terms “**You**” and “**Your**” refer to the United States of America, any executive agency or department in which documents responsive to these Requests may be found, and the officers, agents, employees, present or former counsel, and all other persons acting on behalf of those agencies or departments.

5. The connectives “**and**” and “**or**” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of each of the Requests any and all information and Documents that might otherwise be construed to be outside of their scope.

6. “**Alabama Vulnerable Child Compassion and Protection Act**” (or “**Act**”) shall mean Alabama Act No. 2022-289, introduced in the Alabama Legislature as Senate Bill 184 and signed into law on or around April 8, 2022.

7. “**Sex**” or “**Biological Sex**” shall mean the biological state of being male or female, based on the individual’s sex organs at birth, chromosomes, and endogenous hormone profiles.

8. “**Male**” shall mean the biological state of being male, based on the individual’s sex organs at birth, chromosomes, and endogenous hormone profiles.

9. “**Female**” shall mean the biological state of being female, based on the individual’s sex organs at birth, chromosomes, and endogenous hormone profiles.

10. “**Gender Dysphoria**” is the diagnosis of Gender Dysphoria under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). “**Related Conditions**” are any issues concerning gender identity, gender incongruence, transgender identity, or non-binary identity. These include, but are not limited to, ICD diagnostic codes for trans-sexualism (including all sub-categories); gender identity disorder in adolescents or adults; gender identity disorder in children; trans-vestic fetishism; disorder of gender identity or role; transsexualism; dual role trans-vestism; gender identity disorder of childhood; other gender identity disorders; and gender identity disorder, unspecified.

11. “**Puberty Blockers**” shall mean medication administered to Minors to delay or prevent the onset or continuation of puberty, or otherwise to prevent the formation or maturation of secondary sex characteristics consistent with the patient’s Biological Sex. This includes, but is not limited to, common puberty blockers such

as histrelin acetate and leuprolide acetate if administered for the purpose of Transitioning. For purposes of these Requests, “Puberty Blockers” does not include GnRH agonists administered to young children (7 and younger) for the treatment of central precocious puberty or to adult men (19+) for the treatment of prostate cancer.

12. “**Cross-sex Hormones**” shall mean hormones administered to induce the physical characteristics of a sex or gender profile other than the Biological Sex of the patient (including non-cross-sex gender identities such as “non-binary”). It includes, but is not limited to, administering androgenic hormones such as testosterone, fluoxymesterone, and methyltestosterone to a biological female, and estrogenic hormones such as estrogen and estradiol to a biological male. It also includes the administration of hormone blockers and anti-androgens such as flutamide, spironolactone, and cyproterone if used as part of Transitioning.

13. “**Desistance**” shall mean the resolution of diagnosed Gender Dysphoria or Related Conditions in a Minor without the continued administration of Puberty Blockers, Cross-Sex Hormones, or surgical interventions.

14. “**Transitioning**” shall mean the administration of medicines such as Puberty Blockers, Cross-Sex Hormones, and surgical interventions to change the physical appearance of a Minor in a way that is not consistent with the patient’s Biological Sex. This includes changing the appearance to appear as a cross-sex identification as well as non-cross-sex identifications such as “non-binary.”

15. “**Detransitioning**” shall mean any actions taken to conceal or reverse the effects of Transitioning, including the administration of medicines, surgical interventions, and social actions such as changing pronouns, dress, or other forms of gender expression.

16. “**Minor**” shall mean a person under the age of 19.

### REQUESTS FOR PRODUCTION

1. All Communications and Documents concerning the Act.
2. All Communications and Documents concerning any legal challenge to the Act.
3. All Communications and Documents among You and any plaintiff or expert in prior litigation concerning the Act, including *Ladinsky v. Ivey*, N.D. Ala., No. 22-cv-447; and *Walker v. Marshall*, M.D. Ala. No. 22-cv-167.
4. All Communications and Documents that You may rely upon in summary judgment briefing or introduce at trial.
5. All Communications and Documents referred to or referenced in Your Initial Disclosures.
6. All Communications and Documents since January 1, 2017, concerning Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

7. All Communications and Documents since January 1, 2017, concerning the effects of Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition on the well-being or health of Minors.

8. All Communications and Documents since January 1, 2017, concerning the informed consent process for treating Minors for Gender Dysphoria or a Related Condition.

9. All Communications and Documents since January 1, 2017, concerning any guidance, proposed rules, final rules, or other legal documents You have issued, may issue, or will issue regarding Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

10. All documents or communications between any official, attorney, employee, or representative of the U.S. Department of Justice and any other federal entity or employee concerning Transitioning and Gender Dysphoria or a Related Condition.

11. All Communications and Documents regarding Proposed Rule, Nondiscrimination in Health Programs and Activities, 87 Fed. Reg. 47824, that relate to Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

12. All Communications and Documents regarding Rule, Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority,

85 Fed. Reg. 37160 (June 19, 2020), that relate to Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

13. All Communications and Documents regarding Rule, Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023, 87 Fed. Reg. 27208, that relate to Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

14. All Communications and Documents concerning any past or present studies or other research You have conducted, funded, or otherwise supported regarding Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

15. All Communications and Documents concerning any past or present studies or other research You have declined to conduct, fund, or otherwise support regarding Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

16. All Communications and Documents regarding any criteria used to select studies or research to fund regarding Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

17. All Communications and Documents concerning Your funding of Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

18. All Communications and Documents concerning research published as Johanna Olson-Kennedy et al., *Impact of Early Medical Treatment for Transgender Youth: Protocol for the Longitudinal, Observational Trans Youth Care Study*, doi:10.2196/14434, National Institutes of Health Project # 1R01HD082554-01A1, including without limitation the grant proposal (including appendices), study protocol, all records of its implementation, all informed consent documents, all IRB approval forms, all educational materials, all minutes and notes from any meetings with any NIH staff, all progress reports, all board meeting minutes, all FCOI requests, all letters of support, all funding documents, all outcome data, all extensions or requests for extensions, and Communications regarding a letter dated on or about Apr 5, 2019 requesting a moratorium on this research signed by Michael Laidlaw, William Malone, and/or Hacsí Horvath.

19. All Communications and Documents concerning research published as Johanna Olson-Kennedy et al., *Physiologic Response to Gender-Affirming Hormones Among Transgender Youth*, *Journal of Adolescent Health*, 62(4), 397–401. <https://doi.org/10.1016/j.jadohealth.2017.08.005>, including without limitation the grant proposal (including appendices), all study protocols, all records of its implementation, all informed consent documents, all IRB approval forms, all educational materials, all minutes and notes from any meetings with any NIH staff, all progress

reports, all board meeting minutes, all FCOI requests, all letters of support, all funding documents, all outcome data, and all extensions or requests for extensions.

20. All Communications and Documents concerning research by Natalie J. Nokoff regarding Transitioning or Gender Dysphoria or a Related Condition, including without limitation all study protocols, all records of implementation, all informed consent documents, all IRB approval forms, all educational materials, all minutes and notes from any meetings with any NIH staff, all progress reports, all board meeting minutes, all FCOI requests, all letters of support, all funding documents, and all outcome data, about all of the following NIH-funded projects and any other projects concerning Transitioning or Gender Dysphoria or a Related Condition: Trans Health: Evaluation of Markers of Cardio-metabolic Health and Well-being in Transgender Youth, <https://clinicaltrials.gov/ct2/show/NCT02550431>; Pubertal Blockade and Estradiol Effects on Cardiometabolic Health for Transitioning Youth, Projects # K23-HL-151868-01, -02, -03; and, Project # K12-HD-057022.

21. All Communications and Documents concerning Your participation in Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition, including at any hospitals, medical offices, or clinics run by or supported by You.

22. All Communications and Documents concerning the Food & Drug Administration's or any other agency's consideration of medical devices, drugs, or

medical requirements related to Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

23. All Communications and Documents concerning the Food & Drug Administration's decision to add a warning about the risk of pseudotumor cerebri (idiopathic intracranial hypertension) to the labeling for gonadotropin-releasing hormone agonists as generally discussed in Risk of pseudotumor cerebri added to labeling for gonadotropin-releasing hormone agonists, AAP, [https://www.fda.gov/media/159663/download#:~:text=The%20Food%20and%20Drug%20Administration%20\(FDA\)%20has%20added%20a%20warning,precocious%20puberty%20in%20pediatric%20patients.\(July%201,%202022\),including%20without%20limitation%20reporting%20of%20adverse%20events%20by%20diagnosis,primary%20data,Communications%20between%20You%20and%20AAP,and%20Communications%20between%20Your%20agencies.](https://www.fda.gov/media/159663/download#:~:text=The%20Food%20and%20Drug%20Administration%20(FDA)%20has%20added%20a%20warning,precocious%20puberty%20in%20pediatric%20patients.(July%201,%202022),including%20without%20limitation%20reporting%20of%20adverse%20events%20by%20diagnosis,primary%20data,Communications%20between%20You%20and%20AAP,and%20Communications%20between%20Your%20agencies.)

24. All Communications and Documents concerning the FDA review of Puberty Blockers referenced in Christina Jewett, Women Fear Drug They Used To Halt Puberty Led To Health Problems, Kaiser Health News, <https://khn.org/news/women-fear-drug-they-used-to-halt-puberty-led-to-health-problems/> (Feb. 2, 2017).

25. All Communications and Documents concerning reporting of adverse events for Puberty Blockers and Cross-sex Hormones.

26. All Communications and Documents concerning reporting of adverse events for surgical procedures used to treat Gender Dysphoria or a Related Condition.

27. All Communications and Documents concerning Transitioning treatments or care provided to Minors in Alabama, including referrals to providers outside the state.

28. All Communications and Documents relating to the appropriate age for beginning Transitioning treatment in Minors.

29. All Communications and Documents concerning reports on the quality of care for the treatment of Minors for Gender Dysphoria or a Related Condition, including without limitation Communications and Documents involving the Agency for Healthcare Research and Quality and its Topic Brief: Treatments for Gender Dysphoria in Transgender Youth, <https://effectivehealthcare.ahrq.gov/system/files/docs/topic-brief-gender-dysphoria.pdf> (Jan. 8, 2021).

30. All Communications and Documents concerning the following document published by the Department of Health and Human Services' Office of Population Affairs: Gender-Affirming Care and Young People, <https://opa.hhs.gov/sites/default/files/2022-03/gender-affirming-care-young-people-march-2022.pdf>.

31. All Communications and Documents concerning the following document published by the Department of Health and Human Service's Children's Bureau: Guidance for Title IV-B and IV-E Agencies When Serving LGBTQI+ Children and Youth, <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2201.pdf>.

32. All Communications and Documents concerning the Centers for Medicare and Medicaid's Services' decision to approve a request to provide "gender-affirming care" in the individual and small group health insurance markets as part of Colorado's Essential Health Benefit (EHB) benchmark. *See* <https://www.hhs.gov/about/news/2021/10/12/biden-harris-administration-green-lights-coverage-of-lgbtqplus-care-as-an-essential-health-benefit-in-colorado.html>.

33. All Communications and Documents concerning the following document published by the Department of Justice: Letter Regarding Federal Nondiscrimination Protections, <https://www.justice.gov/opa/press-release/file/1489066/download>.

34. All Communications and Documents pertaining to incidences and facts regarding onset of Gender Dysphoria or a Related Condition.

35. All Communications and Documents regarding the incidences of Medicare beneficiaries with Gender Dysphoria or a Related Condition or who are undergoing Transitioning.

36. All Communications and Documents reflecting incidences or evidence of desistance or detransition.

37. All Communications and Documents concerning Dr. Erika Anderson and Dr. Marci Bowers related to Gender Dysphoria or a Related Condition.

38. All Communications and Documents between NIH's Sexual & Gender Minority Research Office and any representative of the World Professional Association for Transgender Health ("WPATH"), U.S. Professional Association for Transgender Health ("USPATH"), the Endocrine Society, the American Psychological Association, the American Academy of Pediatrics ("AAP"), the Human Rights Campaign, the Southern Poverty Law Center, and the American Civil Liberties Union regarding Transitioning and Gender Dysphoria or a Related Condition.

39. All Communications and Documents between or among Xavier Becerra, Rachel Levine, Francis Collins, Janet E. Hall, Loyce Pace, Chiquita Brooks-LaSure, Karen L. Parker, or any of their officers, agents, employees, present or former counsel, or other persons acting on their behalf and any representative of WPATH, USPATH, the Endocrine Society, the American Psychological Association, AAP, the Human Rights Campaign, the Southern Poverty Law Center, and the American Civil Liberties Union regarding Transitioning and Gender Dysphoria or a Related Condition.

40. All Communications and Documents concerning the organizational stance regarding the treatment of Gender Dysphoria or a Related Condition from WPATH, USPATH, AAP, or the Endocrine Society.

41. All Communications and Documents concerning any conference related to Gender Dysphoria or a Related Condition that WPATH, USPATH, AAP, or the Endocrine Society has hosted.

42. All Communications and Documents regarding Your review or consideration of the following: Nat'l Inst. for Health and Care Excellence, Evidence Review: Gender-Affirming Hormones for Children and Adolescents with Gender Dysphoria (2021); Nat'l Inst. for Health and Care Excellence, Evidence Review: Gonadotrophin Releasing Hormone Analogues for Children and Adolescents with Gender Dysphoria (2021); Ryan Anderson, When Harry Became Sally (2018); Abigail Shrier, Irreversible Damage (2020); Abigail Shrier, Top Trans Doctors Blow the Whistle on 'Sloppy' Care, Common Sense (Oct. 4, 2021); William J. Malone et al., Proper Care of Transgender and Gender-diverse Persons in the Setting of Proposed Discrimination, 106 J. Clinical Endocrinology & Metabolism e3287 (2021); Abigail Shrier, A Pediatric Association Stifles Debate on Gender Dysphoria, Wall St. Journal (Aug. 9, 2021); Stephen Levine et al., Reconsidering Informed Consent for Trans-Identified Children, Adolescents, and Young Adults, J. Sex & Marital Therapy, 7 (Mar. 2022); Socialstyrelsen, Care of children and adolescents with gender

dysphoria (Feb. 2022); Académie Nationale de Médecine, Medicine and gender trans-identity in children and adolescents (Feb. 2022); James M. Cantor, Transgender and Gender Diverse Children and Adolescents: Fact-Checking of AAP Policy, *Journal of Sex & Marital Therapy*, DOI: 10.1080/0092623X.2019.1698481 (2019).

43. All Communications and Documents regarding the Society for Evidence Based Gender Medicine (“SEGM”), the American College of Pediatricians, 4th Wave Now, Transgender Trend, Michael Laidlaw, MD, William Malone, MD, Paul Hruz, MD, Quentin Van Meter, MD, Julie Mason, MD, Stephen Levine, MD, Andre Van Mol, MD, Michelle Cretella, South Dakota Rep. Fred Deutsch, Deborah Soh, and Hilary Cass.

44. All Communications and Documents regarding the following filings by You: Statement of Interest, *Brandt v. Rutledge*, E.D. Ark. No. 21-cv-450, Dkt. 19 (filed June 17, 2021); Amicus Brief, *Brandt v. Rutledge*, 8th Cir. No. 21-2875 (filed Jan. 25, 2022); Amicus Brief, *Hecox v. Little*, 9th Cir. Nos. 20-35813, 20-35815, Dkt. 45 (filed Nov. 19, 2020).

45. All Communications and Documents concerning public statements (including via social media), interviews, testimony, or speeches made by You about the Act, Transitioning, or the treatment of Minors for Gender Dysphoria or a Related Condition.

Respectfully submitted,

Steve Marshall  
*Attorney General*

Christopher Mills (*pro hac vice*)  
SPERO LAW LLC  
557 East Bay Street, #22251  
Charleston, South Carolina  
29413  
(843) 606-0640  
CMills@Spero.law

s/ Brian W. Barnes  
David H. Thompson (*pro hac vice*)  
Peter A. Patterson (*pro hac vice*)  
Brian W. Barnes (*pro hac vice*)  
John D. Ramer (*pro hac vice*)  
COOPER & KIRK, PLLC  
1523 New Hampshire Ave., NW  
Washington, D.C. 20036  
(202) 220-9600  
dthompson@cooperkirk.com  
ppatterson@cooperkirk.com  
bbarnes@cooperkirk.com  
jrager@cooperkirk.com

Edmund G. LaCour, Jr. (ASB-9182-U81L)  
*Solicitor General*  
A. Barrett Bowdre (ASB-2087-K29V)  
Thomas A. Wilson (ASB-1494-D25C)  
*Deputy Solicitors General*  
James W. Davis (ASB-4063-I58J)  
*Deputy Attorney General*  
Benjamin M. Seiss (ASB-2110-O00W)  
*Assistant Attorney General*

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ALABAMA  
501 Washington Avenue  
Post Office Box 300152  
Montgomery, Alabama 36130-0152  
Telephone: (334) 242-7300  
Facsimile: (334) 353-8400  
Edmund.LaCour@AlabamaAG.gov  
Barrett.Bowdre@AlabamaAG.gov  
Thomas.Wilson@AlabamaAG.gov  
Jim.Davis@AlabamaAG.gov  
Ben.Seiss@AlabamaAG.gov

*Counsel for Defendants*

## CERTIFICATE OF SERVICE

The parties have agreed to electronic service of discovery documents. I hereby certify that I electronically served a copy of the foregoing document on Melody H. Eagan ([meagan@lightfootlaw.com](mailto:meagan@lightfootlaw.com)), Jeffrey P. Doss ([jdoss@lightfootlaw.com](mailto:jdoss@lightfootlaw.com)), Amie A. Vague ([avague@lightfootlaw.com](mailto:avague@lightfootlaw.com)), J. Andrew Pratt ([apratt@kslaw.com](mailto:apratt@kslaw.com)), Misty L. Peterson ([mpeterson@kslaw.com](mailto:mpeterson@kslaw.com)), Adam Reinke ([areinke@kslaw.com](mailto:areinke@kslaw.com)), Gilbert Oladeinbo ([goladeinbo@kslaw.com](mailto:goladeinbo@kslaw.com)), Brent P. Ray ([bray@kslaw.com](mailto:bray@kslaw.com)), Abigail Hoverman Terry ([ahoverman@kslaw.com](mailto:ahoverman@kslaw.com)), Michael B. Shortnacy ([mshortnacy@kslaw.com](mailto:mshortnacy@kslaw.com)), Asaf Orr ([aorr@nclrights.org](mailto:aorr@nclrights.org)), Jennifer L. Levi ([jlevi@glad.org](mailto:jlevi@glad.org)), Scott D. McCoy ([scott.mccoy@splcenter.org](mailto:scott.mccoy@splcenter.org)), Diego A. Soto ([diego.soto@splcenter.org](mailto:diego.soto@splcenter.org)), Jessica L. Stone ([jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)), Sarah Warbelow ([sarah.warbelow@hrc.org](mailto:sarah.warbelow@hrc.org)), Cynthia Weaver ([cynthia.weaver@hrc.org](mailto:cynthia.weaver@hrc.org)), John Powers ([john.powers@usdoj.gov](mailto:john.powers@usdoj.gov)), Coty Montag ([coty.montag@usdoj.gov](mailto:coty.montag@usdoj.gov)); Eliza Dermody ([eliza.dermody@usdoj.gov](mailto:eliza.dermody@usdoj.gov)); Alyssa C. Lareau ([alyssa.lareau@usdoj.gov](mailto:alyssa.lareau@usdoj.gov)), Renee Williams ([renee.williams3@usdoj.gov](mailto:renee.williams3@usdoj.gov)), Kaitlin Toyama ([kaitlin.toyama@usdoj.gov](mailto:kaitlin.toyama@usdoj.gov)), Lane Woodke ([lane.woodke@usdoj.gov](mailto:lane.woodke@usdoj.gov)), Jason R. Cheek ([jason.cheek@usdoj.gov](mailto:jason.cheek@usdoj.gov)), Sandra J. Stewart ([sandra.stewart@usdoj.gov](mailto:sandra.stewart@usdoj.gov)), and Stephen D. Wadsworth ([Stephen.wadsworth@usdoj.gov](mailto:Stephen.wadsworth@usdoj.gov)) via email on this the 20th day of September 2022.

s/ Brian W. Barnes  
*Counsel for Defendants*

## **EXHIBIT B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

BRIANNA BOE, individually and on  
behalf of her minor son, MICHAEL BOE;  
*et al.*,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

STEVE MARSHALL, in his official  
capacity as Attorney General of the State  
of Alabama; *et al.*,

Defendants.

Case No. 2:22-cv-184-LCB-  
CWB

Honorable Liles C. Burke

**PLAINTIFF-INTERVENOR UNITED STATES OF AMERICA'S  
OBJECTIONS AND RESPONSES TO DEFENDANTS' FIRST REQUESTS  
FOR PRODUCTION**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure (“Rules”),  
Plaintiff-Intervenor the United States of America submits its objections and  
responses to Defendants’ First Requests for Production.

**Preliminary Statement**

The United States’ Responses are limited to information currently available to  
the United States and are based on the United States’ understanding of the

information it has received or obtained to date. Additional discovery may reveal facts that affect whether any given document is responsive to any particular request. The United States' investigation is continuing and, consistent with the Rules and the Local Rules of this Court, the United States will supplement its Responses and its production as required.

The United States' Responses are further limited in that it will not produce documents or electronically stored information that are an exact duplicate<sup>1</sup> of an item that has already been produced, or documents or electronically stored information that have already been produced in this litigation.

### **Specific Objections and Responses**

The United States objects to the Requests' definition of "You" or "Your," which is overly broad and disproportionate to the needs of the case because it is not limited to the portion of the vast federal government that is likely to have information relevant to the claims and defenses in this case. Instead, the definition would apply to the entire federal government, "former counsel," and "all other persons acting on behalf of" the entire federal government. The boilerplate language in the Requests' definition disregards the nature of the federal government and the comparatively limited claims and defenses in this case. If followed, it would call for broad searches that are not likely

---

<sup>1</sup> "Duplicates" in the context of electronically stored information are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128 bit value used to create a unique identified for an electronic file.

in any way to lead to information relevant to the claims and defenses in this case. It is unreasonable, disproportionate, and likely impossible for counsel for the United States in this case to attempt to ascertain, find, and collect responsive information from all persons who meet this unnecessarily overbroad definition. Instead, the United States will respond to each Request based on information within the possession, custody, or control of the three offices acting as counsel and handling this litigation on behalf of the United States—that is, the United States Department of Justice, Civil Rights Division, Federal Coordination & Compliance Section; the United States Attorney’s Office for the Northern District of Alabama, Civil Division; and the United States Attorney’s Office for the Middle District of Alabama, Civil Division.

**REQUEST FOR PRODUCTION NO. 1:**

All Communications and Documents concerning the Act.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys and staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced.

Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced. Communications between counsel and an expert witness or consultant will not be produced as they are protected from disclosure, including under Rule 26(b)(4).

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request fails to limit itself to any time period. In addition, the Request includes an overbroad catchall of “[a]ll Communications and Documents concerning the Act” (emphasis added), without any limitation, which likely includes numerous documents that are entirely unrelated to the claims and defenses at issue in this lawsuit. As just one example, the Request would include any mention of the Act in any email in the United States’ possession, which likely includes large numbers of irrelevant documents such as, for example, news article roundups that reference this litigation. As written, the United States would expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such

responsive information.

The United States is withholding responsive documents based on these objections. However, subject to the foregoing objections and without waiving the same, the United States will conduct a reasonable search and produce documents responsive to this Request. In addition, responsive documents are listed on the United States' initial disclosures and will be produced.

**REQUEST FOR PRODUCTION NO. 2:**

All Communications and Documents concerning any legal challenge to the Act.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced.

Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced. Communications between counsel and an expert witness or consultant will not be produced as they are protected from disclosure, including under Rule 26(b)(4).

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request fails to limit itself to any time period. In addition, the Request includes an overbroad catchall of “[a]ll Communications and Documents concerning any legal challenge to the Act” (emphasis added), without any limitation, which likely includes numerous documents that are entirely unrelated to the claims and defenses at issue in this lawsuit. As just one example, the Request would include any mention of any legal challenge to the Act in any email in the United States’ possession, which likely includes large numbers of irrelevant documents including, for example, news article roundups that reference this litigation. As written, the United States would expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States is withholding responsive documents based on these objections. However, subject to the foregoing objections and without waiving the

same, the United States will conduct a reasonable search and produce documents responsive to this Request. In addition, responsive documents are listed on the United States' initial disclosures and will be produced.

**REQUEST FOR PRODUCTION NO. 3:**

All Communications and Documents among You and any plaintiff or expert in prior litigation concerning the Act, including *Ladinsky v. Ivey*, N.D. Ala., No. 22-cv-447; and *Walker v. Marshall*, M.D. Ala. No. 22-cv-167.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced.

Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced. Communications between counsel and an expert witness or consultant will not be produced as they are protected from disclosure, including under Rule 26(b)(4).

The United States further objects to this Request because it is overly broad on

its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request fails to limit itself to any time period. In addition, the Request includes an overbroad catchall of “[a]ll Communications and Documents” (emphasis added), without any limitation, which includes numerous documents that are entirely unrelated to the claims and defenses at issue in this lawsuit.

The United States further objects to this Request as premature, to the extent it seeks documents related to any experts the United States may disclose in relation to this lawsuit. The United States will make its expert disclosures in accordance with the Court’s July 15, 2022 Scheduling Order (or any subsequent operative scheduling orders) and Rule 26(a)(2).

The United States is withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States has no nonprivileged documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 4:**

All Communications and Documents that You may rely upon in summary judgment briefing or introduce at trial.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files

privilege, deliberative process privilege, and/or the common interest privilege.

Moreover, the Request for documents that the United States “may” rely upon for summary judgment or at trial invade the attorney work product doctrine as it touches on mental impressions, conclusions, opinions, and/or legal theories of Plaintiff-Intervenor’s counsel. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced. Communications between counsel and an expert witness or consultant will not be produced as they are protected from disclosure, including under Rule 26(b)(4).

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States further objects to this Request on the grounds that it is premature. The United States will identify the documents that it may introduce at trial or reply upon in summary judgment briefing (including its expert disclosures) pursuant to the relevant deadlines established by the Court’s July 15, 2022 Scheduling Order (or any subsequent operative scheduling orders) and Rule 26(a)(2).

The United States is not withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States will conduct a reasonable search and produce documents responsive to

this Request at the appropriate time.

**REQUEST FOR PRODUCTION NO. 5:**

All Communications and Documents referred to or referenced in Your Initial Disclosures.

**RESPONSE:**

The United States objects to this Request as unduly burdensome as it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. Further, communications between counsel and an expert witness or consultant will not be produced as they are protected from disclosure, including under Rule 26(b)(4).

Subject to the foregoing objection, the United States will produce the following documents, referred to or referenced in the United States' Initial Disclosures in this litigation:

- Studies regarding the medical treatment of gender dysphoria in transgender youth;
- Guidelines regarding the standards of care for the medical treatment of gender dysphoria provided to transgender youth;
- Medical literature related to “off label” use of medications;
- Public statements from medical associations or practitioners regarding the standards of care for medical treatment of gender dysphoria provided to transgender youth;
- Public statements from medical associations regarding Alabama Senate Bill 184 and/or House Bill 266;

- Public statements or interviews from State officials related to Alabama Senate Bill 184 and/or House Bill 266;
- Video recordings of legislative hearings or proceedings on Alabama Senate Bill 184 and/or House Bill 266;
- Declaration signed by Dr. Armand Antommara, which was filed in support of the United States’ motion for a temporary restraining order and a preliminary injunction, and the exhibits accompanying that declaration; and
- Documents admitted as exhibits during the preliminary injunction proceedings.

In addition to the above-referenced categories, the United States also identified in its Initial Disclosures “[a]ll pleadings and other documents filed in this action and the attachments thereto.” Documents that are part of the record in this matter are either already in Defendants’ possession, custody, or control, or are readily available. Pursuant to this objection, the United States will not produce this category of documents. Otherwise, the United States is not withholding responsive documents based on the foregoing objections.

**REQUEST FOR PRODUCTION NO. 6:**

All Communications and Documents since January 1, 2017, concerning Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically

stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced.

Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced. Communications between counsel and an expert witness or consultant will not be produced as they are protected from disclosure, including under Rule 26(b)(4).

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents since January 1, 2017 . . .” (emphasis added), related to the very broad subjects of “Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition,” without limitation. Information responsive to this unreasonably broad Request likely includes numerous documents that are entirely unrelated to the claims and defenses at issue in this lawsuit. As just one example, the Request would include any reference to Transitioning in any email in

the United States' possession since 2017, which likely includes thousands of irrelevant documents including, for example, news articles about Transitioning, generally, that are entirely unrelated to this litigation. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. As written, the United States would expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant. Furthermore, the timeframe for which Defendants seek responsive information is overbroad. Defendants themselves have objected to producing documents created since 2017 and based on this objection the United States has agreed, during a meet and confer with counsel, to limit its own discovery to a narrower timeframe. Therefore, the United States will limit its Response to this Request to information since January 1, 2020 that is relevant to the claims and defenses of this case.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States is withholding responsive documents based on these objections. However, subject to the foregoing objections and without waiving the same, the United States will conduct a reasonable search and produce documents

responsive to this Request. In addition, responsive documents are listed on the United States' initial disclosures and will be produced.

**REQUEST FOR PRODUCTION NO. 7:**

All Communications and Documents since January 1, 2017, concerning the effects of Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition on the well-being or health of Minors.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced.

Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced. Communications between counsel and an expert witness or consultant will not be produced as they are protected from disclosure, including under Rule 26(b)(4).

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an

improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents since January 1, 2017 . . .” (emphasis added), related to the very broad subjects of “the effects of Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition on the well-being or health of Minors,” without limitation. Information responsive to this unreasonably broad Request likely includes numerous documents that are entirely unrelated to the claims and defenses at issue in this lawsuit. As just one example, the Request would include any reference to the effects of Transitioning in any email in the United States’ possession since 2017, which likely includes thousands of irrelevant documents including, for example, news articles about the effects of Transitioning, generally, which are entirely unrelated to this litigation. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. As written, the United States would expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant. Furthermore, the timeframe for which Defendants seek responsive information is overbroad. Defendants themselves have objected to producing documents created since 2017 and based on this objection the United States has agreed, during a meet and confer with counsel, to limit its own discovery to a narrower timeframe. Therefore, the United States will limit its Response to this Request to information since January 1, 2020 that is relevant to the claims and defenses of this

case.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States is withholding responsive documents based on these objections. However, subject to the foregoing objections and without waiving the same, the United States will conduct a reasonable search and produce documents responsive to this Request. In addition, responsive documents are listed on the United States' initial disclosures and will be produced.

**REQUEST FOR PRODUCTION NO. 8:**

All Communications and Documents since January 1, 2017, concerning the informed consent process for treating Minors for Gender Dysphoria or a Related Condition.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely

among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced.

Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced. Communications between counsel and an expert witness or consultant will not be produced as they are protected from disclosure, including under Rule 26(b)(4).

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents since January 1, 2017 . . .” (emphasis added), related to the very broad subject of “the informed consent process for treating Minors for Gender Dysphoria or a Related Condition,” without limitation. Information responsive to this unreasonably broad Request likely includes numerous documents that are entirely unrelated to the claims and defenses at issue in this lawsuit. As just one example, the Request would include all references to the informed consent process in any email in the United States’ possession since 2017, which likely includes thousands of irrelevant documents including, for example, news articles about informed consent, generally, that entirely unrelated to this litigation. The United States further objects to the extent this Request seeks information in the possession of other

federal agencies that are not parties to this case. As written, the United States would expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant. Furthermore, the timeframe for which Defendants seek responsive information is overbroad. Defendants themselves have objected to producing documents created since 2017 and based on this objection the United States has agreed, during a meet and confer with counsel, to limit its own discovery to a narrower timeframe. Therefore, the United States will limit its Response to this Request to information since January 1, 2020 that is relevant to the claims and defenses of this case.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States is withholding responsive documents based on these objections. However, subject to the foregoing objections and without waiving the same, the United States will conduct a reasonable search and produce documents responsive to this Request. In addition, responsive documents are listed on the United States' initial disclosures and will be produced.

**REQUEST FOR PRODUCTION NO. 9:**

All Communications and Documents since January 1, 2017, concerning any

guidance, proposed rules, final rules, or other legal documents You have issued, may issue, or will issue regarding Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced.

Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced. Communications between counsel and an expert witness or consultant will not be produced as they are protected from disclosure, including under Rule 26(b)(4).

The United States further objects to this Request because the terms “guidance” and “other legal documents” are vague and ambiguous, as they are not defined.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v.*

*La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents since January 1, 2017 . . .” (emphasis added) related to the very broad subjects of “any guidance, proposed rules, final rules, or other legal documents . . . regarding Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition” (emphasis added), without limitation. Information responsive to this unreasonably broad Request likely includes numerous documents that are entirely unrelated to the claims and defenses at issue in this lawsuit. As just one example, the Request would include all references to proposed rules in any email in the United States’ possession since 2017, which likely includes large numbers of irrelevant documents. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. As written, the United States would expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant. Furthermore, the timeframe for which Defendants seek responsive information is overbroad. Defendants themselves have objected to producing documents created since 2017 and based on this objection the United States has agreed, during a meet and confer with counsel, to limit its own discovery to a narrower timeframe. Therefore, the United States will limit its Response to this Request to information since January 1, 2020 that is relevant to the claims and defenses of this case.

The United States is withholding responsive documents based on these objections. However, subject to the foregoing objections and without waiving the

same, the United States will conduct a reasonable search and produce documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 10:**

All documents or communications between any official, attorney, employee, or representative of the U.S. Department of Justice and any other federal entity or employee concerning Transitioning and Gender Dysphoria or a Related Condition.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced.

Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). First, the

Request includes “[a]ll documents or communications” (emphasis added) related to the very broad subjects of “Transitioning and Gender Dysphoria or a Related Condition” and without any limitation as to timeframe or to the claims and defenses in this matter. Second, the Request includes “any official, attorney, employee, or representative of the U.S. Department of Justice and any other federal entity or employee” (emphasis added). The United States Department of Justice consists of 41 distinct offices, divisions, and bureaus, with hundreds of subcomponents located throughout the United States and the United States’ territories and over 100,000 employees. It is unreasonable and disproportionate for counsel for the United States in this case to attempt to find and collect responsive information from all persons who meet this unnecessarily broad definition, which disregards the size and breadth of the United States Department of Justice and the comparatively limited claims and defenses in this case. Information responsive to this unreasonably broad Request likely includes numerous documents that are entirely unrelated to the claims and defenses at issue in this lawsuit. As just one example, the Request would include any reference to Transitioning in emails with federal employees, which likely includes large numbers of irrelevant documents including, for example, documents with personal, private medical information about individual United States Department of Justice employees that are entirely unrelated to this litigation. As written, the United States would expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant. Furthermore, Defendants seek responsive information

without any time limitations, which is overbroad. Defendants themselves have objected to producing documents created since 2017 and based on this objection the United States has agreed, during a meet and confer with counsel, to limit its own discovery to a narrower timeframe. Therefore, the United States will limit its Response to this Request to information since January 1, 2020 that is relevant to the claims and defenses of this case. Additionally, consistent with its other Responses to Defendants' Requests, the United States will respond based on information within the possession, custody, or control of the three offices acting as counsel and handling this litigation on behalf of the United States—that is, the United States Department of Justice, Civil Rights Division, Federal Coordination & Compliance Section; the United States Attorney's Office for the Northern District of Alabama, Civil Division; and the United States Attorney's Office for the Middle District of Alabama, Civil Division.

The United States is withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States has no nonprivileged documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 11:**

All Communications and Documents regarding Proposed Rule, Non-discrimination in Health Programs and Activities, 87 Fed. Reg. 47824, that relate to Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice or between the United States Department of Justice and any client agency are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because it is irrelevant, overly broad on its face, and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request involves a Proposed Rule published by the United States Department of Health and Human Services, which is not a party to this litigation. The Proposed Rule is entirely unrelated to this litigation in which the United States, represented by the United States Department of Justice, is challenging Alabama Senate Bill 184 on equal protection grounds. The United States notes that Private Plaintiffs are no longer

pursuing a claim under Section 1557 of the Affordable Care Act, further underscoring the Proposed Rule's irrelevance to this litigation. Communications and Documents regarding this Proposed Rule will not be produced. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information, such as the Proposed Rule, that are equally available to the parties because they are publicly available.

The United States is withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States has no nonprivileged documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 12:**

All Communications and Documents regarding Rule, Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority, 85 Fed. Reg. 37160 (June 19, 2020), that relate to Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other

documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice or between the United States Department of Justice and any client agency are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because it is irrelevant, overly broad on its face, and not proportional to the needs of the case. The Request involves a Rule published by the United States Department of Health and Human Services, which is not a party to this litigation. The Rule is entirely unrelated to this litigation in which the United States, represented by the United States Department of Justice, is challenging Alabama Senate Bill 184 on equal protection grounds. The United States also notes that Private Plaintiffs are no longer pursuing a claim under Section 1557 of the Patient Protection and Affordable Care Act, further underscoring the Rule's irrelevance to this litigation. Communications and Documents regarding this Rule will not be produced.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information, such as the Rule, that are equally available to the parties because they are publicly available.

The United States is withholding responsive documents based on these

objections. Subject to the foregoing objections and without waiving the same, the United States has no nonprivileged documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 13:**

All Communications and Documents regarding Rule, Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023, 87 Fed. Reg. 27208, that relate to Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice or between the United States Department of Justice and any client agency are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because it is irrelevant, overly broad on its face, and not proportional to the needs of the case. The Request

constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request involves a Rule published by the United States Department of Health and Human Services, which is not a party to this litigation. The Rule is entirely unrelated to this litigation in which the United States, represented by the United States Department of Justice, is challenging Alabama Senate Bill 184 on equal protection grounds. The United States also notes that Private Plaintiffs are no longer pursuing a claim under Section 1557 of the Patient Protection and Affordable Care Act, further underscoring the Rule’s irrelevance to this litigation. Communications and Documents regarding this Rule will not be produced.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information, such as the Rule, that are equally available to the parties because they are publicly available.

The United States is withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States has no nonprivileged documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 14:**

All Communications and Documents concerning any past or present studies or other research You have conducted, funded, or otherwise supported regarding Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice or between the United States Department of Justice and any client agency are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because the term “otherwise supported” is vague and ambiguous, as it is not defined.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents concerning any past or present studies or other research” (emphasis added), without any limitations as to timeframe or to the claims and defenses in this matter, related to the very broad subjects of “Transitioning

or the treatment of Minors for Gender Dysphoria or a Related Condition.” The Request is also vague and overbroad because it seeks Communications and Documents concerning all “studies or other research” without specifically referencing whether it is seeking “medical” studies or “medical” research. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. Information responsive to this unreasonably broad Request includes numerous documents that are entirely unrelated to the claims and defenses at issue in this lawsuit. As just one example, the Request as contemplated by Defendants would include all documents about such research, which includes large numbers of irrelevant documents such as privileged budget tables entirely unrelated to this litigation. The United States will not expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant. Furthermore, Defendants seek responsive information without any time limitations, which is overbroad. Defendants themselves have objected to producing documents created since 2017 and based on this objection the United States has agreed, during a meet and confer with counsel, to limit its own discovery to a narrower timeframe. Therefore, the United States will limit its Response to this Request to information since January 1, 2020 that is relevant to the claims and defenses of this case.

The United States further objects to this Request as premature, to the extent it seeks documents related to any experts the United States may disclose in relation to

this lawsuit. The United States will make its expert disclosures in accordance with the Court's July 15, 2022 Scheduling Order (or any subsequent operative scheduling orders) and Rule 26(a)(2).

The United States is not withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States has no nonprivileged documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 15:**

All Communications and Documents concerning any past or present studies or other research You have declined to conduct, fund, or otherwise support regarding Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice or between the United States Department of Justice and any client agency are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally,

communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because the term “otherwise supported” is vague and ambiguous, as it is not defined. The United States will interpret “otherwise supported” to mean financial or material support.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents concerning any past or present studies or other research” (emphasis added), without any limitations as to timeframe or to the claims and defenses in this matter, related to the very broad subjects of “Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.” The Request is also vague and overbroad because it seeks Communications and Documents concerning all “studies or other research” without specifically referencing whether it is seeking “medical” studies or “medical” research. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. Information responsive to this unreasonably broad Request includes numerous documents that are entirely unrelated to the claims and defenses at issue in this lawsuit. As just one example, the Request as contemplated by Defendants would include all documents about such research, which

includes large numbers of irrelevant documents such as privileged budget tables entirely unrelated to this litigation. The United States will not expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant. Furthermore, Defendants seek responsive information without any time limitations, which is overbroad. Defendants themselves have objected to producing documents created since 2017 and based on this objection the United States has agreed, during a meet and confer with counsel, to limit its own discovery to a narrower timeframe. Therefore, the United States will limit its Response to this Request to information since January 1, 2020 that is relevant to the claims and defenses of this case.

The United States is not withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States has no documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 16:**

All Communications and Documents regarding any criteria used to select studies or research to fund regarding Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the

attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice or between the United States Department of Justice and any client agency are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because the term “otherwise supported” is vague and ambiguous, as it is not defined. The United States will interpret “otherwise supported” to mean financial or material support.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents regarding any criteria” (emphasis added), without any limitations as to timeframe or to the claims and defenses in this matter, related to the very broad subjects of “Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.” The Request is also vague and overbroad because it seeks Communications and Documents regarding any criteria used to select studies or research without specifically referencing whether it is seeking

“medical” studies or “medical” research. Information responsive to this unreasonably broad Request includes numerous documents that are entirely unrelated to the claims and defenses at issue in this lawsuit. As just one example, the Request as contemplated by Defendants would include all documents about these criteria, which includes large numbers of irrelevant documents such as privileged criteria considered decades ago and entirely unrelated to this litigation. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. The United States will not expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant. Furthermore, Defendants seek responsive information without any time limitations, which is overbroad. Defendants themselves have objected to producing documents created since 2017 and based on this objection the United States has agreed, during a meet and confer with counsel, to limit its own discovery to a narrower timeframe. Therefore, the United States will limit its Response to this Request to information since January 1, 2020 that is relevant to the claims and defenses of this case.

The United States further objects to this Request as premature, to the extent it seeks documents related to any experts the United States may disclose in relation to this lawsuit. The United States will make its expert disclosures in accordance with the Court’s July 15, 2022 Scheduling Order (or any subsequent operative scheduling orders) and Rule 26(a)(2).

The United States is not withholding responsive documents based on these objections. Subject to the foregoing objections and without waving the same, the United States has no documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 17:**

All Communications and Documents concerning Your funding of Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice or between the United States Department of Justice and any client agency are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because it is irrelevant, overly broad on its face, and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See,*

*e.g.*, *Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011).

Any federal government funding of medical treatment is wholly unrelated to this litigation, which challenges Alabama Senate Bill 184 on equal protection grounds. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. Communications and Documents regarding any funding are irrelevant, and will not be produced.

The United States is not withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States has no documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 18:**

All Communications and Documents concerning research published as Johanna Olson-Kennedy et al., Impact of Early Medical Treatment for Transgender Youth: Protocol for the Longitudinal, Observational Trans Youth Care Study, doi:10.2196/14434, National Institutes of Health Project # 1R01HD082554-01A1, including without limitation the grant proposal (including appendices), study protocol, all records of its implementation, all informed consent documents, all IRB approval forms, all educational materials, all minutes and notes from any meetings with any NIH staff, all progress reports, all board meeting minutes, all FCOI requests, all letters of support, all funding documents, all outcome data, all extensions or requests for extensions, and Communications regarding a letter dated on or about Apr 5, 2019 requesting a moratorium on this research signed by Michael Laidlaw, William Malone,

and/or Hacsí Horvath.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice or between the United States Department of Justice and any client agency are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” (emphasis added) concerning the research cited, without any limitations as to the claims and defenses in this matter, which includes numerous documents that are entirely unrelated to the claims and defenses at issue. As just one example, the Request as contemplated by Defendants

would include an extensive range of administrative documents related to grant funding that are irrelevant to this litigation, which challenges Alabama Senate Bill 184 on equal protection grounds. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. The United States will not expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant. Therefore, the United States will limit its Response to this Request to information that is relevant to the claims and defenses of this case.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information, such as published research, that are equally available to the parties because they are publicly available.

The United States is not withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, responsive documents are listed on the United States' initial disclosures and will be produced.

**REQUEST FOR PRODUCTION NO. 19:**

All Communications and Documents concerning research published as Johanna Olson-Kennedy et al., Physiologic Response to Gender-Affirming Hormones Among Transgender Youth, *Journal of Adolescent Health*, 62(4), 397–401.

<https://doi.org/10.1016/j.jadohealth.2017.08.005>, including without limitation the grant proposal (including appendices), all study protocols, all records of its

implementation, all informed consent documents, all IRB approval forms, all educational materials, all minutes and notes from any meetings with any NIH staff, all progress reports, all board meeting minutes, all FCOI requests, all letters of support, all funding documents, all outcome data, and all extensions or requests for extensions.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice or between the United States Department of Justice and any client agency are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request

includes “[a]ll Communications and Documents” (emphasis added) concerning the research cited, without any limitations as to the claims and defenses in this matter, which includes numerous documents that are entirely unrelated to the claims and defenses at issue. As just one example, the Request as contemplated by Defendants includes an extensive range of administrative documents related to grant funding that are irrelevant to this litigation, which challenges Alabama Senate Bill 184 on equal protection grounds. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. As written, the United States would expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant. Therefore, the United States will limit its Response to this Request to information that is relevant to the claims and defenses of this case.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information, such as published research, that are equally available to the parties because they are publicly available.

The United States is not withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States has no documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 20:**

All Communications and Documents concerning research by Natalie J. Nokoff regarding Transitioning or Gender Dysphoria or a Related Condition, including

without limitation all study protocols, all records of implementation, all informed consent documents, all IRB approval forms, all educational materials, all minutes and notes from any meetings with any NIH staff, all progress reports, all board meeting minutes, all FCOI requests, all letters of support, all funding documents, and all outcome data, about all of the following NIH-funded projects and any other projects concerning Transitioning or Gender Dysphoria or a Related Condition: Trans Health: Evaluation of Markers of Cardio-metabolic Health and Well-being in Transgender Youth, <https://clinicaltrials.gov/ct2/show/NCT02550431>; Pubertal Blockade and Estradiol Effects on Cardiometabolic Health for Transitioning Youth, Projects # K23-HL-151868-01, -02, -03; and, Project # K12-HD-057022.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice or between the United States Department of Justice and any client agency are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by

the common interest privilege and will not be produced.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” (emphasis added) concerning the research cited, without any limitations as to the claims and defenses in this matter, which includes numerous documents that are entirely unrelated to the claims and defenses at issue. As just one example, the Request as contemplated by Defendants includes an extensive range of administrative documents related to grant funding that are irrelevant to this litigation, which challenges Alabama Senate Bill 184 on equal protection grounds. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. The United States will not expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant. Therefore, the United States will limit its Response to this Request to information that is relevant to the claims and defenses of this case.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information, such as published research, that are equally available to the parties because they are publicly available.

The United States is not withholding responsive documents based on these

objections. Subject to the foregoing objections and without waiving the same, the United States has no documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 21:**

All Communications and Documents concerning Your participation in Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition, including at any hospitals, medical offices, or clinics run by or supported by You.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice or between the United States Department of Justice and any client agency are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because the term “participation” is vague and ambiguous, as it is not defined and the Request does not

specify participation in what capacity.

The United States further objects to this Request because it is irrelevant, overly broad on its face, and not proportional to the needs of the case. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. Any federal government participation in medical treatment is wholly unrelated to this litigation, which challenges Alabama Senate Bill 184 on equal protection grounds. Communications and Documents regarding any such activities will not be produced.

The United States is not withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States has no documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 22:**

All Communications and Documents concerning the Food & Drug Administration's or any other agency's consideration of medical devices, drugs, or medical requirements related to Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other

documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice or between the United States Department of Justice and any client agency are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because the terms “consideration” and “medical requirements” are vague and ambiguous, as they are not defined.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” (emphasis added), without any limitations as to timeframe or to the claims and defenses in this matter, which likely includes numerous documents that are entirely unrelated to the claims and defenses at issue. As just one example, the Request would include any mention of the consideration of the use of hormone therapy dating back multiple decades. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. As written, the United States

would expend unreasonable resources searching for, reviewing, and producing documents that are irrelevant. Furthermore, Defendants seek responsive information without any time limitations, which is overbroad. Defendants themselves have objected to producing documents created since 2017 and based on this objection the United States has agreed, during a meet and confer with counsel, to limit its own discovery to a narrower timeframe. Therefore, the United States will limit its Response to this Request to information since January 1, 2020 that is relevant to the claims and defenses of this case.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States is not withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, responsive documents are listed on the United States' initial disclosures and will be produced.

**REQUEST FOR PRODUCTION NO. 23:**

All Communications and Documents concerning the Food & Drug Administration's decision to add a warning about the risk of pseudotumor cerebri (idiopathic intracranial hypertension) to the labeling for gonadotropin-releasing

hormone agonists as generally discussed in Risk of pseudotumor cerebri added to labeling for gonadotropin-releasing hormone agonists, AAP, [https://www.fda.gov/media/159663/download#:~:text=The%20Food%20and%20Drug%20Administration%20\(FDA\)%20has%20added%20a%20warning,precocious%20puberty%20in%20pediatric%20patients.](https://www.fda.gov/media/159663/download#:~:text=The%20Food%20and%20Drug%20Administration%20(FDA)%20has%20added%20a%20warning,precocious%20puberty%20in%20pediatric%20patients.) (July 1, 2022), including without limitation reporting of adverse events by diagnosis, primary data, Communications between You and AAP, and Communications between Your agencies.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice or between the United States Department of Justice and any client agency are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an

improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” (emphasis added), without any limitations as to the claims and defenses in this matter, which includes numerous documents that are entirely unrelated to the claims and defenses at issue. As just one example, the Request would include any mention of the Food and Drug Administration’s decision to add a warning in any email in the United States’ possession, which includes large numbers of irrelevant documents such as, for example, news articles reporting on this decision. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. As written, the United States would expend unreasonable resources searching for, reviewing, and producing documents that are irrelevant. Therefore, the United States will limit its Response to this Request to information that is relevant to the claims and defenses of this case.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States is not withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same,

responsive documents are listed on the United States' initial disclosures and will be produced.

**REQUEST FOR PRODUCTION NO. 24:**

All Communications and Documents concerning the FDA review of Puberty Blockers referenced in Christina Jewett, Women Fear Drug They Used To Halt Puberty Led To Health Problems, Kaiser Health News, <https://khn.org/news/women-fear-drug-they-used-to-halt-puberty-led-to-health-problems/> (Feb. 2, 2017).

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice or between the United States Department of Justice and any client agency are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an

improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” (emphasis added), without any limitation to the claims and defenses in this matter, which includes numerous documents that are entirely unrelated to the claims and defenses at issue. As just one example, the Request would include any mention of the Food and Drug Administration’s review in any email in the United States’ possession, which includes large numbers of irrelevant documents such as, for example, news articles reporting on this review. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. As written, the United States would expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant. Therefore, the United States will limit its Response to this Request to information that is relevant to the claims and defenses of this case.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information, such as published articles, that are equally available to the parties because they are publicly available and/or part of the record in this matter.

The United States is not withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States has no documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 25:**

All Communications and Documents concerning reporting of adverse events for Puberty Blockers and Cross-sex Hormones.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced.

Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” (emphasis added), without any limitation, which includes numerous documents that are entirely unrelated to the claims and defenses at issue. As just one example, the Request would include all

reporting of adverse events for Puberty Blockers and Cross-sex Hormones, which likely includes large numbers of irrelevant documents including, for example, documents with personal, private medical information about individual United States Department of Justice employees that are entirely unrelated to this litigation. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. The United States is not required to expend unreasonable resources searching for, reviewing, and producing documents that are irrelevant. Therefore, the United States will limit its Response to this request to Communications and Documents since January 1, 2020.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States is withholding responsive documents based on these objections. However, subject to the foregoing objections and without waiving the same, the United States will conduct a reasonable search and produce documents responsive to this Request. In addition, responsive documents are listed on the United States' initial disclosures and will be produced.

**REQUEST FOR PRODUCTION NO. 26:**

All Communications and Documents concerning reporting of adverse events

for surgical procedures used to treat Gender Dysphoria or a Related Condition.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced.

Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” (emphasis added), without any limitation, which includes numerous documents that are entirely unrelated to the claims and defenses at issue. As just one example, the Request would include any such documents dating back decades which, particularly given the speed of medical advancements, are irrelevant to the allegations of this lawsuit, which does not

challenge any ban on surgical procedures on transgender youth. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. The United States is not required to expend unreasonable resources searching for, reviewing, and producing documents that are irrelevant. As just one example, the Request would include all reporting of adverse events for surgical procedures used to treat Gender Dysphoria or a Related Condition, which likely includes documents with personal, private medical information about individual United States Department of Justice employees that are entirely unrelated to this litigation. Therefore, the United States will limit its Response to this request Communications and Documents since January 1, 2020.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States is withholding responsive documents based on these objections. However, subject to the foregoing objections and without waiving the same, the United States will conduct a reasonable search and produce documents responsive to this Request. In addition, responsive documents are listed on the United States' initial disclosures and will be produced.

**REQUEST FOR PRODUCTION NO. 27:**

All Communications and Documents concerning Transitioning treatments or care provided to Minors in Alabama, including referrals to providers outside the state.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced.

Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced. Communications between counsel and an expert witness or consultant will not be produced as they are protected from disclosure, including under Rule 26(b)(4).

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request

includes “[a]ll Communications and Documents” (emphasis added), without any limitation, which includes numerous documents that are entirely unrelated to the claims and defenses at issue. As just one example, the Request would include any such documents dating back decades which, particularly given the speed of medical advancements, are irrelevant to the allegations of this lawsuit. The Request could also include documents with personal, private medical information about individual United States Department of Justice employees that are entirely unrelated to this litigation. The United States is not required to expend unreasonable resources searching for, reviewing, and producing documents that are irrelevant. Therefore, the United States will limit its Response to this request to Communications and Documents since January 1, 2020.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States further objects to this Request as premature, to the extent it seeks documents related to any experts the United States may disclose in relation to this lawsuit. The United States will make its expert disclosures in accordance with the Court’s July 15, 2022 Scheduling Order (or any subsequent operative scheduling orders) and Rule 26(a)(2).

The United States is withholding responsive documents based on these objections. However, subject to the foregoing objections and without waiving the same, the United States will conduct a reasonable search and produce documents responsive to this Request. In addition, responsive documents are listed on the United States' initial disclosures and will be produced.

**REQUEST FOR PRODUCTION NO. 28:**

All Communications and Documents relating to the appropriate age for beginning Transitioning treatment in Minors.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced.

Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced. Communications between counsel and an expert witness or consultant will not be produced as they are protected from disclosure, including under Rule 26(b)(4).

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” (emphasis added), without any limitation as to timeframe or to the claims and defenses in this matter, which includes numerous documents that are entirely unrelated to the claims and defenses at issue. As just one example, the Request would include any such documents dating back decades which, particularly given the speed of medical advancements, are irrelevant to the allegations of this lawsuit. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. The United States is not required to expend unreasonable resources searching for, reviewing, and producing documents that are irrelevant. Therefore, the United States will limit its Response to this request to Communications and Documents since January 1, 2020.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States further objects to this Request as premature, to the extent it

seeks documents related to any experts the United States may disclose in relation to this lawsuit. The United States will make its expert disclosures in accordance with the Court's July 15, 2022 Scheduling Order (or any subsequent operative scheduling orders) and Rule 26(a)(2).

The United States is withholding responsive documents based on these objections. However, subject to the foregoing objections and without waiving the same, the United States will conduct a reasonable search and produce documents responsive to this Request. In addition, responsive documents are listed on the United States' initial disclosures and will be produced.

**REQUEST FOR PRODUCTION NO. 29:**

All Communications and Documents concerning reports on the quality of care for the treatment of Minors for Gender Dysphoria or a Related Condition, including without limitation Communications and Documents involving the Agency for Healthcare Research and Quality and its Topic Brief: Treatments for Gender Dysphoria in Transgender Youth, <https://effectivehealthcare.ahrq.gov/system/files/docs/topic-brief-gender-dysphoria.pdf> (Jan. 8, 2021).

**RESPONSE:**

The United States objects to this Request to the extent it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents,

correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced. Communications between counsel and an expert witness or consultant will not be produced as they are protected from disclosure, including under Rule 26(b)(4).

The United States further objects to this Request because the term “quality of care” is vague and ambiguous, as it is not defined.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” (emphasis added), without any limitation as to timeframe or to the claims and defenses in this matter, which includes numerous documents that are entirely unrelated to the claims and defenses at issue. As just one example, the Request would include any such documents dating back decades which, particularly given the speed of medical advancements, are irrelevant to the allegations of this lawsuit. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not

parties to this case. The United States is not required to expend unreasonable resources searching for, reviewing, and producing documents that are irrelevant. Therefore, the United States will limit its Response to this request to Communications and Documents since January 1, 2020.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States is not withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States will conduct a reasonable search and produce documents responsive to this Request. In addition, responsive documents are listed on the United States' initial disclosures and will be produced.

**REQUEST FOR PRODUCTION NO. 30:**

All Communications and Documents concerning the following document published by the Department of Health and Human Services' Office of Population Affairs: Gender-Affirming Care and Young People, <https://opa.hhs.gov/sites/default/files/2022-03/gender-affirming-care-young-people-march-2022.pdf>.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice or between the United States Department of Justice and any client agency are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced. Communications between counsel and an expert witness or consultant will not be produced as they are protected from disclosure, including under Rule 26(b)(4).

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” concerning a publication by the United States Department of Health and Human Services—which is not a party to this case—without any limitations as to the claims and defenses in this matter. Information

responsive to this unreasonably broad Request includes numerous documents that are entirely unrelated to the claims and defenses at issue in this lawsuit. As just one example, the Request as contemplated by Defendants would include any mention of the document, which includes large numbers of irrelevant documents such as news articles reporting on its publication. As written, the United States would expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant. Therefore, the United States will limit its Response to this Request to information that is relevant to the claims and defenses of this case.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States is withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States has no documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 31:**

All Communications and Documents concerning the following document published by the Department of Health and Human Service's Children's Bureau: Guidance for Title IV-B and IV-E Agencies When Serving LGBTQI+ Children and Youth, <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2201.pdf>.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice or between the United States Department of Justice and any client agency are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced. Communications between counsel and an expert witness or consultant will not be produced as they are protected from disclosure, including under Rule 26(b)(4).

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” (emphasis added) concerning a document published by the United States Department of Health and Human Services—which is not a party to this case—without any limitations as to the claims

and defenses of this litigation. Information responsive to this unreasonably broad Request includes numerous documents that are entirely unrelated to the claims and defenses at issue in this lawsuit. As just one example, the Request as contemplated by Defendants would include any mention of the document, which includes large numbers of irrelevant documents such as, for example, news articles reporting on its publication. As written, the United States would expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant. Therefore, the United States will limit its Response to this Request to information it has received, reviewed, considered, or relied upon in relation to the claims and defenses at issue in this lawsuit.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States is withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States has no nonprivileged documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 32:**

All Communications and Documents concerning the Centers for Medicare and Medicaid's Services' decision to approve a request to provide "gender-affirming

care” in the individual and small group health insurance markets as part of Colorado’s Essential Health Benefit (EHB) benchmark. *See*

<https://www.hhs.gov/about/news/2021/10/12/biden-harris-administration-green-lights-coverage-of-lgbtqplus-care-as-an-essential-health-benefit-in-colorado.html>.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice or between the United States Department of Justice and any client agency are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because it is irrelevant, overly broad on its face, and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” (emphasis added)

regarding a decision made by the Centers for Medicare and Medicaid Services, which is not a party to this case. Decisions made by the Centers for Medicare and Medicaid Services are entirely unrelated to this litigation in which the United States, represented by the United States Department of Justice, is challenging Alabama Senate Bill 184 on equal protection grounds. This decision, and any related Communications and Documents will not be produced.

The United States is not withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States has no documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 33:**

All Communications and Documents concerning the following document published by the Department of Justice: Letter Regarding Federal Nondiscrimination Protections, <https://www.justice.gov/opa/press-release/file/1489066/download>.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process

privilege, and the attorney work product doctrine and will not be produced.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” (emphasis added), without any limitation as to the claims and defenses in this matter, which likely includes numerous documents that are entirely irrelevant. As just one example, the Request would include any mention of the document, which likely includes large numbers of irrelevant documents including, for example, emails related to any publicity or dissemination of the document. As written, the United States would expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant. Therefore, the United States will limit its Response to this Request to information related to the claims and defenses of this case.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States is withholding responsive documents based on these objections. However, subject to the foregoing objections and without waiving the

same, the United States will conduct a reasonable search and produce documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 34:**

All Communications and Documents pertaining to incidences and facts regarding onset of Gender Dysphoria or a Related Condition.

**RESPONSE:**

The United States objects to this Request to the extent it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced. Communications between counsel and an expert witness or consultant will not be produced as they are protected from disclosure, including under Rule 26(b)(4).

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v.*

*La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” (emphasis added), without any limitation, related to the very broad subjects of “incidences and facts regarding onset of Gender Dysphoria or a Related Condition.” Information responsive to this unreasonably broad Request likely includes numerous documents that are entirely unrelated to the claims and defenses at issue in this lawsuit. As just one example, the Request would include any description of the medical history of any individual with Gender Dysphoria in the United States’ possession, which likely includes large numbers of irrelevant documents including, for example, documents with personal, private medical information about individual United States Department of Justice employees that are entirely unrelated to this litigation. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. As written, the United States would expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant. Furthermore, Defendants seek responsive information without any time limitations, which is overbroad. Defendants themselves have objected to producing documents created since 2017 and based on this objection the United States has agreed, during a meet and confer with counsel, to limit its own discovery to a narrower timeframe. Therefore, the United States will limit its Response to this Request to information since January 1, 2020 related to the claims or defenses at issue in this lawsuit.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States further objects to this Request as premature, to the extent it seeks documents related to any experts the United States may disclose in relation to this lawsuit. The United States will make its expert disclosures in accordance with the Court's July 15, 2022 Scheduling Order (or any subsequent operative scheduling orders) and Rule 26(a)(2).

The United States is withholding responsive documents based on these objections. However, subject to the foregoing objections and without waiving the same, the United States will conduct a reasonable search and produce documents responsive to this Request. In addition, responsive documents are listed on the United States' initial disclosures and will be produced.

**REQUEST FOR PRODUCTION NO. 35:**

All Communications and Documents regarding the incidences of Medicare beneficiaries with Gender Dysphoria or a Related Condition or who are undergoing Transitioning.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically

stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice or between the United States Department of Justice and any client agency are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because it is irrelevant, overly broad on its face, and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). In addition to failing to include any time limitation, the Request involves Medicare, which is administered by the Centers for Medicare and Medicaid Services, which is not a party to this case. Medicare beneficiaries are entirely unrelated to this litigation in which the United States, represented by the United States Department of Justice, is challenging Alabama Senate Bill 184 on equal protection grounds. Further, this lawsuit relates to the treatment of minors who are typically not beneficiaries of Medicare. Communications and Documents regarding Medicare and its beneficiaries

will not be produced.

The United States is withholding responsive documents based on these objections. Subject to the foregoing objections, the United States has no nonprivileged documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 36:**

All Communications and Documents reflecting incidences or evidence of desistance or detransition.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced.

Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced. Communications between counsel and an expert witness or consultant will not be produced as they are protected from disclosure, including under Rule 26(b)(4).

The United States further objects to this Request because it is overly broad on

its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” (emphasis added), without any limitation, related to the very broad subjects of “incidences or evidence of ‘desistance’ or detransition.” Information responsive to this unreasonably broad Request likely includes numerous documents that are entirely unrelated to the claims and defenses at issue in this lawsuit. As just one example, the Request would include any description of the medical history of any individual with a history of “desistance” or “detransition” in the United States’ possession, which likely includes large numbers of irrelevant documents including, for example, documents with personal, private medical information about individual United States Department of Justice employees that are entirely unrelated to this litigation. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. As written, the United States would expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant. Furthermore, Defendants seek responsive information without any time limitations, which is overbroad. Defendants themselves have objected to producing documents created since 2017 and based on this objection the United States has agreed, during a meet and confer with counsel, to limit its own discovery to a narrower timeframe. Therefore, the United States will limit its Response to this Request to

information since January 1, 2020 related to the claims or defenses at issue in this lawsuit.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States further objects to this Request as premature, to the extent it seeks documents related to any experts the United States may disclose in relation to this lawsuit. The United States will make its expert disclosures in accordance with the Court's July 15, 2022 Scheduling Order (or any subsequent operative scheduling orders) and Rule 26(a)(2).

The United States is withholding responsive documents based on these objections. However, subject to the foregoing objections and without waiving the same, the United States will conduct a reasonable search and produce documents responsive to this Request. In addition, responsive documents are listed on the United States' initial disclosures and will be produced.

**REQUEST FOR PRODUCTION NO. 37:**

All Communications and Documents concerning Dr. Erika Anderson and Dr. Marci Bowers related to Gender Dysphoria or a Related Condition.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request fails to limit itself to any time period. In addition, the Request includes an overbroad catchall of “[a]ll Communications and Documents” (emphasis added), without any limitation, which includes numerous documents that are entirely unrelated to the claims and defenses at issue in this lawsuit.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties

because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States is not withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States has no documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 38:**

All Communications and Documents between NIH’s Sexual & Gender Minority Research Office and any representative of the World Professional Association for Transgender Health (“WPATH”), U.S. Professional Association for Transgender Health (“USPATH”), the Endocrine Society, the American Psychological Association, the American Academy of Pediatrics (“AAP”), the Human Rights Campaign, the Southern Poverty Law Center, and the American Civil Liberties Union regarding Transitioning and Gender Dysphoria or a Related Condition.

**RESPONSE:**

The United States objects to this Request because it is irrelevant, overly broad on its face, and not proportional to the needs of the case. The Request includes “[a]ll Communications and Documents” (emphasis added) between an office within the National Institutes of Health—which is not a party to this lawsuit—and eight large, nongovernmental organizations, related to the very broad matters of “Transitioning

and Gender Dysphoria or a Related Condition.” Communications and Documents between these entities will not be produced.

The United States is not withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States has no documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 39:**

All Communications and Documents between or among Xavier Becerra, Rachel Levine, Francis Collins, Janet E. Hall, Loyce Pace, Chiquita Brooks-LaSure, Karen L. Parker, or any of their officers, agents, employees, present or former counsel, or other persons acting on their behalf and any representative of WPATH, USPATH, the Endocrine Society, the American Psychological Association, AAP, the Human Rights Campaign, the Southern Poverty Law Center, and the American Civil Liberties Union regarding Transitioning and Gender Dysphoria or a Related Condition.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an

improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” (emphasis added) involving seven current and former federal government officials associated with agencies that are not parties to this lawsuit, “any of their officers, agents, employees, present or former counsel, or other persons acting on their behalf” (emphasis added), and eight large, nongovernmental organizations, related to the very broad matters of “Transitioning and Gender Dysphoria or a Related Condition.” Communications and Documents between these entities are entirely unrelated to this litigation in which the United States, represented by the United States Department of Justice, is challenging Alabama Senate Bill 184 on equal protection grounds. Communications and Documents between these entities will not be produced. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case.

The United States is not withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States has no documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 40:**

All Communications and Documents concerning the organizational stance regarding the treatment of Gender Dysphoria or a Related Condition from WPATH, USPATH, AAP, or the Endocrine Society.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because the term “organizational stance” is vague and ambiguous, as it is not defined.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” (emphasis added), without any limitations, of four nongovernmental entities that are not parties to this lawsuit. Information responsive to this unreasonably broad Request includes numerous documents that are entirely unrelated to the claims and defenses at issue. As just one

example, the Request would include decades-old news articles received by the United States in which a member of one of these non-party organizations communicated the organization's view about the treatment of Gender Dysphoria. As written, the United States would expend unreasonable resources searching for, reviewing, and producing documents that are irrelevant. Furthermore, Defendants seek responsive information without any time limitations, which is overbroad. Defendants themselves have objected to producing documents created since 2017 and based on this objection the United States has agreed, during a meet and confer with counsel, to limit its own discovery to a narrower timeframe. Therefore, the United States will limit its Response to this Request to information since January 1, 2020 that is relevant to the claims and defenses of this case.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States is withholding responsive documents based on these objections. However, subject to the foregoing objections and without waiving the same, the United States will conduct a reasonable search and produce documents responsive to this Request. In addition, responsive documents are listed on the United States' initial disclosures and will be produced.

**REQUEST FOR PRODUCTION NO. 41:**

All Communications and Documents concerning any conference related to Gender Dysphoria or a Related Condition that WPATH, USPATH, AAP, or the Endocrine Society has hosted.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced.

Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced. Communications between counsel and an expert witness or consultant will not be produced as they are protected from disclosure, including under Rule 26(b)(4).

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request

includes “[a]ll Communications and Documents” (emphasis added), without any limitations, related to any conference held on the very broad subjects of “Gender Dysphoria or a Related Condition” by four nongovernmental entities that are not parties to this lawsuit. Information responsive to this unreasonably broad Request includes numerous documents that are entirely unrelated to the claims and defenses at issue. As just one example, the Request would include any invitation, no matter how old, to any conference on these topics held by one of these non-party organizations. The United States is not required to expend unreasonable resources searching for, reviewing, and producing documents that are irrelevant. Furthermore, Defendants seek responsive information without any time limitations, which is overbroad. Defendants themselves have objected to producing documents created since 2017 and based on this objection the United States has agreed, during a meet and confer with counsel, to limit its own discovery to a narrower timeframe. Therefore, the United States will limit its Response to this Request to information since January 1, 2020 that is relevant to the claims and defenses of this case.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information, such as public conference agenda, that are equally available to the parties because they are publicly available.

The United States is withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States has no nonprivileged documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 42:**

All Communications and Documents regarding Your review or consideration of the following: Nat'l Inst. for Health and Care Excellence, Evidence Review: Gender-Affirming Hormones for Children and Adolescents with Gender Dysphoria (2021); Nat'l Inst. for Health and Care Excellence, Evidence Review: Gonadotrophin Releasing Hormone Analogues for Children and Adolescents with Gender Dysphoria (2021); Ryan Anderson, When Harry Became Sally (2018); Abigail Shrier, Irreversible Damage (2020); Abigail Shrier, Top Trans Doctors Blow the Whistle on 'Sloppy' Care, Common Sense (Oct. 4, 2021); William J. Malone et al., Proper Care of Transgender and Gender-diverse Persons in the Setting of Proposed Discrimination, 106 J. Clinical Endocrinology & Metabolism e3287 (2021); Abigail Shrier, A Pediatric Association Stifles Debate on Gender Dysphoria, Wall St. Journal (Aug. 9, 2021); Stephen Levine et al., Reconsidering Informed Consent for Trans-Identified Children, Adolescents, and Young Adults, J. Sex & Marital Therapy, 7 (Mar. 2022); Socialstyrelsen, Care of children and adolescents with gender dysphoria (Feb. 2022); Académie Nationale de Médecine, Medicine and gender transidentity in children and adolescents (Feb. 2022); James M. Cantor, Transgender and Gender Diverse Children and Adolescents: Fact-Checking of AAP Policy, Journal of Sex & Marital Therapy, DOI: 10.1080/0092623X.2019.1698481 (2019).

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically

stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced.

Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced. Communications between counsel and an expert witness or consultant will not be produced as they are protected from disclosure, including under Rule 26(b)(4).

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” (emphasis added), without any limitations as to the claims and defenses of this matter, related to the very broad activities of “review or consideration” of eleven articles published by entities or individuals unrelated to this lawsuit. Information responsive to this unreasonably broad Request includes numerous documents that are entirely unrelated to the claims and defenses at issue. As just one example, the Request would include

communications dating back to at least 2018, regarding a publication authored by a private citizen that has no bearing at all on the facts at issue in this lawsuit. The United States further objects to the extent this Request seeks information in the possession of other federal agencies that are not parties to this case. The United States is not required to expend unreasonable resources searching for, reviewing, and producing documents that are irrelevant. Furthermore, Defendants seek responsive information without any time limitations, which is overbroad. Defendants themselves have objected to producing documents created since 2017 and based on this objection the United States has agreed, during a meet and confer with counsel, to limit its own discovery to a narrower timeframe. Therefore, the United States will limit its Response to this Request to information since January 1, 2020 that is relevant to the claims and defenses of this case.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States is not withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States will conduct a reasonable search and produce documents responsive to this Request. In addition, responsive documents are listed on the United States' initial

disclosures and will be produced.

**REQUEST FOR PRODUCTION NO. 43:**

All Communications and Documents regarding the Society for Evidence Based Gender Medicine (“SEGM”), the American College of Pediatricians, 4th Wave Now, Transgender Trend, Michael Laidlaw, MD, William Malone, MD, Paul Hruz, MD, Quentin Van Meter, MD, Julie Mason, MD, Stephen Levine, MD, Andre Van Mol, MD, Michelle Cretella, South Dakota Rep. Fred Deutsch, Deborah Soh, and Hilary Cass.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced.

Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced. Communications between counsel and an expert witness or consultant will not be produced as they are protected from disclosure, including under Rule 26(b)(4).

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” (emphasis added), without any limitations, related to sixteen individuals and nongovernmental organizations that are not parties to this lawsuit. Information responsive to this unreasonably broad Request includes numerous documents that are entirely unrelated to the claims and defenses at issue. As just one example, the Request would include all emails from each of the sixteen entities or individuals on any topic at all, which includes large numbers of irrelevant documents. The United States is not required to expend unreasonable resources searching for, reviewing, and producing documents that are irrelevant. Furthermore, Defendants seek responsive information without any time limitations, which is overbroad. Defendants themselves have objected to producing documents created since 2017 and based on this objection the United States has agreed, during a meet and confer with counsel, to limit its own discovery to a narrower timeframe. Therefore, the United States will limit its Response to this Request to information since January 1, 2020 that is relevant to the claims and defenses of this case.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United

States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States is withholding responsive documents based on these objections. Subject to the foregoing objections and without waiving the same, the United States has no nonprivileged documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 44:**

All Communications and Documents regarding the following filings by You: Statement of Interest, *Brandt v. Rutledge*, E.D. Ark. No. 21-cv-450, Dkt. 19 (filed June 17, 2021); Amicus Brief, *Brandt v. Rutledge*, 8th Cir. No. 21-2875 (filed Jan. 25, 2022); Amicus Brief, *Hecox v. Little*, 9th Cir. Nos. 20-35813, 20-35815, Dkt. 45 (filed Nov. 19, 2020).

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced.

Additionally, communications between the United States and the Private Plaintiffs are

protected by the common interest privilege and will not be produced.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents” (emphasis added) regarding three unrelated lawsuits, which are completely separate from this litigation challenging Alabama Senate Bill 184 on equal protection grounds. Communications and Documents regarding unrelated lawsuits will not be produced.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States is withholding responsive documents based on these objections. However, subject to the foregoing objections and without waiving the same, the United States will conduct a reasonable search and produce documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 45:**

All Communications and Documents concerning public statements (including via social media), interviews, testimony, or speeches made by You about the Act,

Transitioning, or the treatment of Minors for Gender Dysphoria or a Related Condition.

**RESPONSE:**

The United States objects to this Request as it seeks documents or electronically stored information protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, the common interest privilege, and/or the attorney work product doctrine. Internal documents, correspondence, and other documents and communications created by, or at the request of, and exchanged solely among attorneys or staff of the United States Department of Justice are protected by the attorney-client privilege, investigatory files privilege, deliberative process privilege, and the attorney work product doctrine and will not be produced. Additionally, communications between the United States and the Private Plaintiffs are protected by the common interest privilege and will not be produced.

The United States further objects to this Request because it is overly broad on its face and not proportional to the needs of the case. The Request constitutes an improper “fishing expedition” that courts have repeatedly rejected. *See, e.g., Crosby v. La. Health Service and Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011). The Request includes “[a]ll Communications and Documents concerning public statements” (emphasis added), on these broad topics without any limitation as to timeframe or the claims and defenses at issue, which likely includes numerous documents that are entirely unrelated to the claims and defenses at issue. As just one example, the Request

would include any statement, given at any time, that in any way discussed Transitioning, even if completely unrelated to the issues here. As written, the United States would expend unreasonable resources searching for, reviewing, and producing a large volume of documents that are irrelevant. Furthermore, Defendants seek responsive information without any time limitations, which is overbroad. Defendants themselves have objected to producing documents created since 2017 and based on this objection the United States has agreed, during a meet and confer with counsel, to limit its own discovery to a narrower timeframe. Therefore, the United States will limit its Response to this Request to information since January 1, 2020 that is relevant to the claims and defenses of this case.

The United States further objects to this Request as unduly burdensome, to the extent it requests documents and information that are equally available to the parties because they are publicly available and/or part of the record in this matter. The United States will provide Defendants with the location of and/or specifically reference such responsive information.

The United States is withholding responsive documents based on these objections. However, subject to the foregoing objections and without waiving the same, the United States will conduct a reasonable search and produce documents responsive to this Request.

November 3, 2022

Respectfully submitted,

SANDRA J. STEWART  
United States Attorney  
Middle District of Alabama

KRISTEN CLARKE  
Assistant Attorney General  
Civil Rights Division

PRIM F. ESCALONA  
United States Attorney  
Northern District of Alabama

JOHN POWERS (DC Bar No. 1024831)  
Counsel to the Assistant Attorney General  
Civil Rights Division

LANE H. WOODKE  
Chief, Civil Division  
Northern District of Alabama

CHRISTINE STONEMAN  
Chief, Federal Coordination and  
Compliance Section

/s/ Jason R. Cheek  
JASON R. CHEEK  
Deputy Chief, Civil Division  
MARGARET L. MARSHALL  
Assistant U.S. Attorney  
ROBERT C. PICKREN  
Assistant U.S. Attorney  
U.S. Attorney's Office  
Northern District of Alabama  
1801 Fourth Avenue North  
Birmingham, AL 35203  
Tel.: (205) 244-2104  
Jason.Cheek@usdoj.gov  
Margaret.Marshall@usdoj.gov

/s/ Coty Montag  
COTY MONTAG (DC Bar No. 498357)  
Deputy Chief, Federal Coordination and  
Compliance Section

STEPHEN D. WADSWORTH  
Assistant United States Attorney  
U.S. Attorney's Office  
Middle District of Alabama  
Post Office Box 197  
Montgomery, AL 36101-0197  
Tel.: (334) 223-7280  
Stephen.Wadsworth@usdoj.gov

ALYSSA C. LAREAU (DC Bar No.  
494881)  
RENEE WILLIAMS (CA Bar No. 284855)  
KAITLIN TOYAMA (CA Bar No. 318993)  
Trial Attorneys  
United States Department of Justice  
Civil Rights Division  
Federal Coordination and Compliance  
Section  
950 Pennsylvania Avenue NW – 4CON  
Washington, DC 20530  
Tel.: (202) 305-2222  
Alyssa.Lareau@usdoj.gov  
Renee.Williams3@usdoj.gov  
Kaitlin.Toyama@usdoj.gov

## CERTIFICATE OF SERVICE

The parties have agreed to electronic service of discovery documents. I hereby certify that on November 3, 2022, I electronically served a copy of the foregoing document to the following counsel of record:

Melody H. Eagan  
Jeffrey P. Doss  
Amie A. Vague  
LIGHTFOOT, FRANKLIN & WHITE LLC  
The Clark Building  
400 20th Street North  
Birmingham, AL 35203  
meagan@lightfootlaw.com  
jdoss@lightfootlaw.com  
avague@lightfootlaw.com

J. Andrew Pratt  
Misty L. Peterson  
Adam Reinke  
KING & SPALDING LLP  
1180 Peachtree Street Northeast, Suite 1600  
Atlanta, GA 30309  
apratt@kslaw.com  
mpeterson@kslaw.com  
areinke@kslaw.com

Brent P. Ray  
Abigail Hoverman Terry  
KING & SPALDING LLP  
110 North Wacker Drive, Suite 3800  
Chicago, IL 60606  
bray@kslaw.com  
ahoverman@kslaw.com

Michael B. Shortnacy  
KING & SPALDING LLP  
633 West Fifth Street, Suite 1600  
Los Angeles, CA 90071

mshortnacy@kslaw.com

Asaf Orr  
NATIONAL CENTER FOR LESBIAN RIGHTS  
870 Market Street, Suite 370  
San Francisco, CA 94102  
aorr@nclrights.org

Jennifer L. Levi  
GLBTQ LEGAL ADVOCATES & DEFENDERS  
18 Tremont, Suite 950  
Boston, MA 02108  
jlevi@glad.org

Scott D. McCoy  
SOUTHERN POVERTY LAW CENTER  
P.O. Box 12463  
Miami, FL 33101  
scott.mccoy@splcenter.org

Diego A. Soto  
SOUTHERN POVERTY LAW CENTER  
400 Washington Avenue  
Montgomery, AL 36104  
diego.soto@splcenter.org

Jessica L. Stone  
SOUTHERN POVERTY LAW CENTER  
150 E. Ponce de Leon Ave., Suite 340  
Decatur, GA 30030  
jessica.stone@splcenter.org

Sarah Warbelow  
Cynthia Weaver  
HUMAN RIGHTS CAMPAIGN FOUNDATION  
1640 Rhode Island Ave., NW  
Washington, DC 20036  
sarah.warbelow@hrc.org  
cynthia.weaver@hrc.org

*Counsel for Private Plaintiffs*

Edmund G. LaCour Jr.  
A. Barrett Bowdre  
James W. Davis  
Benjamin M. Seiss  
OFFICE OF THE ATTORNEY GENERAL  
STATE OF ALABAMA  
501 Washington Avenue  
P.O. Box 300152  
Montgomery, AL 36130-0152  
Edmund.LaCour@AlabamaAG.gov  
Barrett.Bowdre@AlabamaAG.gov  
Jim.Davis@AlabamaAG.gov  
Ben.Seiss@AlabamaAG.gov

Christopher E. Mills  
SPERO LAW LLC  
557 East Bay Street  
Charleston, SC 29413  
cmills@spero.law

Brian Wesley Barnes  
David H. Thompson  
John D. Ramer  
Peter A. Patterson  
COOPER & KIRK  
1523 New Hampshire Avenue NW  
Washington, DC 20036  
bbarnes@cooperkirk.com  
dthompson@cooperkirk.com  
jrager@cooperkirk.com  
ppatterson@cooperkirk.com

*Counsel for Defendants*

Respectfully submitted,

/s/ Jason R. Cheek  
Jason R. Cheek  
Assistant U.S. Attorney

**EXHIBIT C**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

REV. PAUL A. EKNES-TUCKER;  
BRIANNA BOE, individually and on  
behalf of her minor son, MICHAEL BOE;  
JAMES ZOE, individually and on behalf  
of his minor son, ZACHARY ZOE;  
MEGAN POE, individually and on behalf  
of her minor daughter, ALLISON POE;  
KATHY NOE, individually and on behalf  
of her minor son, CHRISTOPHER NOE;  
JANE MOE, Ph.D.; and RACHEL KOE,  
M.D.

Plaintiffs,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

STEVE MARSHALL, in his official  
capacity as Attorney General of the State  
of Alabama; DARYL D. BAILEY, in his  
official capacity as District Attorney for  
Montgomery County; C. WILSON  
BLAYLOCK, in his official capacity as  
District Attorney for Cullman County;  
JESSICA VENTIERE, in her official  
capacity as District Attorney for Lee  
County; TOM ANDERSON, in his official  
capacity as District Attorney for the 12th  
Judicial Circuit; and DANNY CARR, in

Case No. 2:22-cv-184-LCB-  
SRW

Honorable Liles C. Burke

his official capacity as District Attorney  
for Jefferson County.

Defendants.

**PLAINTIFF-INTERVENOR UNITED STATES' INITIAL DISCLOSURES**

Plaintiff-Intervenor the United States of America (“United States”), through undersigned counsel, hereby submits its initial disclosures as required by Federal Rule of Civil Procedure (“Rule”) 26(a)(1).

The United States makes these Initial Disclosures based upon the information reasonably available to it at the present time. The United States does not represent that these Initial Disclosures identify every individual, document, or tangible thing potentially relevant to this lawsuit. The United States reserves its right to clarify, alter, amend, modify, or supplement these Initial Disclosures if and when additional information becomes available to it, to the extent required by the Rules, the Court’s local rules, and/or any applicable orders of the Court. These Initial Disclosures do not include information that may be used solely for impeachment purposes, or identify or otherwise include information concerning experts, as this subject is not covered by Rule 26(a)(1). The United States will provide its expert disclosures, if applicable, pursuant to Rule 26(a)(2) and any scheduling order entered by the Court.

These Initial Disclosures are not an admission as to the existence, relevance, or admissibility of the identified materials, or a waiver of any attorney-client or work product privilege, or other applicable privilege or immunity. In addition to the documents, electronically stored information, and/or other tangible things described below, the United States also may rely upon other documents, electronically stored information, and/or other tangible things produced by other parties or third parties in this or other litigation.

**A. Individuals Likely to Have Knowledge of Discoverable Information to Support the United States’ Claim**

The following individuals are likely to have knowledge of discoverable information that the United States may use to support its claim in this case, unless solely used for impeachment. The United States reserves the right to seek discovery from, and relating to, other persons that may subsequently become known as persons likely to have discoverable information. The United States further reserves the right to modify the following list and to identify and call as witnesses additional persons if, during the course of its investigation and discovery relating to this case, the United States learns that such additional persons have knowledge or information that the United States may use to support its claim.

Name	Contact Information	Subject
Rev. Paul A. Eknes-Tucker	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North	The impact of Senate Bill 184 on Named Plaintiffs

Name	Contact Information	Subject
	Birmingham, AL 35203	
Brianna Boe	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs
Michael Boe	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs
James Zoe	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs
Zachary Zoe	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs
Megan Poe	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs
Allison Poe	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs
Kathy Noe	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs

<b>Name</b>	<b>Contact Information</b>	<b>Subject</b>
Christopher Noe	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs
Jane Moe, Ph.D.	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs
Dr. Rachel Koe	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs
Steve Marshall, in his official capacity as Attorney General of the State of Alabama	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	The enforcement of Senate Bill 184
Daryl D. Bailey, in his official capacity as District Attorney for Montgomery County	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	The enforcement of Senate Bill 184
C. Wilson Blaylock, in his official capacity as District Attorney for Cullman County	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	The enforcement of Senate Bill 184

Name	Contact Information	Subject
Jessica Ventiere, in her official capacity as District Attorney for Lee County	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	The enforcement of Senate Bill 184
Tom Anderson, in his official capacity as District Attorney for the 12th Judicial District	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	The enforcement of Senate Bill 184
Danny Carr, in his official capacity as District Attorney for Jefferson County	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	The enforcement of Senate Bill 184
Morissa J. Ladinsky, M.D., FAAP	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on transgender youth in Alabama; the standards of care for the treatment of gender dysphoria for transgender youth; informed consent procedures for the treatment of gender dysphoria for transgender youth
Dr. James Cantor	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152	Standards of care related to the treatment of gender dysphoria in transgender youth

Name	Contact Information	Subject
	Montgomery, AL 36130-0152	
Michael K. Laidlaw, M.D.	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	Standards of care related to the treatment of gender dysphoria in transgender youth
Quentin L. Van Meter, M.D.	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	Standards of care related to the treatment of gender dysphoria in transgender youth
Paul W. Hruz, M.D., Ph.D.	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	Standards of care related to the treatment of gender dysphoria in transgender youth
Patrick Hunter, M.D.	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	Standards of care related to the treatment of gender dysphoria in transgender youth
Dianna Kenny	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	Standards of care related to the treatment of gender dysphoria in transgender youth

Additional witnesses who may have discoverable information that the United States may rely upon to support its claim include: (1) all individuals or entities identified in Private Plaintiffs' and Defendants' respective disclosures and witness lists; (2) all individuals or entities identified by any party in response to interrogatories or other discovery requests; (3) all expert witnesses designated by any party; (4) all individuals designated by any party as a Rule 30(b)(6) representative; (5) all individuals or entities served by any party with a subpoena during the course of this suit; (6) all individuals or entities noticed and/or deposed in this case; (7) all individuals who submitted declarations, affidavits, or sworn statements during the preliminary injunction hearing; and (8) all individuals or entities referred to in any document produced by any party or third-party in this litigation.

**B. A Copy of, or Description by Category and Location of, Documents, Electronically Stored Information, and Tangible Things in the United States' Possession, Custody, or Control to Support its Claim**

The United States identifies the following categories of documents, electronically stored information, and tangible things in its possession, custody, or control that it may use to support its claim, unless solely used for impeachment. All of these documents are located at the offices of the undersigned attorneys:

(1) Studies regarding the medical treatment of gender dysphoria in transgender youth;

(2) Guidelines regarding the standards of care for the medical treatment of gender dysphoria provided to transgender youth;

(3) Medical literature related to “off label” use of medications;

(4) Public statements from medical associations or practitioners regarding the standards of care for medical treatment of gender dysphoria provided to transgender youth;

(5) Public statements from medical associations regarding Alabama Senate Bill 184 and/or House Bill 266;

(6) Public statements or interviews from State officials related to Alabama Senate Bill 184 and/or House Bill 266;

(7) Video recordings of legislative hearings or proceedings on Alabama Senate Bill 184 and/or House Bill 266;

(8) Declaration signed by Dr. Armand Antommara, which was filed in support of the United States’ motion for a temporary restraining order and a preliminary injunction, and the exhibits accompanying that declaration;

(9) All pleadings and other documents filed in this action and the attachments thereto; and

(10) Documents admitted as exhibits during the preliminary injunction proceedings.

**C. Computation of Damages**

The United States is not seeking damages from any party.

**D. Insurance Agreements**

Not Applicable.

Dated: June 14, 2022

Respectfully submitted,

SANDRA J. STEWART  
United States Attorney  
Middle District of Alabama

KRISTEN CLARKE  
Assistant Attorney General  
Civil Rights Division

PRIM F. ESCALONA  
United States Attorney  
Northern District of Alabama

JOHN POWERS (DC Bar No. 1024831)  
Counsel to the Assistant Attorney General  
Civil Rights Division

LANE H. WOODKE  
Chief, Civil Division  
Northern District of Alabama

CHRISTINE STONEMAN  
Chief, Federal Coordination and  
Compliance Section

*s/ Jason R. Cheek*

\_\_\_\_\_  
JASON R. CHEEK  
Deputy Chief, Civil Division

*s/ Coty Montag*

\_\_\_\_\_  
COTY MONTAG (DC Bar No. 498357)  
Deputy Chief, Federal Coordination and  
Compliance Section

MARGARET LESTER MARSHALL

Assistant United States Attorney  
U.S. Attorney's Office  
Northern District of Alabama  
1801 Fourth Avenue North  
Birmingham, Alabama 35203  
Tel.: (205) 244-2121  
mmarshall2@usa.usdoj.gov

ALYSSA C. LAREAU (DC Bar No. 494881)  
RENEE WILLIAMS (CA Bar No. 284855)  
KAITLIN TOYAMA (CA Bar No. 318993)  
Trial Attorneys  
United States Department of Justice  
Civil Rights Division  
Federal Coordination and Compliance  
Section

STEPHEN D. WADSWORTH  
Assistant United States Attorney  
U.S. Attorney's Office  
Middle District of Alabama  
Post Office Box 197

950 Pennsylvania Avenue NW – 4CON  
Washington, DC 20530  
Tel.: (202) 305-2994  
Alyssa.Lareau@usdoj.gov  
Renee.Williams3@usdoj.gov

Montgomery, Alabama 36101-0197 Kaitlin.Toyama@usdoj.gov  
Tel.: (334) 223-7280  
Stephen.Wadsworth@usdoj.gov

ELIZA DERMODY (DC Bar No. 1001530)  
Acting Senior Counsel to the Assistant  
Attorney General  
United States Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue NW  
Washington, DC 20530  
Tel.: (202) 305-0463  
Eliza.Dermody@usdoj.gov

*Attorneys for Plaintiff-Intervenor United  
States of America*

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2022, I sent, via electronic mail, the foregoing Initial Disclosures to the following counsel of record:

Melody H. Eagan  
Jeffrey P. Doss  
Amie A. Value  
LIGHTFOOT, FRANKLIN & WHITE LLC  
The Clark Building  
400 20th Street North  
Birmingham, AL 35203  
meagan@lightfootlaw.com  
jdoss@lightfootlaw.com  
avague@lightfootlaw.com

J. Andrew Pratt  
Misty L. Peterson  
Adam Reinke  
Gilbert Oladeinbo  
KING & SPALDING LLP  
1180 Peachtree Street Northeast, Suite 1600  
Atlanta, GA 30309  
apratt@kslaw.com  
mpeterson@kslaw.com  
areinke@kslaw.com  
goladeinbo@kslaw.com

Brent P. Ray  
Abigail Hoverman Terry  
KING & SPALDING LLP  
110 North Wacker Drive, Suite 3800  
Chicago, IL 60606  
bray@kslaw.com  
ahoverman@kslaw.com

Michael B. Shortnacy  
KING & SPALDING LLP  
633 West Fifth Street, Suite 1600

Los Angeles, CA 90071  
mshortnacy@kslaw.com

Asaf Orr  
NATIONAL CENTER FOR LESBIAN RIGHTS  
870 Market Street, Suite 370  
San Francisco, CA 94102  
aorr@nclrights.org

Jennifer L. Levi  
GLBTQ LEGAL ADVOCATES & DEFENDERS  
18 Tremont, Suite 950  
Boston, MA 02108  
jlevi@glad.org

Scott D. McCoy  
SOUTHERN POVERTY LAW CENTER  
P.O. Box 12463  
Miami, FL 33101  
scott.mccoy@splcenter.org

Diego A. Soto  
SOUTHERN POVERTY LAW CENTER  
400 Washington Avenue  
Montgomery, AL 36104  
diego.soto@splcenter.org

Jessica L. Stone  
SOUTHERN POVERTY LAW CENTER  
150 E. Ponce de Leon Ave., Suite 340  
Decatur, GA 30030  
jessica.stone@splcenter.org

Sarah Warbelow  
Cynthia Weaver  
HUMAN RIGHTS CAMPAIGN FOUNDATION  
1640 Rhode Island Ave., NW  
Washington, DC 20036  
sarah.warbelow@hrc.org  
cynthia.weaver@hrc.org

*Counsel for Plaintiffs*

Edmund G. LaCour Jr.  
A. Barrett Bowdre  
James W. Davis  
Benjamin M. Seiss  
OFFICE OF THE ATTORNEY GENERAL  
STATE OF ALABAMA  
501 Washington Avenue  
P.O. Box 300152  
Montgomery, AL 36130-0152  
Edmund.LaCour@AlabamaAG.gov  
Barrett.Bowdre@AlabamaAG.gov  
Jim.Davis@AlabamaAG.gov  
Ben.Seiss@AlabamaAG.gov

Christopher E. Mills  
Spero Law LLC  
557 East Bay Street  
Charleston, SC 29413  
cmills@spero.law

*Counsel for Defendants*

Respectfully submitted,

/s/ Coty Montag  
Coty Montag  
Deputy Chief  
Civil Rights Division  
U.S. Department of Justice

## **EXHIBIT D**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

BRIANNA BOE, individually and on  
behalf of her minor son, MICHAEL BOE;  
*et al.*,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

STEVE MARSHALL, in his official  
capacity as Attorney General of the State  
of Alabama; *et al.*,

Defendants.

Case No. 2:22-cv-184-LCB-CWB

Honorable Liles C. Burke

**PLAINTIFF-INTERVENOR UNITED STATES OF AMERICA**  
**FIRST SUPPLEMENTAL INITIAL DISCLOSURES**

Plaintiff-Intervenor the United States of America (“United States”), through undersigned counsel, hereby submits its first supplemental initial disclosures as required by Federal Rule of Civil Procedure (“Rule”) 26(a)(1) and Local Rule 26.1.

The United States makes these First Supplemental Initial Disclosures based upon the information reasonably available to it at the present time. The United

States does not represent that these First Supplemental Initial Disclosures identify every individual, document, or tangible thing potentially relevant to this lawsuit. The United States reserves its right to clarify, alter, amend, modify, or supplement these First Supplemental Initial Disclosures if and when additional information becomes available to it, to the extent required by the Rules, the Court's local rules, and/or any applicable orders of the Court. These First Supplemental Initial Disclosures do not include information that may be used solely for impeachment purposes, or identify or otherwise include information concerning experts, as this subject is not covered by Rule 26(a)(1). The United States will provide its expert disclosures, if applicable, pursuant to Rule 26(a)(2) and any scheduling order entered by the Court.

These First Supplemental Initial Disclosures are not an admission as to the existence, relevance, or admissibility of the identified materials, or a waiver of any attorney-client or work product privilege, or other applicable privilege or immunity. In addition to the documents, electronically stored information, and/or other tangible things described below, the United States also may rely upon other documents, electronically stored information, and/or other tangible things produced by other parties or third parties in this or other litigation.

**A. Individuals Likely to Have Knowledge of Discoverable Information to Support the United States' Claim**

The following individuals are likely to have knowledge of discoverable information that the United States may use to support its claim in this case, unless solely used for impeachment. The United States reserves the right to seek discovery from, and relating to, other persons that may subsequently become known as persons likely to have discoverable information. The United States further reserves the right to modify the following list and to identify and call as witnesses additional persons if, during the course of its investigation and discovery relating to this case, the United States learns that such additional persons have knowledge or information that the United States may use to support its claim.

<b>Name</b>	<b>Contact Information</b>	<b>Subject</b>
Brianna Boe	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs
Michael Boe	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs
Megan Poe	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs
Allison Poe	Lightfoot, Franklin & White LLC The Clark Building	The impact of Senate Bill 184 on Named Plaintiffs

Name	Contact Information	Subject
	400 20th Street North Birmingham, AL 35203	
Kathy Noe	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs
Christopher Noe	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs
Rebecca Roe	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs
Melissa Roe	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs
Robert Moe	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs
April Moe	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs
Heather Austin, Ph.D.	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs

Name	Contact Information	Subject
Dr. Rachel Koe	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on Named Plaintiffs
Steve Marshall, in his official capacity as Attorney General of the State of Alabama	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	The enforcement of Senate Bill 184
Daryl D. Bailey, in his official capacity as District Attorney for Montgomery County	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	The enforcement of Senate Bill 184
C. Wilson Blaylock, in his official capacity as District Attorney for Cullman County	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	The enforcement of Senate Bill 184
Jessica Ventiere, in her official capacity as District Attorney for Lee County	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	The enforcement of Senate Bill 184
Tom Anderson, in his official capacity as District Attorney for the 12th Judicial Circuit	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152	The enforcement of Senate Bill 184

Name	Contact Information	Subject
	Montgomery, AL 36130-0152	
Danny Carr, in his official capacity as District Attorney for Jefferson County	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	The enforcement of Senate Bill 184
Morissa J. Ladinsky, M.D., FAAP	Lightfoot, Franklin & White LLC The Clark Building 400 20th Street North Birmingham, AL 35203	The impact of Senate Bill 184 on transgender youth in Alabama; the standards of care for the treatment of gender dysphoria for transgender youth; informed consent procedures for the treatment of gender dysphoria for transgender youth
Dr. James Cantor	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	Standards of care related to the treatment of gender dysphoria in transgender youth
Michael K. Laidlaw, M.D.	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	Standards of care related to the treatment of gender dysphoria in transgender youth
Quentin L. Van Meter, M.D.	Office of the Attorney General State of Alabama	Standards of care related to the treatment of gender

Name	Contact Information	Subject
	501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	dysphoria in transgender youth
Paul W. Hruz, M.D., Ph.D.	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	Standards of care related to the treatment of gender dysphoria in transgender youth
Patrick Hunter, M.D.	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	Standards of care related to the treatment of gender dysphoria in transgender youth
Dianna Kenny	Office of the Attorney General State of Alabama 501 Washington Avenue Post Office Box 300152 Montgomery, AL 36130-0152	Standards of care related to the treatment of gender dysphoria in transgender youth

Additional witnesses who may have discoverable information that the United States may rely upon to support its claim include: (1) all individuals or entities identified in Private Plaintiffs' and Defendants' respective disclosures and witness lists; (2) all individuals or entities identified by any party in response to interrogatories or other discovery requests; (3) all expert witnesses designated by any party; (4) all individuals designated by any party as a Rule 30(b)(6) representative; (5) all individuals or entities served by any party with a subpoena

during the course of this suit; (6) all individuals or entities noticed and/or deposed in this case; (7) all individuals who submitted declarations, affidavits, or sworn statements during the preliminary injunction hearing; and (8) all individuals or entities referred to in any document produced by any party or third-party in this litigation.

**B. A Copy of, or Description by Category and Location of, Documents, Electronically Stored Information, and Tangible Things in the United States' Possession, Custody, or Control to Support its Claim**

The United States identifies the following categories of documents, electronically stored information, and tangible things in its possession, custody, or control that it may use to support its claim, unless solely used for impeachment. All of these documents are located at the offices of the undersigned attorneys:

- (1) Studies regarding the medical treatment of gender dysphoria and/or gender incongruence;
  1. Annelou L.C. de Vries, et al., *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, 134(4) *Pediatrics* 696-704 (2014);
  2. Annelou L.C. de Vries, et al., *Puberty Suppression in Adolescents With Gender Identity Disorder: A Prospective Follow-Up Study*, 8(8) *J. Sex Med.* 2276-83 (2011);
  3. Christal Achille, et al., *Longitudinal Impact of Gender-Affirming Endocrine Intervention on the Mental Health and Well-Being of Transgender Youths: Preliminary Results*, 8 *Int. J. Pediatr. Endocrinol.* 1-5 (2020);
  4. Diana M. Tordoff, et al., *Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care*, 5(2) *JAMA Netw. Open.* 1-13 (2022);

5. Diane Chen, et al., *Psychosocial Characteristics of Transgender Youth Seeking Gender-Affirming Medical Treatment: Baseline Findings from the TYC Study*, 68(6) *J. Adolesc. Health* 1104-11 (2021);
6. Diego López de Lara, et al., *Psychosocial Assessment in Transgender Adolescents*, 93(1) *An. Pediatr.* 41-48 (2020);
7. Greta R. Bauer, et al., *Do Clinical Data from Transgender Adolescents Support the Phenomenon of “Rapid Onset Gender Dysphoria”?*, 243 *J. Pediatr.* 224-27 (2022);
8. Henriette A. Delemarre-van de Waal & Peggy T. Cohen-Kettenis, *Clinical Management of Gender Identity Disorder in Adolescents: A Protocol on Psychological and Paediatric Endocrinology Aspects*, 155 *Eur. J. Endocrinology* S131-37 (2006);
9. Jack L. Turban, et al., *Access to Gender-Affirming Hormones During Adolescence and Mental Health Outcomes Among Transgender Adults*, 17(1) *PLoS ONE* 1-15 (2022);
10. Jack L. Turban, et al., *Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation*, 145(2) *Pediatrics* 1-8 (2020);
11. Jaclyn M. W. Hughto, et al., *Social and Medical Gender Affirmation Experiences Are Inversely Associated with Mental Health Problems in a U.S. Non-Probability Sample of Transgender Adults*, 49(7) *Arch. Sex Behav.* 2635-47 (2020);
12. Jill Wagner, et al., *Psychosocial Overview of Gender-Affirming Care*, 32(6) *J. Pediatr. Adolesc. Gynecol.* 567-73 (2019);
13. Johanna Olson-Kennedy, et al., *Physiologic Response to Gender-Affirming Hormones Among Transgender Youth*, 62(4) *J. Adolesc. Health* 397-401 (2018);
14. Kate Millington, et al., *Physiological and Metabolic Characteristics of a Cohort of Transgender and Gender-Diverse Youth in the United States*, 67(3) *J. Adolesc. Health* 376-83 (2020);

15. Kristina R. Olson, et al., *Gender Identity 5 Years After Social Transition*, 150(2) *Pediatrics* 1-7 (2022);
  16. Lieke J.J.J. Vrouenraets, et al., *Assessing Medical Decision-Making Competence in Transgender Youth*, 148(6) *Pediatrics* 1-10 (2021);
  17. Luke R. Allen, et al., *Well-Being and Suicidality Among Transgender Youth After Gender-Affirming Hormones*, 7(3) *Clinical Practice in Pediatric Psychology* 302-11 (2019);
  18. Maria Anna Theodora Catharina van der Loos, et al., *Continuation of Gender-Affirming Hormones in Transgender People Starting Puberty Suppression in Adolescence: A Cohort Study in the Netherlands*, 6(12) *Lancet Child Adolesc. Health* 869-75 (2022);
  19. P.T. Cohen-Kettenis & S.H.M. van Goozen, *Pubertal Delay as an Aid in Diagnosis and Treatment of a Transsexual Adolescent*, 7(4) *Eur. Child Adolesc. Psychiatry* 246-48 (1998);
  20. Rosalia Costa, et al., *Psychological Support, Puberty Suppression, and Psychosocial Functioning in Adolescents with Gender Dysphoria*, 12(11) *J. Sex Med.* 2206-14 (2015); and
  21. Stephen M. Rosenthal, *Approach to the Patient: Transgender Youth: Endocrine Considerations*, 99(12) *J. Clin. Endocrinol. Metab.* 4379-89 (2014).
- (2) Clinical practice guidelines regarding the medical treatment of gender dysphoria and/or gender incongruence provided to transgender and/or gender diverse youth;
1. American Academy of Child and Adolescent Psychiatry, *Practice Parameter on Gay, Lesbian, or Bisexual Sexual Orientation, Gender Nonconformity, and Gender Discordance in Children and Adolescents*, 51(9) *J. Am. Acad. Child Adolesc. Psychiatry* 957-74 (2012);
  2. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th Ed. Text Revision (2022);

3. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th Ed. (2013);
  4. American Psychological Association, *Guidelines for Psychological Practice With Transgender and Gender Nonconforming People*, 70(9) *Am. Psychol.* 832-64 (2015);
  5. World Health Organization, *International Statistical Classification of Diseases and Related Health Problems (ICD)*, 11th Revision (2022);
  6. World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, 8th Version (2022);
  7. Wylie Hembree, et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102(11) *J. Clin. Endocrinol. Metab.* 3869-3903 (2017); and
  8. UCSF Gender Affirming Health Program, Department of Family and Community Medicine, University of California San Francisco, *Guidelines for the Preliminary and Gender-Affirming Care of Transgender and Gender Nonbinary People*, 2nd Ed. (2016).
- (3) Medical literature related to “off label” use of medications;
1. Food and Drug Administration, *Understanding Unapproved Use of Approved Drugs “Off Label”* (2018), <https://www.fda.gov/patients/learn-about-expanded-access-and-other-treatment-options/understanding-unapproved-use-approved-drugs-label> (last accessed Dec. 16, 2022);
  2. Katelyn Yackey, et al., *Off-label Medication; Prescribing Patterns in Pediatrics: An Update*, 9(3) *Hospital Pediatrics* 186-93 (2019); and
  3. Kathleen A. Neville, et al., *Off-Label Use of Drugs in Children*, 133(3) *Pediatrics* 563-67 (2014).
- (4) Public statements from medical associations or practitioners regarding

the medical care provided to transgender and/or gender diverse youth;

1. Alyson Sulaski Wyckoff, *AAP continues to support care of transgender youths as more states push restrictions*, AAP News (Jan. 6, 2022), <https://publications.aap.org/aapnews/news/19021/AAP-continues-to-support-care-of-transgender?autologincheck=redirected?nfToken=00000000-0000-0000-0000-000000000000>;
2. *AMA reinforces opposition to restrictions on transgender medical care*, American Medical Association (June 15, 2021), <https://www.ama-assn.org/press-center/press-releases/ama-reinforces-opposition-restrictions-transgender-medical-care>;
3. APA Assembly and Board of Trustees, *Position Statement on Treatment of Transgender (Trans) and Gender Diverse Youth*, American Psychiatric Association (July 2020);
4. APA Assembly and Board of Trustees, *Position Statement on Access to Care for Transgender and Gender Diverse Individuals*, American Psychiatric Association (July 2018);
5. Brief of Amici Curiae American Academy of Pediatrics and Additional National and State Medical and Mental Health Organizations in Support of Plaintiffs-Appellees and Affirmance, *Eknes-Tucker, et al. v. Ivey, et al.*, No. 22-11707 (11th Cir. 2022);
6. Brief of Amici Curiae American Academy of Pediatrics and Additional National and State Medical and Mental Health Organizations in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction, *Eknes-Tucker, et al. v. Ivey, et al.*, No. 2:22-cv-00184-LCB-SRW (M.D. Ala. 2022), ECF No. 91-1;
7. Daniel E. Shumer, et al., *The Effect of Lesbian, Gay, Bisexual, and Transgender-Related Legislation on Children*, 178 J. Pediatr., 5-6.e1 (2016);
8. *Endocrine Society celebrates UK Court of Appeal decision to preserve access to gender-affirming care*, Endocrine Society

(Sept. 17, 2021), <https://www.endocrine.org/news-and-advocacy/news-room/2021/endocrine-society-celebrates-uk-court-of-appeal-decision>;

9. Jason Rafferty, AAP Committee on Psychosocial Aspects of Child and Family Health, AAP Committee on Adolescence, AAP Section on Lesbian, Gay, Bisexual, and Transgender Health and Wellness, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142(4) *Pediatrics* 1-14 (2018);
10. Landon D. Hughes, et al., “*These Laws Will Be Devastating*”: *Provider Perspectives on Legislation Banning Gender-Affirming Care for Transgender Adolescents*, 69 *J. Adolesc. Health* 976-82 (2021);
11. Lee S. Beers, *American Academy of Pediatrics Speaks Out Against Bills Harming Transgender Youth*, American Academy of Pediatrics (Mar. 16, 2021), <https://www.aap.org/en/news-room/news-releases/aap/2021/american-academy-of-pediatrics-speaks-out-against-bills-harming-transgender-youth/>;
12. Letter from James L. Madara, CEO and Executive Vice President of the American Medical Association, to Bill McBride, Executive Director of the National Governors Association (April 26, 2021), <https://www.ama-assn.org/press-center/press-releases/ama-states-stop-interfering-health-care-transgender-children>;
13. Susan D. Boulware, M.D. et al., *Biased Science: The Texas and Alabama Measures Criminalizing Medical Treatment for Transgender Children and Adolescents Rely on Inaccurate and Misleading Scientific Claims*, Yale School of Medicine (2022);
14. *USPATH Position Statement on Legislative and Executive Actions Regarding the Medical Care of Transgender Youth*, United States Professional Association for Transgender Health (Apr. 2022);
15. WPATH Board of Directors and Executive Officers, *Position Statement on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the U.S.A.*, World Professional

- Association for Transgender Health (Dec. 21, 2016); and
16. WPATH Global Board of Directors, *WPATH POSITION ON “Rapid-Onset Gender Dysphoria (ROGD)”*, World Professional Association for Transgender Health (Sept. 4, 2018).
- (5) Public statements from medical associations regarding Alabama Senate Bill 184 and/or House Bill 266 or predecessor proposed legislation;
1. *American Academy of Pediatrics and Its Alabama Chapter Oppose Bill Threatening Health of Transgender Youth*, American Academy of Pediatrics (April 7, 2022), <https://www.aap.org/en/news-room/news-releases/aap/2022/american-academy-of-pediatrics-and-its-alabama-chapter-oppose-bill-threatening-health-of-transgender-youth/>;
  2. APA Assembly and Board of Trustees, *Position Statement on Discrimination Against Transgender and Gender Diverse Individuals*, American Psychiatric Association (July 2018);
  3. Brief of Amici Curiae American Academy of Pediatrics and Additional National and State Medical and Mental Health Organizations in Support of Plaintiffs-Appellees and Affirmance, Eknes-Tucker, et al. v. Ivey, et al., No. 22-11707 (11th Circuit);
  4. Brief of Amici Curiae American Academy of Pediatrics and Additional National and State Medical and Mental Health Organizations in Support of Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction, Eknes-Tucker, et al. v. Ivey, et al., No. 2:22-cv-00184-LCB-SRW (M.D. Ala. 2022), ECF No. 91-1; and
  5. *Statement of the Alabama Psychological Association (aPA) Supporting Gender-Affirming Care for Transgender Youth and Urging Opposition to Alabama SB 184/HB 266*, Alabama Psychological Association (aPA) (2022).
- (6) Public statements or interviews from State officials related to Alabama Senate Bill 184 and/or House Bill 266 or predecessor proposed legislation;

1. Anne Branigin, *For Ala. Families with Trans Kids, a Countdown to Decide Their Futures*, Washington Post (Apr. 19, 2022), <https://www.washingtonpost.com/nation/2022/04/19/alabama-trans-health-care-ban-families/>;
2. Bob Crittenden, *Allen, Wes – AL House of Representatives (VCAP Bill)*, Faith Radio (Mar. 1, 2022), <https://www.faithradio.org/programming/media-center/allen-wes-al-house-of-representatives-vcap-bill/>;
3. Brian Lyman, *Families, physicians take stand against Alabama transgender medicine ban*, Montgomery Advertiser (Apr. 22, 2022);
4. Brian Lyman, *‘Unthinkable’: Families and physicians file lawsuits against state’s transgender medicine ban*, Montgomery Advertiser (Apr. 21, 2022), <https://www.montgomeryadvertiser.com/story/news/2022/04/21/alabama-new-transgender-medicine-ban-facing-lawsuits/7393766001/>;
5. Brian Lyman, *Alabama lawmakers approve bill that criminalizes gender-affirming care for trans youth*, USA Today (Apr. 8, 2022), <https://www.usatoday.com/story/news/nation/2022/04/08/alabama-transgender-bill-criminalizes-gender-affirming-care-youth/9510277002/>;
6. Brian Lyman, *Alabama Senate approves bill banning transgender youth treatments amid protests at state Capitol*, Montgomery Advertiser (Mar. 2, 2021), <https://www.montgomeryadvertiser.com/story/news/2021/03/02/alabama-senate-approves-bill-banning-transgender-youth-treatments/6867380002/>
7. Capitol Journal, *Interview with Rep. Wes Allen*, Alabama Public Television (Mar. 10, 2020), <https://video.aptv.org/video/march-10-2020-dcnp7b/>;
8. Caroline Klapp, *Gov. Ivey Signs Transgender Youth Bills into Law*, WAFF (Apr. 8, 2022),

<https://www.waff.com/2022/04/09/gov-ivey-signs-transgender-youth-bills-into-law/>;

9. Christopher Vondracek, *Alabama Republicans seek transgender surgery ban for teens*, Washington Times (Mar. 8, 2020), <https://www.washingtontimes.com/news/2020/mar/8/alabama-republicans-seek-transgender-surgery-ban-t/>;
10. Jaine Treadwell, *Allen: Bill would protect children*, Troy Messenger (Jan. 8, 2021), [troy messenger.com/2021/01/08/allen-bill-would-protect-children/](https://troy messenger.com/2021/01/08/allen-bill-would-protect-children/);
11. Kiara Alfonseca, *Alabama Governor Signs ‘Don’t Say Gay,’ Trans Care and Bathroom Ban Bills*, ABCNews.com (Apr. 8, 2022), <https://abcnews.go.com/US/alabama-legislature-passes-dont-gay-trans-care-bathroom/story?id=83940764>;
12. Kim Chandler, *Alabama Senate approves treatment ban for trans kids*, AP News (Mar. 2, 2021), <https://apnews.com/article/alabama-bills-c7645e8aaff7a769fa13b9b5aeb26cc1>;
13. Maria Caspani, *Alabama Governor Signs Law Criminalizing Some Transyouth Care*, Reuters (Apr. 8, 2022), <https://www.reuters.com/legal/litigation/alabama-governor-signs-law-criminalizing-some-trans-youth-care-2022-04-08/>;
14. Mickey Welsh, *Governor Kay Ivey responds to a suit filed against new anti transgender bill*, Montgomery Advertiser (Apr. 11, 2022), <https://www.montgomeryadvertiser.com/videos/news/2022/04/11/governor-kay-ivey-responds-filed-block-alabamas-new-law-banning-puberty-blockers-and-hormones-transg/7282075001/>;
15. Mike Cason, *Alabama ban on transgender treatments for minors moves closer to becoming law*, AL.com (Mar. 16, 2021), <https://www.al.com/news/2021/03/bill-banning-transgender-treatments-for-minors-moves-closer-to-becoming-law.html>;
16. Mike Cason, *Alabama Senate passes bill banning transgender treatments for minors*, AL.com (Mar. 2, 2021), <https://www.al.com/news/2021/03/alabama-senate-passes-bill->

- banning-transgender-treatments-for-minors.html;
17. Mike Cason, *Alabama Lawmakers Again Seek to Ban Transgender Treatments for Minors*, AL.com (Jan. 6, 2021), <https://www.al.com/news/2021/01/alabama-lawmakers-again-seek-to-ban-transgender-treatments-for-minors.html>;
  18. Mike Cason, *Alabama Senate Passes Bill to Block Transgender Treatments for Minors*, AL.com (Mar. 5, 2020), <https://www.al.com/news/2020/03/alabama-senate-considers-bill-to-block-transgender-treatments-for-minors.html>;
  19. Sean Ross, *Alabama Senate Passes Vulnerable Child Compassion and Protection Act* (Mar. 2, 2021), <https://yellowhammernews.com/alabama-senate-passes-vulnerable-child-compassion-and-protection-act/>;
  20. Sean Ross, *Alabama Legislator Files Bill to Ban Transgender Meds, Surgeries for Minors — ‘It Is Irresponsible to Permanently Mutilate Them’*, Yellowhammer News (Feb. 21, 2020), <https://yellowhammernews.com/alabama-legislator-files-bill-to-ban-transgender-meds-surgeries-for-minors-it-is-irresponsible-to-permanently-mutilate-them/>;
  21. The Yaffee Program, *Allen: ‘Science is not settled’ on puberty blockers*, Yellowhammer News (Dec. 20, 2022), <https://yellowhammernews.com/allen-science-is-not-settled-on-puberty-blockers/>;
  22. Tony Perkins, *Wes Allen Discusses Upcoming Alabama Senate Vote on Vulnerable Child Compassion and Protection Act*, YouTube (Feb. 15, 2021), [https://www.youtube.com/watch?v=E9Q\\_b22cUWw](https://www.youtube.com/watch?v=E9Q_b22cUWw); and
  23. Wes Allen, *House Bill 1 is needed to protect Alabama’s children*, Troy Messenger (Mar. 3, 2021).
- (7) Video recordings of legislative hearings or proceedings on Alabama Senate Bill 184 and/or House Bill 266;
1. Alabama Senate Health Committee, *Committee Recording – 12 pm – 2/9/2022, 12:00:37 PM*, Vimeo (Feb. 9, 2022),

<https://vimeo.com/675565353/99cfbd4ffe>;

2. Alabama House Judiciary Committee, *House Judy Committee – 3/2/2022, 1:34:28 PM*, Vimeo (Mar. 2, 2022), <https://vimeo.com/683940881/4edaeefda2>; and
  3. House of Representatives, *House Part 1 – 4/7/2022, 9:32:05 AM*, Vimeo (Apr. 7, 2022), <https://vimeo.com/697000650/59a642f5d4>.
- (8) Declaration signed by Dr. Armand Antommaria, which was filed in support of the United States’ motion for a temporary restraining order and a preliminary injunction, and the exhibits accompanying that declaration;
1. Exhibit 1, Declaration of Armand H. Antommaria, MD.
- (9) All pleadings and other documents filed in this action and the attachments thereto;
- (10) Documents admitted as exhibits during the preliminary injunction proceedings;
1. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th Ed. Text Revision (2022) [US Exhibit 1];
  2. Jason Rafferty, AAP Committee on Psychosocial Aspects of Child and Family Health, AAP Committee on Adolescence, AAP Section on Lesbian, Gay, Bisexual, and Transgender Health and Wellness, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142(4) *Pediatrics* 1-14 (2018) [US Exhibit 2];
  3. Wylie Hembree, et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102(11) *J. Clin. Endocrinol. Metab.* 3869-3903 (2017) [US Exhibit 3];
  4. World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, 7th Version (2012) [US

Exhibit 4];

5. *Statement of the Alabama Psychological Association (aPA) Supporting Gender-Affirming Care for Transgender Youth and Urging Opposition to Alabama SB 184/HB 266*, Alabama Psychological Association (aPA) (2022) [US Exhibit 5];
  6. *American Academy of Pediatrics and Its Alabama Chapter Oppose Bill Threatening Health of Transgender Youth*, American Academy of Pediatrics (April 7, 2022) [US Exhibit 6];
  7. Declaration of Armand H. Antommaria, MD, PhD, FAAP, HEC-C [US Exhibit 7];
  8. Bibliography of Armand H. Antommaria [US Exhibit 8];
  9. Curriculum Vitae of Armand H. Antommaria [US Exhibit 9];
  10. Food and Drug Administration, *Understanding Unapproved Use of Approved Drugs “Off Label”* (2018) [US Exhibit 10];
  11. Susan D. Boulware, M.D. et al., *Biased Science: The Texas and Alabama Measures Criminalizing Medical Treatment for Transgender Children and Adolescents Rely on Inaccurate and Misleading Scientific Claims*, Yale School of Medicine (2022) [US Exhibit 11];
  12. Kiara Alfonseca, *Alabama Governor Signs ‘Don’t Say Gay,’ Trans Care and Bathroom Ban Bills*, ABCNews.com (Apr. 8, 2022) [US Exhibit 12];
- (11) Studies on characteristics of the transgender and/or gender diverse youth population;
1. Arjee Javellana Restar, *Methodological Critique of Littman’s (2018) Parental-Respondents Accounts of “Rapid-Onset Gender Dysphoria,”* 49 Archives of Sexual Behavior 61-66 (2020);
  2. Greta R. Bauer, et al., *Do Clinical Data from Transgender Adolescents Support the Phenomenon of “Rapid Onset Gender Dysphoria”?*, 243 J. Pediatr. 224-27 (2022);
  3. Kristina R. Olson, et al., *Mental Health of Transgender Children*

- Who Are Supported in Their Identities*, 137(3) *Pediatrics* 1-8 (2016);
4. Marjin Arnoldussen, et al., *Demographics and Gender-Related Measures in Younger and Older Adolescents Presenting to a Gender Service*, *Eur. Child Adolesc. Psychiatry* 1-10 (2022);
  5. Norman P. Spack, et al., *Children and Adolescents With Gender Identity Disorder Referred to a Pediatric Medical Center*, 129(3) *Pediatrics* 418-25 (2012);
  6. Sandy E. James, et al., *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality (2017), <https://perma.cc/5CL3-RG9E>;
  7. Sari L. Reisner, *Mental Health of Transgender Youth in Care at an Adolescent Urban Community Health Center: A Matched Retrospective Cohort Study*, 56 *J. Adolesc. Health* 274-79 (2015);
  8. The Trevor Project, *2022 National Survey on LGBTQ Youth Mental Health* (2022), [https://www.thetrevorproject.org/survey-2022/assets/static/trevor01\\_2022survey\\_final.pdf](https://www.thetrevorproject.org/survey-2022/assets/static/trevor01_2022survey_final.pdf);
  9. The Trevor Project, *2022 National Survey on LGBTQ Youth Mental Health, Alabama* (2022), <https://www.thetrevorproject.org/wp-content/uploads/2022/12/The-Trevor-Project-2022-National-Survey-on-LGBTQ-Youth-Mental-Health-by-State-Alabama.pdf>;
  10. The Trevor Project, *LGBTQ Youth in The South* (2021), <https://www.thetrevorproject.org/wp-content/uploads/2021/12/The-Trevor-Project-LGBTQ-Youth-in-the-South-December-2021.pdf>; and
  11. The Trevor Project, *Research Brief: LGBTQ Youth in the Workplace* (2021), [https://www.thetrevorproject.org/wp-content/uploads/2021/07/LGBTQ-Youth-in-the-Workplace\\_-March-2021.pdf](https://www.thetrevorproject.org/wp-content/uploads/2021/07/LGBTQ-Youth-in-the-Workplace_-March-2021.pdf).
- (12) Medical literature and public statements from medical associations

related to informed consent/assent in medical decision-making;

1. Aviva L. Katz & Sally A. Webb, APP Committee on Bioethics, *Informed Consent in Decision-Making in Pediatric Practice*, 138(2) e1-16 Pediatrics (2016);
2. Beth A. Clark & Alice Virani, “*This Wasn’t a Split-Second Decision*”: *An Empirical Ethical Analysis of Transgender Youth Capacity, Rights, and Authority to Consent to Hormone Therapy*, 18(1) J. Bioeth. Inq. 151-64 (2021);
3. Daniel E. Shumer & Amy C. Tishelman, *The Role of Assent in the Treatment of Transgender Adolescents*, 16(2) Int. J. Transgend. 97-102 (2015);
4. Lieke J.J.J. Vrouenraets, et al., *Assessing Medical Decision-Making Competence in Transgender Youth*, 148(6) Pediatrics 1-10 (2021);
5. Lois A. Weithorn & Susan B. Campbell, *The Competency of Children and Adolescents to Make Informed Treatment Decisions*, 53(6) Child Dev. 1589-98 (1982); and
6. R Rowland, *Integrity and Rights to Gender-Affirming Healthcare*, 48 J. Med. Ethics 832-37 (2022).

(13) Medical literature related to clinical research methods;

1. Carolina Martinez-Castaldi, et al., *Child Versus Adult Research: The Gap in High-Quality Study Design*, 122(1) Pediatrics 52-57 (2008);
2. Ezekiel J. Emanuel, et al., *What Makes Clinical Research Ethical?*, 283(20) JAMA 2701-11 (2000); and
3. Sari L. Reisner, et al., *Advancing Methods for US Transgender Health Research*, 23(2) Curr. Opin. Endocrinol. Diabetes Obes. 198-207 (2016).

(14) Medical literature on evidence-based medicine and the development of clinical practice guidelines; and

1. American Academy of Pediatrics Steering Committee on Quality

- Improvement and Management, *Classifying Recommendations for Clinical Practice Guidelines*, 114(3) *Pediatrics* 874-77 (2004);
2. Brian A. Swiglo BA, et al., *A Case for Clarity, Consistency, and Helpfulness: State-of-the-Art Clinical Practice Guidelines in Endocrinology Using the Grading of Recommendations, Assessment, Development, and Evaluation System*, 93(3) *J. Clin. Endocrinol. Metab.* 666-73 (2008); and
  3. David Atkins, et al., *Grading Quality of Evidence and Strength of Recommendations*, 328 *BMJ* 1490-94 (2004).
- (15) Reviews of evidence on treatment for gender dysphoria and/or gender incongruence.
1. Denise Chew, et al., *Hormonal Treatment in Young People with Gender Dysphoria: A Systematic Review*, 414(4) *Pediatrics* 1-18 (2018);
  2. Meredith McNamara, et al., *A Critical Review of the June 2022 Florida Medicaid Report on the Medical Treatment of Gender Dysphoria*, Yale School of Medicine (2022); and
  3. Susan D. Boulware, et al., *Biased Science: The Texas and Alabama Measures Criminalizing Medical Treatment for Transgender Children and Adolescents Rely on Inaccurate and Misleading Scientific Claims*, Yale School of Medicine (2022).

**C. Computation of Damages**

The United States is not seeking damages from any party.

**D. Insurance Agreements**

Not Applicable.

Dated: January 17, 2023

SANDRA J. STEWART  
United States Attorney  
Middle District of Alabama

Respectfully submitted,

KRISTEN CLARKE  
Assistant Attorney General  
Civil Rights Division

PRIM F. ESCALONA  
United States Attorney  
Northern District of Alabama

JOHN POWERS (DC Bar No. 1024831)  
Counsel to the Assistant Attorney General  
Civil Rights Division

LANE H. WOODKE  
Chief, Civil Division  
Northern District of Alabama

CHRISTINE STONEMAN  
Chief, Federal Coordination and Compliance  
Section

/s/ Jason R. Cheek  
JASON R. CHEEK  
Deputy Chief, Civil Division  
MARGARET L. MARSHALL  
Assistant U.S. Attorney  
ROBERT C. PICKREN  
Assistant U.S. Attorney  
U.S. Attorney's Office  
Northern District of Alabama  
1801 Fourth Avenue North  
Birmingham, AL 35203  
Tel.: (205) 244-2104  
Jason.Cheek@usdoj.gov  
Margaret.Marshall@usdoj.gov

/s/ Coty Montag  
COTY MONTAG (DC Bar No. 498357)  
Deputy Chief, Federal Coordination and  
Compliance Section

STEPHEN D. WADSWORTH  
Assistant United States Attorney  
U.S. Attorney's Office  
Middle District of Alabama  
Post Office Box 197  
Montgomery, AL 36101-0197  
Tel.: (334) 223-7280  
Stephen.Wadsworth@usdoj.gov

RENEE WILLIAMS (CA Bar No. 284855)  
KAITLIN TOYAMA (CA Bar No. 318993)  
Trial Attorneys  
United States Department of Justice  
Civil Rights Division  
Federal Coordination and Compliance Section  
950 Pennsylvania Avenue NW – 4CON  
Washington, DC 20530  
Tel.: (202) 305-2222  
Renee.Williams3@usdoj.gov  
Kaitlin.Toyama@usdoj.gov

AMIE S. MURPHY (NY Bar No. 4147401)  
Trial Attorney  
United States Department of Justice  
Civil Rights Division  
Housing and Civil Enforcement Section  
950 Pennsylvania Avenue NW – 4CON  
Washington, DC 20530  
Tel.: (202) 353-1285  
Amie.Murphy2@usdoj.gov

*Attorneys for Plaintiff-Intervenor United  
States of America*

CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2023, I sent, via electronic mail, the foregoing Initial Disclosures to the following counsel of record:

Melody H. Eagan  
Jeffrey P. Doss  
Amie A. Vague  
LIGHTFOOT, FRANKLIN & WHITE LLC  
The Clark Building  
400 20th Street North  
Birmingham, AL 35203  
meagan@lightfootlaw.com  
jdoss@lightfootlaw.com  
avague@lightfootlaw.com

J. Andrew Pratt  
Misty L. Peterson  
Adam Reinke  
KING & SPALDING LLP  
1180 Peachtree Street Northeast, Suite 1600  
Atlanta, GA 30309  
apratt@kslaw.com  
mpeterson@kslaw.com  
areinke@kslaw.com

Brent P. Ray  
Abigail Hoverman Terry  
KING & SPALDING LLP  
110 North Wacker Drive, Suite 3800  
Chicago, IL 60606  
bray@kslaw.com  
ahoverman@kslaw.com

Michael B. Shortnacy  
KING & SPALDING LLP  
633 West Fifth Street, Suite 1600  
Los Angeles, CA 90071  
mshortnacy@kslaw.com

Asaf Orr  
NATIONAL CENTER FOR LESBIAN RIGHTS  
870 Market Street, Suite 370  
San Francisco, CA 94102  
aorr@nclrights.org

Jennifer L. Levi  
GLBTQ LEGAL ADVOCATES & DEFENDERS  
18 Tremont, Suite 950  
Boston, MA 02108  
jlevi@glad.org

Scott D. McCoy  
SOUTHERN POVERTY LAW CENTER  
2 Biscayne Boulevard, Suite 3750  
Miami, FL 33131  
scott.mccoy@splcenter.org

Diego A. Soto  
SOUTHERN POVERTY LAW CENTER  
400 Washington Avenue  
Montgomery, AL 36104  
diego.soto@splcenter.org

Jessica L. Stone  
SOUTHERN POVERTY LAW CENTER  
150 E. Ponce de Leon Ave., Suite 340  
Decatur, GA 30030  
jessica.stone@splcenter.org

Sarah Warbelow  
Cynthia Weaver  
HUMAN RIGHTS CAMPAIGN FOUNDATION  
1640 Rhode Island Ave., NW  
Washington, DC 20036  
sarah.warbelow@hrc.org  
cynthia.weaver@hrc.org

*Counsel for Private Plaintiffs*

Edmund G. LaCour Jr.  
A. Barrett Bowdre  
Thomas A. Wilson  
James W. Davis  
Benjamin M. Seiss  
OFFICE OF THE ATTORNEY GENERAL  
STATE OF ALABAMA  
501 Washington Avenue  
Post Office Box 300152  
Montgomery, Alabama 36130-0152  
Edmund.LaCour@AlabamaAG.gov  
Barrett.Bowdre@AlabamaAG.gov  
Thomas.Wilson@AlabamaAG.gov  
Jim.Davis@AlabamaAG.gov  
Ben.Seiss@AlabamaAG.gov

Christopher Mills  
SPERO LAW LLC  
557 East Bay Street, #22251  
Charleston, South Carolina 29413  
CMills@Spero.law

David H. Thompson  
Peter A. Patterson  
Brian W. Barnes  
John D. Ramer  
COOPER & KIRK, PLLC  
1523 New Hampshire Ave., NW  
Washington, D.C. 20036  
dthompson@cooperkirk.com  
ppatterson@cooperkirk.com  
bbarnes@cooperkirk.com  
jrager@cooperkirk.com

*Counsel for Defendants*

Respectfully submitted,

/s/ Coty Montag  
Coty Montag

Deputy Chief  
Civil Rights Division  
U.S. Department of Justice

## **EXHIBIT E**



expansive mission to enhance the health and well-being of Americans.

3. Prior to assuming my current position, I held the position of CIO for the U.S. Marshals Service where I was responsible for providing IT services and support to 7,600 U.S. Marshals' employees, contractors, and task force officers spread across 475 sites within the U.S. and at eight overseas locations. During my time as an active-duty Air Force officer, I served as analyst, engineer, and program manager on the Joint Surveillance System, the NORAD Battle Management System, combat simulations at the Air Force Wargaming Institute, and the Air Force Research Laboratory's Enterprise Business System. I was also an Assistant Professor at the Air Force Institute of Technology and a military advisor to the Ministry of Defense and Aviation in Riyadh, Saudi Arabia. After retiring as a Lieutenant Colonel in 2007, I joined the Civil Service and served at the Pentagon as the Executive Director of the 844th Communications Squadron and then as the Deputy Chief Information Officer for Headquarters Air Force.

4. I have a Bachelor's Degree in Computer Science from Utah State University, an M.S. in Computer Systems Technology from the Air Force Institute of Technology, and a Ph.D. in Computer Science and Software Engineering from Auburn University.

5. This declaration is based upon personal knowledge, information acquired by me in the course of performing my official duties, and my review of HHS records, systems, and information maintained by HHS in the regular course of my employment and is true and correct to the best of my knowledge.

6. I understand that, as part of the above-captioned litigation, Defendants served on the United States on September 20, 2022 a document entitled Defendants' First Requests for Production to Intervenor-Plaintiff United States of America ("RFPs"). I understand that

Defendants' RFPs required the United States to provide responses on behalf of any executive agency or department in which responsive documents may be found.

7. I understand that Defendants are no longer seeking responsive documents from every executive agency, but only from HHS, including its sub-agencies the Food and Drug Administration ("FDA") and the National Institutes of Health ("NIH").

8. It is my understanding that the RFPs are exceptionally broad, seeking a plethora of documents and data from multiple Operating Divisions. RFPs of this nature are likely to result in terabytes ("TBs") of potentially responsive data that would need to be collected individually from each of the tenants.

9. Collections of this size pose multiple problems that will lead to time-consuming delays. Limitations exist on the Microsoft side because Microsoft 365 is a cloud service and HHS is not the only user in the government community clouds. So, Microsoft has implemented their own limitations as to data movement and bandwidth throttling. Microsoft sets limitations on how much data can be processed and downloaded in a 24-hour period, which limits the speed at which collections can run.

10. Defendants' demand for documents from "only HHS (with the understanding that this includes the agencies within HHS such as the FDA and the NIH)" is predicated on a misunderstanding of HHS's structure and how documents are collected throughout the Department. The primary burden in collective requests like those posed by the RFPs is the federated nature of HHS.

11. The Office of the Chief Information Officer (“OCIO”), Office of Operations runs a system that covers HHS Staff Divisions and five Operating Divisions. The Operating Divisions are the Administration for Community Living, the Administration for Children and Family, the Agency for Healthcare Research and Quality, the Substance Abuse and Mental Health Services Administration, and the Administration for Strategic Preparedness and Response.

12. However, other Operating Divisions, including the FDA, NIH, the Centers for Medicare & Medicaid Services (“CMS”), the Centers for Disease Control and Prevention (“CDC”), the Indian Health Service (“IHS”), the Health Resources and Services Administration (“HRSA”), etc. (each of which would be expected to have documents potentially responsive to Defendants’ RFPs as part of HHS, even though Defendants have not specified they are seeking documents from these sub-agencies) all run their own systems and would have to be individually queried.

13. Therefore, it is my understanding that each RFP served on “HHS” would actually constitute multiple RFPs served on each particular Operating Division in that each Operating Division that might have responsive documents would have to search, individually, for anything responsive to a given RFP. HHS does not have the ability to search across all Operating Divisions as a unitary function.

**Operating Divisions’ Diverse Data Storage Systems**

14. Each of the individual searches referenced above would require different technical personnel to perform the searches according to the systems and processes that the respective Operating Divisions have in place. While the entire Department of Health and Human Services

subscribes to Microsoft 365, each Operating Division co-exists as a separate, distinct “tenant” in the Microsoft 365 ecosystem. A Microsoft 365 tenant is a dedicated instance of the services of Microsoft 365 and an organization’s data is stored within a specific default location, such as in multiple Microsoft data centers in North America. Each Microsoft 365 tenant is distinct, unique, and separate from all other Microsoft 365 tenants.

15. Thus, FDA, NIH, CMS, CDC, IHS, HRSA, etc. store their data in tenants that are distinct and separate from the data of other tenants, with hard boundaries around the tenant’s space so that a particular Operating Division will be the only entity with access to the data stored in that tenant.

16. For example, data stored in the FDA tenant is inaccessible for eDiscovery requests by CMS personnel, and vice versa. Thus, in order to search for responsive documents in the FDA tenant, an FDA team must implement their processes. Similarly, in order to search for responsive documents in the CMS tenant, a CMS team must implement their processes. HHS cannot search in a unitary fashion for potentially responsive data from both FDA and CDC. Even Microsoft, which hosts the data for the Operating Divisions, would not provide access to non-tenant entities.

17. Within the Microsoft 365 environment, information is stored in Microsoft data centers. The data resides there in email, SharePoint, Microsoft Teams, and other collaboration tools. Each of those constitutes a large repository of data that is specific to the users of the tenant and inaccessible to other tenants.

18. Further, various Operating Divisions could possess data in a variety of different systems that may not all be part of the Microsoft environment. Each Operating Division has its

own unique architecture and systems. Some of this data could be hosted by Amazon, Oracle, or another system, which would also be limited to those tenants. Thus, for every RFP for which a particular Operating Division might have responsive documents, each request would have to be parsed out to the Operating Division/tenant individually.

19. Therefore, if three different tenants have documents potentially responsive to a particular RFP, three different groups of technical personnel would have to perform individual searches of their respective tenants.

20. Further, the act of collecting data has a performance impact on the systems from which the data is being collected. For example, if a large collection of the type that would be necessitated by Defendants' RFPs were to be run across the Agency for Healthcare Research and Quality's ("AHRQ") email system, that could have a performance impact on the email system. Depending on how severe that impact is, which would depend on the size of the collection effort, AHRQ personnel could have trouble performing their job duties due to the lack of consistent, uninterrupted email access. Therefore, to perform this type of large-scale collection, the technical team would need to partition the search into multiple parts and run the partitioned searches after hours in order to minimize any disruption to AHRQ's systems. Even more, AHRQ gets email service from the same tenant/system that serves four additional small Operating Divisions and all the Office of the Secretary Staff Divisions as well as the Immediate Office of the Secretary. Searches of the AHRQ email system of the type that would be required by the RFPs could impact many more organizations than just AHRQ.

21. The content of a particular RFP, as described in the RFP's verbiage, cannot be input into an eDiscovery software system in order to run a search for potentially responsive

documents. Instead, the technical team has to input the requirements of the RFP in an eDiscovery system(s) to run the search. Each query for each Operating Division/tenant will be unique depending on what systems each Operating Division/tenant uses, where the documents reside, etc. Therefore, there is often significant trial and error just to determine the scope of the data set to be collected. It requires considerable work just to create the functional implementation of the RFPs. And that work will be bespoke depending on the systems the various Operating Division/tenant uses to house its data.

22. The functional implementation of the RFP in order to run a search for potential responsive documents via the eDiscovery system(s) will be complicated by the necessity of partitioning the search as described above in order to minimize any disruption to the underlying system. Care must be taken, and time spent developing the search parameters, to ensure that the partitioning of the search does not result in missed elements of the RFP's content.

23. Realistically, the RFPs at issue in this litigation would likely take weeks, if not months, to collect the data set from any individual Operating Division/tenant. While each Operating Division/tenant can theoretically search for potentially responsive documents in parallel, some Operating Division/tenant's underlying architecture may complicate the searches and increase the amount of time required to collect a data set, especially where an Operating Division/tenant does not store all documents in the same Microsoft 365 tenant space.

24. Each Operating Division/tenant utilizes a unique architecture and information system, which results in numerous different locations where data is housed. Therefore, different processes need to be utilized to search for and collect data depending on the Operating Division in question. The tools and physical infrastructure all vary from Operating Division to Operating

Division, which will result in potentially massively different processes that need to be followed, which will result in vastly different collection times and efforts.

25. For example, CMS utilizes Box instead of OneDrive for primary document storage and integration. This means that documents stored on network drives are not in Microsoft's space (though other data is stored in Microsoft's tenant space), which would require CMS to search both its Microsoft 365 tenant space for certain documents stored therein while also searching Box for other documents stored in that system. Similarly, NIH has 25 institutes that operate under NIH, all of whom do things a little bit differently. Each of those institutes has some unique aspects to their architecture and the systems they use based on the focus area of their individual missions. This would parse the collection process out even further and complicate the collection effort.

26. Further, RFPs 18, 19, 20, 22, 23, 24 25, 28, 29, 30, & 36 do not include timeframes. Each of the Operating Divisions have used their current platforms for varying time periods, but it is likely that there must be documents (perhaps in paper copies) that predate the Operating Divisions' use of Microsoft 365, Box, or other document storage systems. Thus, in addition to the burdensome digital searches described above, each Operating Division would likely need to manually search physical files in order to locate responsive documents, scan those documents to create digital copies, and then process them along with the digital files that each Operating Division would locate.

**Practical Issues with Moving Large Amounts (TBs) of Data**

27. As noted above, it is likely that a collection "across HHS" (i.e., of the many Operating Division/tenants within HHS) would produce TBs of potentially responsive data.

28. If this is true, HHS's various technical teams and vendors would quickly encounter a physics problem: moving TBs of data. This issue would itself create delays with the collection. A TB is equal to 1,024 gigabytes of data. It would take 728,177 floppy disks or 1,498 CDs to hold 1 TB of information. Although different files have different sizes, a TB is the equivalent of 85,899,345 pages of Word documents.

29. If, for example, the resulting data set from these collections comprised 10TB of data, it would take days, even potentially weeks, just to transfer the data set onto a series of hard drives for delivery to a vendor for processing, uploading, and review.

30. After that 10TB of data is transferred to hard drives, it would then take days or weeks for the vendor to load the data into their review platform, assuming that they do not run into data corruption errors.

#### **Practical Issues with Reviewing Data from Various Operating Divisions**

31. It is my understanding that documents that are located in the various Operating Divisions will likely be unique as compared to documents residing in the custody of other Operating Divisions. Each category of unique documents that are housed in a particular Operating Division would require review by that Operating Division's disclosure program staff and attorneys, given their subject matter expertise. This specialized knowledge is critical for identifying and redacting privileged information (e.g., confidential business information, personal privacy information, or information concerning an Operating Division's ongoing investigative or law enforcement efforts) contained within the often highly technical documents held by that Operating Division.

32. For example, RFP 22 broadly seeks, *inter alia*, documents concerning FDA’s consideration of “Puberty Blockers,” which Defendants ambiguously define as “medication *administered* to Minors to delay or prevent the onset or continuation of puberty, or otherwise to prevent the formation or maturation of secondary sex characteristics consistent with the patient’s Biological Sex,” regardless of whether FDA has *approved* the drug for such uses (emphasis added). This request would seem to encompass, among other things, an unspecified number of New Drug Applications (“NDAs”) concerning an unspecified number of drugs that are in the sole custody of FDA because they were filed with the agency to seek its approval to market such drugs in the United States. *See* 21 U.S.C. § 355(a).

33. Even if Defendants’ RFPs were limited to seeking an NDA for a specific drug, responding to the request would still be burdensome. It is my understanding NDAs often contain in excess of 100,000 pages of documents, and typically include a variety of documents such as full reports of pre-clinical and clinical investigations to demonstrate the safety and efficacy of the drug for its intended use, correspondence pertaining to FDA’s review and approval of the drug, approval documents relating to various supplements to the manufacturer’s NDA, and other correspondence between FDA and the manufacturer. NDAs frequently also include numerous data files in a format similar to a spreadsheet for which a page count cannot readily be generated.

34. Moreover, NDAs contain various types of sensitive information that FDA seeks to protect from discovery, such as trade secret information (“TSI”) and confidential commercial information (“CCI”). By law, an NDA must contain extensive data concerning the drug at issue, and TSI and CCI are essential parts of such data. *See* 21 U.S.C. § 355(b); 21 C.F.R. § 314.50. Generally, FDA’s ability to disclose TSI and CCI in NDAs is restricted under federal statutes and the agency’s regulations. *See, e.g.*, 18 U.S.C. § 1905; 21 U.S.C. § 331(j); 21 C.F.R. § 20.61.

Pharmaceutical companies rely on these disclosure restrictions when submitting an NDA to FDA because the TSI and CCI therein reflect, among other things, how the company intends to meet FDA's regulatory expectations for approval. In the competitive marketplace for pharmaceutical drugs, TSI and CCI filed in an NDA are closely guarded commercial secrets, as disclosure of this information could allow competitors to adapt the company's data to help secure FDA approval of their own NDAs.

35. The example above illustrates one of the burdens that HHS would face should HHS be required to collect, review and produce the documents responsive to the RFPs. Each Operating Division has specialized subject matters that fall under its purview, necessitating different skill sets and expertise of the government personnel who interact with these documents. These differing skill sets extend to the attorneys and legal support staff who serve in the various Operating Divisions and will be tasked with reviewing and, where appropriate, withholding or redacting documents pursuant to governmental privileges or legal obligations.

36. For example, attorneys and legal support staff working with CMS will have little familiarity with the NDAs in the custody of the FDA and therefore will not be able to easily or quickly review the NDAs without extensive oversight by attorneys and legal support staff working with the FDA. This is just one example and is likely applicable to various types of potentially responsive documents in the custody and control of numerous Operating Divisions within HHS.

37. The unique nature of the various potentially responsive documents in the custody and control of different Operating Divisions within HHS as well as the breadth of Defendants' RFPs that will likely encompass documents from various, diverse Operating Divisions within the

Agency, will prevent HHS from forming a team of attorneys and legal support staff that can review documents from the various agencies that possess potentially responsive documents. Rather, HHS will likely be forced to have numerous teams of attorneys and legal support staff to review documents from their respective Operating Divisions, applying their particular expertise to the documents under review. This will decrease the efficiency of any review and exponentially increase the burden on HHS's manpower in order to comply with Defendants' RFPs.

38. Even more, the breadth of the RFPs served by Defendants increases the undue burden on HHS. As an easily-ascertainable example, RFP Number 6 seeks “[a]ll Communications and Documents since January 1, 2017, concerning Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.”

39. This particular RFP likely includes much of the 2,274,244 pages of documents that HHS has produced in currently-pending litigation, which comprise the totality of discovery in that litigation. But here, Defendants seek all of this documentation in just one (of many) RFPs.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 13, 2023.



---

Dr. Karl Mathias  
Chief Information Officer  
Department of Health and Human Services