UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Brianna Boe, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
and	)	
	)	
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 ANSWERS TO INTERROGATORIES

INTRODUCTION

In their latest motion, Defendants continue to assert that the Department of Health and Human Services (HHS) and its sub-agencies are subject to party discovery in this case. They are not. The Attorney General's intervention in a lawsuit does not submit every federal executive agency to discovery in that case. As more fully discussed in the United States' prior briefing on this issue, *see* ECF No. 247, at 18-20,[1] such a rule would not be workable and would have disastrous consequences, given the United States' unique position as a litigant.

The information Defendants seek from HHS is irrelevant to this case. Information concerning how HHS tracks certain topics or funds studies has no bearing on the constitutionality of Alabama's Vulnerable Child Compassion and Protection Act (VCAP). And, even if some piece of information might have marginal relevance, it plainly fails the proportionality requirement of Federal Rule of Civil Procedure (Rule) 26(b)(1).

Defendants' motion elides the fact that the United States has already agreed to produce approximately 2.3 million pages of HHS documents in the interest of limiting the issues before this Court.[2] The United States remains committed to a

[1] Page numbers for ECF documents refer to the page number of the document itself, not the ECF stamp.
[2] The United States is producing these documents without waiving its objections, including that it is not required to produce documents on behalf of HHS. Ex. C.

cooperative discovery process and to continuing to work with Defendants to resolve discovery disputes informally where possible while complying with the federal rules governing party discovery.

For the reasons stated above, the United States requests that this Court deny the instant motion to compel.

DEFENDANTS' INTERROGATORIES

Defendants served the United States with 18 interrogatories on December 20, 2022. The interrogatories use the terms "You" and "Your," defined as referring 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." Ex. A, at "Definitions," ¶ 2.

On January 19, 2023, the United States timely served its responses and objections to Defendants' interrogatories. Ex. B. Defendants did not raise any issues with the United States' interrogatory responses until nearly a month later, on February 14, 2023. Even then, Defendants did not attempt to meet and confer,[3] but rather informed the United States by email that Defendants would be moving to

[3] *Cf. Guidelines to Civil Discovery Practice in the Middle District of Alabama* (Feb. 3, 2015), at § I(I) ("Before a motion to compel may be filed, the parties are required to confer about the matters concerning the dispute either by telephone or at a face to face meeting (i.e. - in person, by Skype, video conference or the like) where a meaningful exchange can be had."). A failure to meet and confer provides an alternative ground to deny a motion to compel. *Ross v. Sejin Am., Inc*., No. 3:18-cv-537, 3:18-cv-734, 2021 WL 6973863, at *2 (M.D. Ala. May 26, 2021).

compel more complete responses on Interrogatory Nos. 11 through 18. ECF No. 250-1, Ex. 3. Prior to that communication, Defendants had not indicated which federal agencies they were seeking further responses from, or that Defendants even took issue with any of the interrogatory responses provided. *Id*.[4]

In parallel, on February 15, 2023, without waiving prior objections such as relevance, the United States offered to produce the administrative record for a 2020 HHS rulemaking in response to Defendants' Request for Production No. 12.[5] Ex. C, at 1-3. The United States did so in the interests of limiting the issues before the Court and because the very specific circumstances of those documents significantly limited the burdensomeness of production.[6] The United States is currently finalizing that production of approximately 2.3 million pages, and anticipates producing these documents during the week of March 13, 2023, barring any unanticipated delays with the vendor assisting with production.

[4] On February 14, 2023, the United States asked Defendants via email:

> [. . .] Can you be more specific about the basis for your motion to compel regarding the United States' responses to the interrogatories? This is the first time you are raising any concern with them. Are Defendants planning to move to compel responses from HHS, FDA, and NIH, or is there more to it than that? [. . .]

ECF No. 250-1, Ex. 3.

[5] Request for Production No. 12 was not included in the Defendants' prior motion to compel filed against the United States.

[6] HHS had produced the voluminous administrative record in separate litigation, and therefore, the files had already had been previously assembled by HHS staff.

ARGUMENT

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

Defendants' argument that the United States' interrogatory responses are deficient because they do not include responses from HHS and its sub-agencies threatens to extend the reach of discovery far beyond the scope of Rule 33(b)(1). Defendants fail to consider the United States' unique position as a litigant. The federal government includes many federal agencies that impact a variety of aspects of our society. It is therefore facially unreasonable to expect that parties can compel discovery from all federal agencies in every litigation where the United States is a named party.

Interrogatories must be answered "by the *party* to whom they are directed" or "if that party is . . . a governmental agency, by any officer or agent, who must furnish the information available to the *party*." Fed. R. Civ. P. 33(b)(1) (emphasis added). In this case challenging the constitutionality of a state statute under the Equal Protection Clause, the United States is not required to respond on behalf of HHS, the Food and Drug Administration (FDA), the National Institutes of Health (NIH), or any other HHS sub-agencies because they are not parties to this lawsuit.

As explained in its prior brief addressing this issue,[7] ECF No. 247, when the United States files or intervenes in a lawsuit to enforce federal law, the Department of Justice (Department) is the plaintiff for purposes of discovery 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, at *11 (E.D.N.Y. June 3, 2012) (Title VII case holding "[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."). In an attempt to contrast *City of New York*, Defendants draw a false distinction between the Attorney General's authority to initiate suit pursuant to 42 U.S.C. § 2000e-5 to enforce Title VII against state entities (upon referral from the Equal Employment Opportunity Commission) and his authority to intervene under 42 U.S.C. § 2000h-2. While the language of §§ 2000e-5 and 2000h-2 may differ slightly, they are the same in the most important respect for purposes of the instant motion: both statutes authorize the Attorney General to bring suit *in the name of the United States*. The Attorney General's authority is no different here than it was in *City of New York*, where the court made clear that the Department was the

[7] For the sake of brevity, the United States refers the Court to Section I of its Response in Opposition to Defendants' Motion to Compel Production of Plaintiff-Intervenor's Records for a complete explanation of its position that it does not represent HHS and its sub-agencies for purposes of discovery in this litigation. ECF No. 247. The Attorney General does not have custody or control over the documents or information of every federal agency, nor are there special circumstances—such as a joint investigation or close collaboration in litigation—which would warrant permitting discovery on a non-party federal agency.

"party" for purposes of discovery.

Nor is there any obligation on the Department under Rule 33(b)(1) to respond on behalf of a *non*-party. The only time courts permit party discovery on non-party federal agencies is when there are special circumstances such as close coordination among the agencies or a joint investigation. *See, e.g.*, *United States v. UBS Secs. LLC*, No. 1:18-cv-6369, 2020 WL 7062789, at *6 (E.D.N.Y. Nov. 30, 2020) (finding the Department of Housing and Urban Development and the Department of Treasury part of United States for discovery because the two agencies worked closely with the Department to address financial fraud at issue in the case, including serving on interagency task force specific to the issues in the case); *see also* ECF No. 247, at 8-11 (discussing additional cases). The Department has not relied on the scientific expertise of HHS, FDA, or NIH any more than any other source within the medical and scientific community, nor is it relying on internal, non-public information behind published studies or data of these three agencies to prove its Equal Protection claim.[8] The special circumstances required for the Court to order the Department to respond on behalf of these agencies in discovery simply do not exist here.

[8] The Department has disclosed and produced to Defendants numerous published studies which it may use to support its Equal Protection Claim. *See* ECF No. 247-4 (First Supplemental Initial Disclosures). It has also disclosed its experts to Defendants under Rule 26(a)(2).

The United States' consistent position throughout discovery—including Defendants' previous requests for production—has been that the information that Defendants seek is not available to the Department or otherwise known by any entity under the Department's control. Such information thus may not be properly obtained through Rules 33 and 34. *Ecometry Corp. v. Profit Ctr. Software, Inc.*, No. 06-80083, 2007 WL 9706934, at *6-7 (S.D. Fla. Mar. 15, 2007) (motion to compel denied where the moving party "made no showing that Plaintiff has failed to produce information within its control" since "in answering interrogatories, a party is only required to provide information that is available to it and can be produced without undue labor and expense").

Moreover, "[a] responding party is generally not required to perform extensive research to acquire requested information." *See Lincoln Rock, LLC v. Tampa*, No. 8:15-cv-1374, 2016 WL 6138653, at *14 (M.D. Fla. Oct. 21, 2016) (citing *L.H. v. Schwarzenegger*, No. S-06-2042, 2007 WL 2781132, at *2 (E.D. Cal. Sept. 21, 2007). The information sought by Defendants' interrogatories is neither readily available to the Department nor within its control; thus, it would require extensive, time-consuming efforts for the Department to obtain it from the other agencies. This is particularly true given that the Department and HHS are not acting in concert for purposes of this litigation. Such a demand from Defendants

would put the United States in an impossible position disproportionate to the needs of this case.

II. Defendants Again Seek Information That Is Outside the Scope of Rule 26(b)(1).

Defendants, as the party seeking discovery, have the burden of proving that the United States' interrogatory responses are inadequate. *McNeal v. Macon Cnty. Bd. of Educ.*, No. 3:19-cv-00122, 2021 WL 6883429, at *2 (M.D. Ala. May 26, 2021). They have failed to do so here. Similar to their requests for production,[9] Defendants seek information through their interrogatories that is simply not relevant to any party's claims or defenses in this case. *See* Fed. R. Civ. P. 33(a)(2) (cross-referencing Rule 26(b)). And even if this Court should disagree and find that some of the materials Defendants seek are relevant, any relevance is so marginal that it fails the Rule 26 proportionality requirement.

[9] To avoid repetition to the extent possible, the United States also refers to Section II of its Response in Opposition to Defendants' Motion to Compel Production of Plaintiff-Intervenor's Records, ECF No. 247 at 13-20. Defendants' assertion, ECF No. 252, at 7, that the United States' primary relevance argument for the prior motion was actually a premature assertion of privilege misunderstands the argument. Internal exchanges are generally shielded from disclosure because such exchanges are not agency findings or conclusions but rather reflect the open discourse within agencies, which is the same reason why public policy requires they be protected from disclosure. The circumstances surrounding internal exchanges cut against assigning them any relevance, as this litigation centers on the views of the scientific and medical communities regarding gender-affirming care, not on the communications of individual federal agency employees.

A. Defendants' Interrogatories Seek Irrelevant Information.

HHS's internal decision-making and activities have no bearing on whether VCAP is constitutional. Defendants fail to demonstrate any particularized need or likely relevance for the internal information they are seeking from HHS, but instead make the conclusory assertion that "it takes little imagination" to see why their interrogatories "are all highly relevant to the claims and defenses here." ECF No. 250, at 8-9 (citing brief where Defendants assert that the United States has discovery relevant to the safety and efficacy of gender-affirming care).[10] *See Taylor v. Farm Credit of N. Fla. ACA*, No. 21-13807, 2022 WL 4493044, at *4 (11th Cir. Sept. 28, 2022) (noting that the mere "possibility that loose and sweeping discovery might turn up something" does not show "particularized need and likely relevance" justifying the discovery request's sweeping scope) (quotations and citation omitted). Defendants' interrogatories, like their requests for production, are based upon Defendants' incorrect premise that because the United States has discussed the established safety and efficacy of gender-affirming care, or cited publicly available HHS resources, the United States must therefore

[10] Further confusing their assertion is Defendants' citation to their opposition to the Motion to Quash, which focuses on a slightly different rationale—that the United States has stated that gender-affirming medical care is "'widely recognized within the medical community.'" ECF No. 219, at 21. Again, Defendants make no connection specific to the interrogatories between the topic of medical consensus and the internal information from HHS that they seek. Like the topic of safety and efficacy of gender-affirming medical care, the United States has never supported its position on medical consensus by referring to internal information held by HHS.

be relying in this litigation upon HHS information that is exclusively available to the federal government. This is not so. The United States has been clear throughout this litigation about the scientific and medical evidence that supports its claim, which does not include non-public information or materials from HHS.[11] HHS's externally facing documents and publications speak for themselves; the tracking or reviewing activities of individual HHS employees that Defendants request shed no further light on issues relevant to the case. And, in any event, Defendants are not prejudiced if denied access to internal HHS information to which the Department does not have access.

1. Defendants Seek Irrelevant Information About How HHS and Its Sub-Agencies Monitor, Track, or Review Information (Interrogatories 11, 12, 13, 15).

Defendants want HHS to identify how it monitors, tracks, or reviews (or has monitored, tracked, or reviewed) certain information regarding gender-affirming care. *See* Ex. A, Interrog. Nos. 11, 12, 13, 15.[12] Any HHS internal monitoring, tracking, or reviewing of information related to gender-affirming care would simply have no bearing on the overwhelming scientific and medical literature that

[11] Defendants assert that the United States offered "blanket, unspecific relevancy objections" to the interrogatories. ECF No. 250, at 8. However, when the United States submitted its objections and responses, Defendants had not indicated the interrogatories were narrowed to HHS and its sub-agencies. *See generally* Ex. A.

[12] In its responses to Interrogatories Nos. 11 and 12, the United States additionally noted that it was not challenging VCAP's provisions related to surgical intervention. *See* Ex. B, at 12-13. For Interrogatory No. 11, the United States also objected on the grounds that the term "monitor" was vague, but Defendants did not address this vagueness objection in their motion.

supports the safety and efficacy of such care, and is therefore not relevant. Defendants would not be prejudiced, ECF No. 227, at 18, if they were limited to HHS's externally facing documents and publications, since what is relevant in this case is the vast body of scientific and medical support for gender-affirming care, not whether individual HHS employees monitor, track, or review information about gender-affirming care. The United States is relying upon expert testimony, along with the scientific literature that supports the provision of gender-affirming care, to prove its Equal Protection Claim—in the same way a private litigant would. The information Defendants seek thus is not relevant and not necessary for Defendants to evaluate and critique the evidence that the United States is putting forward.

2. Defendants Seek Irrelevant Information About HHS Activities (Interrogatories 15, 16, 17, 18).

Defendants' interrogatories also seek irrelevant information about HHS activities. For example, Defendants want HHS to identify any studies it has funded or conducted (or helped to fund or conduct) regarding gender-affirming care in minors. Ex. A, Interrog. No. 16. Whether HHS has funded studies related to gender-affirming care has absolutely no bearing on the question of VCAP's constitutionality. The fact that HHS—as opposed to another entity—has funded or conducted a given study regarding gender-affirming care in itself says nothing about the safety or efficacy of gender-affirming care. As noted previously,

published studies and works related to gender-affirming care speak for themselves. *See generally* ECF No. 247, at 14-15. Such works can be evaluated and critiqued on the basis of publicly available information. For published journal articles, authors often disclose their sources of funding and other information.[13] These works generally include a study's methodology, findings, and any limitations—all of which are publicly available to be examined by the parties' experts.[14] *Cf*. Fed. R. Civ. P. 26(b)(1) (considering the "parties' relative access to relevant information"). Similarly, identifying "any ways" in which HHS has provided "funding for Transitioning Minors," *see* Ex. A, Interrog. No. 18, has no relevance to the central issue in this case, given that the safety and efficacy of gender-affirming care is not reliant upon whether HHS, or any other entity, has provided funding for "Transitioning Minors." It is not the source of the funding for transitioning treatments, but again, the vast body of scientific and medical literature that supports the provision of gender-affirming care. Defendants have also offered no connection or explanation of how the extent to which HHS has worked with

[13] *See, e.g.*, Ex. D, at 1 (including funding and conflict of interest disclosures); Plaintiffs' PI Ex. 43 (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)), at 11 (detailing author affiliations, conflict of interest disclosures, funding/support, and role of the funder/sponsor).

[14] Defendants have also attempted to justify several requests for production by asserting that "Defendants seek to understand the process behind the studies' development and implementation to ensure that the studies fairly and accurately portray the information that is in the possession, custody, or control of HHS." ECF No. 252, at 9. However, published studies include details such as what population is being studied, the methodology, and the results, which can be evaluated and critiqued. Whether HHS funded a study is irrelevant to those details.

outside organizations regarding gender-affirming care for minors, *see id*. at Interrog. 17, would at all be relevant to VCAP's constitutionality. Finally, whether HHS is using the World Professional Association for Transgender Health (WPATH) Standards of Care Version 8 (SOC-8) to update HHS's own agency guidance documents or practices, *see id*. at Interrog. 15, has no bearing on VCAP's constitutionality, as it is Defendants' actions with respect to VCAP that are at issue in this case, *not* HHS's work or activities.

B. Defendants' Interrogatories Fail the Rule 26 Proportionality Requirement.

In addition, the information sought by Defendants is so attenuated to the claims and defenses of this case that Defendants' interrogatories necessarily fail the proportionality requirement of Rule 26. *See* Fed. R. Civ. P. 26(b)(1) (Parties can obtain discovery "regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case."); *see also Williams v. Am. Int'l Grp., Inc.*, No. 15-cv-554, 2016 WL 3156066, at *1-2 (M.D. Ala. June 3, 2016) (concluding that the court's consideration did not end at "simple relevance" and that "[p]roportionality considerations weigh strongly against

disclosure" when compared with "limited relevance" in light of privacy concerns in that case).[15]

Among the Rule 26 proportionality considerations are the "importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1). Both of these considerations weigh against Defendants. As detailed in Section II(A), *supra*, the United States does not rely upon internal HHS information to assert its claim. Furthermore, HHS has informed the Department that, if, in the "likely" scenario that "multiple, distinct Operating Divisions house information that is potentially responsive to a particular Interrogatory . . . each particular Operating Division will have to search for, locate, collect, review, and produce the responsive information." Ex. E, ¶ 13 (Dec. of Lisette Taylor).[16] It is HHS's understanding that "that Interrogatories 11-18 seek a plethora of information from multiple Operating Divisions," and that interrogatories "of this nature are likely to result in a wide range of potentially responsive data and information that would need to be collected individually from each of the HHS's various, diverse Operating

[15] Like Defendants' requests for HHS's internal documents, there may be public policy considerations against disclosure of certain information sought by the interrogatories, much like in the case of privacy concerns. *See* ECF No. 247, at 15-16.

[16] HHS has 12 operating divisions, "including nine agencies in the U.S. Public Health Service and three human services agencies." *Health and Human Services Agencies and Offices*, https://www.hhs.gov/about/agencies/hhs-agencies-and-offices/index.html. NIH and FDA are examples of Operating Divisions.

Divisions." Ex. E, ¶ 7. Given the negligible or non-existent relevance of the sought-after information, compelling responses from HHS's Operating Divisions would be disproportionate to the needs of the case. *See id*., ¶ 13 (noting that there is "no unified HHS entity that would be able to conduct searches across the Agency but rather multiple teams of personnel would have to individually respond to each Interrogatory").

Defendants also assert that any objections regarding burden are non-specific and conclusory. This argument also fails. The United States concedes its initial response was not specific to HHS but that was for good reason: Defendants had not at that point limited the interrogatories' scope to HHS. Nor had Defendants taken issue with the United States' interrogatory responses prior to stating their intention to move to compel. The United States thus provides that specificity here. HHS has informed the Department that "*each* Interrogatory served on 'HHS' would actually constitute multiple Interrogatories served on each particular Operating Division in that each Operating Division that might have responsive information would have to search, individually, for anything responsive *to a given Interrogatory*." *Id*., ¶ 14 (emphasis added).[17] Here, the burden of responding to these interrogatories

[17] As each interrogatory in practice constitutes multiple interrogatories served on multiple HHS Operating Divisions, Defendants' requests exceed the 40 interrogatories agreed to by the parties. *See* ECF No. 134, at 5. The attached HHS declaration lists "FDA, NIH, the Centers for Medicare & Medicaid Services ("CMS"), the Centers for Disease Control and Prevention ("CDC"), the Indian Health Service ("IHS"), [and] the Health Resources and Services Administration

outweighs any possible nominal relevance the information sought would have, and thus Defendants' requests are disproportionate to the needs of this case.

The Court should therefore reject Defendants' continued attempts to obtain this information from HHS.

III. Defendants' Interrogatory No. 14 Remains Vague and Unclear.

Interrogatory 14 is vague and unclear for at least two reasons. First, the interrogatory is vague because Defendants fail to define the term "disinformation." Defendants point to a letter written to the Attorney General but that letter also does not define the term "disinformation." The United States is therefore left to guess as to what Defendants and the outside organizations that wrote the letter meant by "disinformation." Furthermore, Defendants' reference in their motion—for the first time—to a speech by HHS official Admiral Rachel Levine is outside the scope of the United States' response because the Department of Justice is not representing HHS in this litigation.[18] *See* Section I, *supra*.

Second, the information sought by Defendants through this interrogatory remains unclear. Defendants assert in their motion that correspondence received by

("HRSA")," noting that nearly all of these offices would be expected to have potentially responsive information. Ex. E, ¶ 11. Even just counting these six HHS Operating Divisions multiplied by only the eight interrogatories upon which Defendants are moving to compel is already 48 interrogatories.

[18] Defendants also fail to explain how what Defendants characterize as "Federal instructions to state medical boards that they should regulate what can be said about the treatments at issue as directed by the federal government" are, as they assert, "relevant to multiple issues" in this litigation. ECF No. 250, at 10.

the Attorney General from outside organizations and individuals is responsive to Interrogatory No. 14. *See* ECF No. 250, at 10-11 (referencing correspondence received by the Attorney General and concluding that "there is obviously responsive information"). However, the interrogatory asks for identification of "any ways" taken to "identify, define, monitor, track, and/or discourage" the "disinformation." It is unclear how the Department's receipt of correspondence from third parties bears on an interrogatory asking for any efforts *taken by the Department* to "identify, define, monitor, track, and/or discourage" disinformation.

Taken together, Defendants still fail to clearly articulate the information they seek for Interrogatory No. 14, and the Court should therefore not compel any further response from the United States.

CONCLUSION

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

Dated: March 13, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 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/ *Renee Williams*
Renee Williams
Trial Attorney
U.S. Department of Justice

EXHIBIT A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

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

DEFENDANTS' FIRST INTERROGATORIES TO INTERVENOR-PLAINTIFF UNITED STATES OF AMERICA

Pursuant to Fed. R. Civ. P. 26 and Fed. R. Civ. P. 33, 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 Interrogatories to Intervenor-Plaintiff United States of America to be answered according to such Rules and any and all applicable Orders of the Court.

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 Interrogatory, 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 Interrogatories 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 information responsive to these Interrogatories, You should promptly furnish such information to the undersigned counsel.

3. **Answer to the Fullest Extent Possible.** If any of the Interrogatories cannot be answered in full, please answer to the fullest extent possible, explaining why you cannot answer the remainder of the Interrogatory 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 Interrogatories, or any part thereof, the specific nature of the objection and whether it applies to the entire Interrogatory or to a certain portion thereof shall be clearly stated. If there is an objection to any part of an Interrogatory, 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."

DEFINITIONS

1. All terms used in these Interrogatories have the broadest possible meaning accorded to them under the Federal Rules of Civil Procedure.

2. 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.

3. **"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.

4. "**Sex**" or "**Biological Sex**" shall mean the biological state of being male or female, based on the individual's chromosomes and reproductive organs at birth.

5. **"Gender Dysphoria**" is the diagnosis of Gender Dysphoria under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). "**Related Conditions**" include "gender incongruence" as defined by the ICD-11 and any other issues concerning trans (or transgender), gender diverse, and non-binary gender identities.

6. "**Puberty Blockers**" shall mean medication administered to Minors to delay or prevent the onset or continuation of puberty, or otherwise to delay or prevent the formation or maturation of secondary sex characteristics. 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 Interrogatories, "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.

7. "**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.

8. "**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.

9. "**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."

10. "**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.

11. "**Minor**" shall mean a person under the age of 19.

12. "**Health Care Providers**" means professionals who provide medical health care or mental health care. "Health care providers" include, but are not limited to, pediatricians, doctors of medicine, doctors of osteopathy, physicians, obstetricians, gynecologists, surgeons, plastic surgeons, urologists,

endocrinologists, neurologists, psychologists, psychiatrists, psychotherapists, mental health professionals, clinicians, speech-language pathologists, social workers, counselors, therapists, and bioethicists. As used in these Interrogatories, "health care providers" includes a nurse or nurse practitioner if that person is the primary person providing services but not if he or she acts only as support staff for another health care provider. The following professionals are specifically excluded from the definition of "health care providers" as used in these Interrogatories: pharmacists, dentists, orthodontists, endodontists, optometrists, ophthalmologists, and podiatrists.

INTERROGATORIES

1. If You have knowledge of any Health Care Providers, in Alabama or elsewhere, who are evaluating, diagnosing, monitoring, or treating Minors in Alabama for Gender Dysphoria or a Related Condition, whether alone or in conjunction with other Health Care Providers, identify such Health Care Providers. To "identify," as used in this Interrogatory, is to provide the person or entity's name, business name, business address, business phone number, and any other readily available business contact information for the Health Care Provider.

2. Identify all Health Care Providers, in Alabama or elsewhere, whom you have reason to believe are evaluating, diagnosing, monitoring, or treating Minors in Alabama for Gender Dysphoria or a Related Condition, whether alone or in

conjunction with other Health Care Providers. You do not need to include any Health Care Provider identified in response to Interrogatory No. 1. To "identify," as used in this Interrogatory, is to provide the person or entity's name, business name, business address, business phone number, and any other readily available business contact information for the health care provider.

3. Identify all persons known to you who have knowledge or information that supports or refutes the allegations set forth in Your Operative Complaint.

4. If You contend that the Act "criminaliz[es] certain forms of medically necessary gender-affirming care for transgender minors," but "permits all other minors to access the same procedures and treatments," Doc. 92 at 3, identify and explain all evidentiary bases for Your contention.

5. If You contend that "[a] diagnosis of gender dysphoria is currently required in order to receive many forms of gender-affirming care, including hormone therapy and surgery," Doc. 92 at 6, identify and explain all evidentiary bases for Your contention.

6. If You contend that "[m]edical treatment standards for gender dysphoria, including for minors, are well-established," Doc. 62-1 at 14, identify and explain all evidentiary bases for Your contention.

7. If You contend that "the State's articulated objectives are pretextual justifications that mask the true purpose of the law: to express moral disapproval of

a vulnerable and unpopular group," Doc. 62-1 at 27, identify and explain all evidentiary bases for Your contention.

8. If You contend that "the overwhelming weight of medical evidence confirms that the medical care that S.B. 184 forbids is safe, effective, and medically necessary treatment for the health and wellbeing of children and adolescents suffering from gender dysphoria," Doc. 62-1 at 30, identify and explain all evidentiary bases for Your contention.

9. If You contend that "[t]here have been ample observational studies, including federally funded trials, supporting the use of puberty blockers and other gender-affirming hormone therapy for adolescents," Doc. 62-1 at 31, identify and explain all evidentiary bases for Your contention.

10. If You contend that "parents and many minors are able to comprehend the risks involved" of the treatments banned by the Act, Doc. 62-1 at 33, identify and explain all evidentiary bases for Your contention.

11. Identify (including by identifying the specific persons or entities involved) any ways in which You monitor, or have monitored, the health outcomes of Minors, in Alabama or elsewhere, who receive Puberty Blockers, Cross-Sex Hormones, and/or surgical interventions to treat Gender Dysphoria and/or Related Conditions.

12. Identify any ways in which You track and/or review, or have tracked and/or reviewed, evidence related to the efficacy or safety of using Puberty Blockers, Cross-Sex Hormones, and/or surgical interventions to treat Minors suffering from Gender Dysphoria and/or Related Conditions.

13. Identify (including by identifying the specific persons or entities involved) any ways in which You track and/or review, or have tracked and/or reviewed, evidence or instances of Desistance or Detransition.

14. Identify (including by identifying the specific persons or entities involved) any ways in which You identify, define, monitor, track, and/or discourage "disinformation" related to Transitioning treatments in Minors. *See, e.g.*, AAP Letter to Merrick Garland, Oct. 3, 2022, https://downloads.aap.org/DOFA/DOJ%20Letter%20Final.pdf.

15. Identify (including by identifying the specific persons or entities involved) any ways in which You are reviewing WPATH's Standards of Care 8 (SOC-8) or using SOC-8 to update Your guidance or practices.

16. Identify any studies You are funding, conducting, or helping to fund or conduct—or have funded, conducted, or helped to fund or conduct—related to Transitioning treatments in Minors.

17. Identify (including by identifying the specific persons or entities involved) any ways in which You collaborate or work, or have collaborated or

worked, with WPATH, USPATH, the American Academy of Pediatrics, and/or Endocrine Society regarding the use of Transitioning treatments in Minors.

18. Identify (including by identifying the specific persons or entities involved) any ways in which You have provided, are providing, or have decided to provide funding for Transitioning Minors.

Respectfully submitted,

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Attorney General

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EXHIBIT B

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.	)	

PLAINTIFF-INTERVENOR UNITED STATES OF AMERICA'S OBJECTIONS AND RESPONSES TO DEFENDANTS' FIRST INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff-Intervenor United States of America submits its objections and responses to Defendants' First Interrogatories.

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 Federal Rules and the Local Rules of this Court, the United States will supplement its Responses.

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 and burdensome searches that are not likely 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.

INTERROGATORY NO. 1:

If You have knowledge of any Health Care Providers, in Alabama or elsewhere, who are evaluating, diagnosing, monitoring, or treating Minors in Alabama for Gender Dysphoria or a Related Condition, whether alone or in conjunction with other Health Care Providers, identify such Health Care Providers. To "identify," as used in this Interrogatory, is to provide the person or entity's name, business name, business address, business phone number, and any other readily available business contact information for the Health Care Provider.

RESPONSE:

The United States objects to Interrogatory No. 1 on the grounds that it seeks information protected by the attorney-client privilege, common interest privilege, or deliberative process privilege. Moreover, it is outside the scope of permitted discovery under Rule 26(b)(1) because it seeks information unrelated to a claim or defense. Whether the United States has knowledge of any health care providers providing gender-affirming care to minors in Alabama, beyond those named in its initial disclosures, has no bearing on the outcome of this litigation. All of the individuals the United States believes may have knowledge to support its claims in

this case have been listed in Plaintiff-Intervenor United States of America's First Supplemental Disclosures, served on January 17, 2023.

INTERROGATORY NO. 2:

Identify all Health Care Providers, in Alabama or elsewhere, whom you have reason to believe are evaluating, diagnosing, monitoring, or treating Minors in Alabama for Gender Dysphoria or a Related Condition, whether alone or in conjunction with other Health Care Providers. You do not need to include any Health Care Provider identified in response to Interrogatory No. 1. To "identify," as used in this Interrogatory, is to provide the person or entity's name, business name, business address, business phone number, and any other readily available business contact information for the health care provider.

RESPONSE:

The United States objects to Interrogatory No. 2 on the grounds that it seeks information protected by the attorney-client privilege, common interest privilege, and deliberative process privilege. This Interrogatory is also overbroad and unduly burdensome. It calls for a similar category of information as Interrogatory No. 1, except that it goes even further beyond the bounds of permissible discovery under Rule 26(b)(1) in that it requires the United States to *speculate* which health care providers are providing gender-affirming care to minors in Alabama. Certainly, unsubstantiated information such as this, were it to exist, would not bear on the

outcome of this litigation. All of the individuals the United States believes may have knowledge to support the claims in this case have been listed in Plaintiff-Intervenor United States of America's First Supplemental Disclosures, served on January 17, 2023.

INTERROGATORY NO. 3:

Identify all persons known to you who have knowledge or information that supports or refutes the allegations set forth in Your Operative Complaint.

RESPONSE:

The United States objects to Interrogatory No. 3 on the grounds that it seeks information protected by the attorney-client privilege, common interest privilege, or deliberative process privilege. Moreover, this Interrogatory is outside the scope of permitted discovery under Rule 26(b)(1) because it seeks information unrelated to a claim or defense. It is also vague. The United States has disclosed all of the people it is aware of who have knowledge supporting its claims in its Rule 26 disclosures, *see* Plaintiff-Intervenor United States of America's First Supplemental Initial Disclosures. The United States reserves the right to supplement its disclosures if it learns of additional relevant witnesses.

Which individuals may have knowledge that would *refute* the claims requires that the United States speculate on what it means to "refute" the claims, which may differ from what Defendants have in mind considering that the parties

disagree on several legal issues related to this case. Given that this aspect of the interrogatory calls for the United States' mental impressions, and that the United States believes that all of the allegations in its operative complaint are accurate, the United States does not provide a response to the second part of the Interrogatory.

INTERROGATORY NO. 4:

If You contend that the Act "criminaliz[es] certain forms of medically necessary gender-affirming care for transgender minors," but "permits all other minors to access the same procedures and treatments," Doc. 92 at 3, identify and explain all evidentiary bases for Your contention.

RESPONSE:

The United States objects to Interrogatory No. 4 on the grounds that contention interrogatories are premature at this point in discovery. The United States is preparing to produce the responsive documents in its possession to date, and reserves the right to supplement its production as discovery, particularly the exchange of expert reports, proceeds. Without waiving the foregoing objection, the United States responds that Section 4 of the Vulnerable Child Compassion and Protection Act (VCAP) is discriminatory on its face because its bans particular treatments and procedures only when they are being used to affirm a gender identity that is "inconsistent with the minor's sex" as assigned at birth. VCAP, § 4. As such, VCAP singles out transgender minors for discriminatory treatment. Those

same procedures that VCAP prohibits for transgender minors remain as permissible as before for all other purposes, including gender-affirming care for anyone who is not transgender. Specifically, VCAP states that "no person shall engage in or cause" specified types of medical care to be performed on a minor with "the purpose of attempting to alter the appearance of or affirm the minor's perception of his or her gender or sex, if that appearance or perception is inconsistent" with their sex assigned at birth. *Id*. at § 4(a). The practices prohibited by Section 4 of VCAP include administering puberty blockers and administering hormone therapy. *Id.* at § 4(a)(1)-(3). Notably, there is an exception for procedures "undertaken to treat a minor born with a medically verifiable disorder of sex development." *Id.* at § 4(b). A violation of Section 4 of S.B. 184 is a Class C felony, *id.* at § 4(c), which is punishable by up to 10 years of imprisonment and a fine of up to $15,000. *See* Ala. Crim. Code §§ 13-A-5-6(a)(3), 13A-5-11(a)(3). In addition to the statute itself, the United States refers to the Declaration of Dr. Armand Antommaria in Support of Plaintiff-Intervenor United States' Motion for a Temporary Restraining Order and a Preliminary Injunction and the exhibits accompanying that declaration.

INTERROGATORY NO. 5:

If You contend that "[a] diagnosis of gender dysphoria is currently required in order to receive many forms of gender-affirming care, including hormone

therapy and surgery," Doc. 92 at 6, identify and explain all evidentiary bases for Your contention.

RESPONSE:

The United States objects to Interrogatory No. 5 on the grounds that contention interrogatories are premature at this point in discovery. The United States is preparing to produce the responsive documents in its possession to date, and reserves the right to supplement its production as discovery, particularly the exchange of expert reports, proceeds. Without waiving the foregoing objection, the United States refers to the declarations, studies, and clinical practice guidelines listed in Plaintiff-Intervenor United States of America's First Supplemental Disclosures, served on January 17, 2023, at B(1), (2), (4), (8), (10), and (15).

INTERROGATORY NO. 6:

If You contend that "[m]edical treatment standards for gender dysphoria, including for minors, are well-established," Doc. 62-1 at 14, identify and explain all evidentiary bases for Your contention.

RESPONSE:

The United States objects to Interrogatory No. 6 on the grounds that contention interrogatories are premature at this point in discovery. The parties have not yet exchanged documents, disclosed their experts, nor deposed any of the witnesses. Without waiving the foregoing objection, the United States refers to the

declarations, studies, and clinical practice guidelines listed in Plaintiff-Intervenor United States of America's First Supplemental Disclosures, served on January 17, 2023, at B(1), (2), (4), (5), (8), (10), and (15).

INTERROGATORY NO. 7:

If You contend that "the State's articulated objectives are pretextual justifications that mask the true purpose of the law: to express moral disapproval of a vulnerable and unpopular group," Doc. 62-1 at 27, identify and explain all evidentiary bases for Your contention.

RESPONSE:

The United States objects to Interrogatory No. 7 on the grounds that contention interrogatories are premature at this point in discovery. The parties have not yet exchanged documents nor have they deposed any of the witnesses. Without waiving the foregoing objection, the United States refers to the legislation's text and legislative history, which belie the State's purported purpose to protect youth. The text and legislative history of VCAP include expressions of moral disapproval of transgender status. So, too, its suggestion that transgender minors will "outgrow" their gender identity. VCAP, § 2(4). Statements from Governor Ivey and co-sponsor Representative Allen reflect profound disapproval of people whose gender identity is inconsistent with the sex they were assigned at birth. In addition, the United States refers to the documents listed in Plaintiff-Intervenor United

States of America's First Supplemental Disclosures, served on January 17, 2023, at B(6) and (7).

INTERROGATORY NO. 8:

If You contend that "the overwhelming weight of medical evidence confirms that the medical care that S.B. 184 forbids is safe, effective, and medically necessary treatment for the health and wellbeing of children and adolescents suffering from gender dysphoria," Doc. 62-1 at 30, identify and explain all evidentiary bases for Your contention.

RESPONSE:

The United States objects to Interrogatory No. 8 on the grounds that contention interrogatories are premature at this point in discovery. The United States is preparing to produce the responsive documents in its possession to date. Moreover, the response to this Interrogatory is informed by the United States' experts, and the deadline for their disclosure has not yet passed. Accordingly, the United States reserves the right to supplement its response later in discovery. Without waiving the foregoing objection, the United States refers to the declarations, studies, and clinical practice guidelines listed in Plaintiff-Intervenor United States of America's First Supplemental Disclosures, served on January 17, 2023, at B(1), (2), (4), (5), (8), (10), and (15).

INTERROGATORY NO. 9:

If You contend that "[t]here have been ample observational studies, including federally funded trials, supporting the use of puberty blockers and other gender-affirming hormone therapy for adolescents," Doc. 62-1 at 31, identify and explain all evidentiary bases for Your contention.

RESPONSE:

The United States objects to Interrogatory No. 9 on the grounds that contention interrogatories are premature at this point in discovery. The United States is preparing to produce the responsive documents in its possession to date. Moreover, the response to this Interrogatory is informed by the United States' experts, and the deadline for their disclosure has not yet passed. Accordingly, the United States reserves the right to supplement its response later in discovery. Without waiving the foregoing objection, the United States refers to the declarations, studies, and clinical practice guidelines listed in Plaintiff-Intervenor United States of America's First Supplemental Disclosures, served on January 17, 2023, at B(1), (2), (8), (10), and (15).

INTERROGATORY NO. 10:

If You contend that "parents and many minors are able to comprehend the risks involved" of the treatments banned by the Act, Doc. 62-1 at 33, identify and explain all evidentiary bases for Your contention.

RESPONSE:

The United States objects to Interrogatory No. 10 on the grounds that contention interrogatories are premature at this point in discovery. The United States is preparing to produce the responsive documents in its possession to date. Moreover, the response to this Interrogatory is informed by the United States' experts, and the deadline for their disclosure has not yet passed. Accordingly, the United States reserves the right to supplement its response later in discovery. Without waiving the foregoing objection, the United States refers to the declarations and studies listed in Plaintiff-Intervenor United States of America's First Supplemental Disclosures, served on January 17, 2023, at B(8) and (12).

INTERROGATORY NO. 11:

Identify (including by identifying the specific persons or entities involved) any ways in which You monitor, or have monitored, the health outcomes of Minors, in Alabama or elsewhere, who receive Puberty Blockers, Cross-Sex Hormones, and/or surgical interventions to treat Gender Dysphoria and/or Related Conditions.

RESPONSE:

The United States objects to Interrogatory No. 11 on the grounds that it is outside the scope of permitted discovery under Rule 26(b)(1) because it seeks information unrelated to a claim or defense, particularly when it comes to surgical

interventions since the United States is not challenging that part of VCAP. The United States further objects on the grounds that the term "monitor" is vague. Nevertheless, 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 do not monitor such outcomes.

INTERROGATORY NO. 12:

Identify any ways in which You track and/or review, or have tracked and/or reviewed, evidence related to the efficacy or safety of using Puberty Blockers, Cross-Sex Hormones, and/or surgical interventions to treat Minors suffering from Gender Dysphoria and/or Related Conditions.

RESPONSE:

The United States objects to Interrogatory No. 12 on the grounds that it is outside the scope of permitted discovery under Rule 26(b)(1) because it seeks information unrelated to a claim or defense, particularly when it comes to surgical interventions since the United States is not challenging that part of VCAP. Nevertheless, 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 do not track such evidence.

INTERROGATORY NO. 13:

Identify (including by identifying the specific persons or entities involved) any ways in which You track and/or review, or have tracked and/or reviewed, evidence or instances of Desistance or Detransition.

RESPONSE:

The United States objects to Interrogatory No. 13 on the grounds that it is outside the scope of permitted discovery under Rule 26(b)(1) because it seeks information unrelated to a claim or defense. Nevertheless, 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 do not track such evidence.

INTERROGATORY NO. 14:

Identify (including by identifying the specific persons or entities involved) any ways in which You identify, define, monitor, track, and/or discourage "disinformation" related to Transitioning treatments in Minors. *See, e.g.*, AAP Letter to Merrick Garland, Oct. 3, 2022, https://downloads.aap.org/DOFA/DOJ%20Letter%20Final.pdf.

RESPONSE:

The United States objects to Interrogatory No. 14 as vague and unclear. The United States does not have responsive information for this Interrogatory.

INTERROGATORY NO. 15:

Identify (including by identifying the specific persons or entities involved) any ways in which You are reviewing WPATH's Standards of Care 8 (SOC-8) or using SOC-8 to update Your guidance or practices.

RESPONSE:

The United States objects to Interrogatory No. 15 on the grounds that it is outside the scope of permitted discovery under Rule 26(b)(1) because it seeks information unrelated to a claim or defense. Nevertheless, 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 do not issue medical guidance regarding the standards of care for transgender minors or practice in this area of medicine.

INTERROGATORY NO. 16:

Identify any studies You are funding, conducting, or helping to fund or conduct—or have funded, conducted, or helped to fund or conduct—related to Transitioning treatments in Minors.

RESPONSE:

The United States objects to Interrogatory No. 16 on the grounds that it is outside the scope of permitted discovery under Rule 26(b)(1) because it seeks information unrelated to a claim or defense. Nevertheless, 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 have not funded or conducted any studies related to gender-affirming treatments in minors.

INTERROGATORY NO. 17:

Identify (including by identifying the specific persons or entities involved) any ways in which You collaborate or work, or have collaborated or worked, with WPATH, USPATH, the American Academy of Pediatrics, and/or Endocrine Society regarding the use of Transitioning treatments in Minors.

RESPONSE:

The United States objects to Interrogatory No. 17 on the grounds that it is outside the scope of permitted discovery under Rule 26(b)(1) because it seeks information unrelated to a claim or defense. Nevertheless, 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 have not collaborated or worked with WPATH, USPATH, the American Academy of Pediatrics, and/or Endocrine Society regarding the use of gender-affirming treatments in minors.

INTERROGATORY NO. 18:

Identify (including by identifying the specific persons or entities involved) any ways in which You have provided, are providing, or have decided to provide funding for Transitioning Minors.

RESPONSE:

The United States objects to Interrogatory No. 18 on the grounds that it is outside the scope of permitted discovery under Rule 26(b)(1) because it seeks information unrelated to a claim or defense. Nevertheless, 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 have not provided funding for transitioning minors.

Dated: January 19, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2023, I sent, via electronic mail, the foregoing Objections and Responses to Defendants' First Interrogatories to the following counsel of record:

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Respectfully submitted,

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

EXHIBIT C

Williams, Renee (CRT)

From: Murphy, Amie (CRT)
Sent: Thursday, February 16, 2023 6:28 PM
To: Brian Barnes; Melody H. Eagan; Montag, Coty (CRT); Bowdre, Barrett; Adam Reinke; John Ramer
Cc: Cheek, Jason (USAALN); LaCour, Edmund; Wilson, Thomas; Davis, Jim; Seiss, Ben; Christopher Mills; Pete Patterson; David Thompson; Jeffrey P. Doss; Amie A. Vague; AOrr; Jennifer Levi; Sarah Warbelow; Cynthia Weaver; Andy Pratt; Misty Peterson; Brent Ray; Abigail Terry; Michael Shortnacy; Scott McCoy; Diego Soto; Jessica Stone; Marshall, Margaret (USAALN); Williams, Renee (CRT); Toyama, Kaitlin (CRT)
Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Hi Brian-

The United States accepts your proposal regarding RFPs 11 and 13.

Best,

Amie

From: Murphy, Amie (CRT)
Sent: Wednesday, February 15, 2023 5:36 PM
To: Brian Barnes <BBarnes@cooperkirk.com>; Melody H. Eagan <meagan@lightfootlaw.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <Areinke@kslaw.Com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <JCheek@usa.doj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <Jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <Mshortnacy@kslaw.Com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <mmarshall2@usa.doj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>
Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Thanks, Brian. We will need about 2-3 weeks to get the files for RFP 12 processed, but then we will send them your way. We will get back to you shortly regarding your proposal regarding RFPs 11 and 13.

From: Brian Barnes <BBarnes@cooperkirk.com>
Sent: Wednesday, February 15, 2023 1:44 PM
To: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>; Melody H. Eagan <meagan@lightfootlaw.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <Areinke@kslaw.Com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <JCheek@usa.doj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague

<avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <Jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <Mshortnacy@kslaw.Com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <mmarshall2@usa.doj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>
Subject: [EXTERNAL] RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Hi Amie,

Thanks for your note on RFPs 11, 12, and 13. Defendants agree that production of the administrative record as outlined in your note below suffices to satisfy RFP 12. Please let me know when we can expect to receive access to those materials.

For RFPs 11 and 13, Defendants would be willing to stand down on those RFPs on one condition. The condition is that if the proposed rule referenced in RFP 11 ultimately results in a final rule and if the federal government prepares an administrative record for that final rule in connection with other litigation, the United States agrees to produce that administrative record to Defendants. Please let me know if this would be an acceptable compromise for purposes of RFPs 11 and 13.

Best regards,

Brian

From: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>
Sent: Wednesday, February 15, 2023 10:28 AM
To: Brian Barnes <BBarnes@cooperkirk.com>; Melody H. Eagan <meagan@lightfootlaw.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <Areinke@kslaw.Com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <Jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <Mshortnacy@kslaw.Com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>
Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Thanks, Brian.

I have an update on the United States' responses to RFPs 11-13.

RFP 12: We can confirm that HHS has compiled the administrative record for this rule for prior litigation in which HHS was a party. We are amenable to facilitating the production of all non-privileged records from that file because it is already compiled and was previously produced. Please note that it consists of approximately 2.3M pages. In facilitating this production, we are not waiving objections based on relevance, burden, and the fact that the Department of Justice

is not obligated to produce documents on behalf of HHS. Please confirm whether Defendants will accept this production as the United States' complete response to RFP 12.

RFPs 11 and 13: HHS has not compiled the administrative record for the pending NPRM (RFP 11) or the Notice of Benefit and Payment Parameters for 2023 (RFP 13). We expect that the combined records would also exceed 2M pages and would take weeks, if not months, to compile. Therefore, the burden to produce these administrative records far exceeds their limited relevance, if any, to the litigation. With respect to the documents responsive to RFP 13, we note that the materials that comprise the foundational part of the record (articles, studies, and data) are cited within the rulemaking and are publicly available.

We remain open to discussing this further if you are willing to limit the scope of your request with respect to RFPs 11 and 13.

Amie

From: Brian Barnes <BBarnes@cooperkirk.com>
Sent: Tuesday, February 14, 2023 1:03 PM
To: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>; Melody H. Eagan <meagan@lightfootlaw.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <Areinke@kslaw.Com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <JCheek@usa.doj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <Jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <Mshortnacy@kslaw.Com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <mmarshall2@usa.doj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>
Subject: [EXTERNAL] RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Hi Amie,

Thanks for your note. We're planning to move to compel interrogatory responses from HHS (including subcomponents of HHS such as FDA and NIH). The arguments on this track the ones we're already litigating with respect to the RFPs, but I'd be happy to discuss if you think that doing so would be productive.

Best regards,

Brian

From: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>
Sent: Tuesday, February 14, 2023 9:29 AM
To: Brian Barnes <BBarnes@cooperkirk.com>; Melody H. Eagan <meagan@lightfootlaw.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <Areinke@kslaw.Com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>;

David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <Jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <Mshortnacy@kslaw.Com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>
Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Good morning, Brian—

Can you be more specific about the basis for your motion to compel regarding the United States' responses to the interrogatories? This is the first time you are raising any concern with them. Are Defendants planning to move to compel responses from HHS, FDA, and NIH, or is there more to it than that?

We are checking on RFPs 11-13 and expect to have a response for you this week.

Best,

Amie

From: Brian Barnes <BBarnes@cooperkirk.com>
Sent: Tuesday, February 14, 2023 8:23 AM
To: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>; Melody H. Eagan <meagan@lightfootlaw.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <Areinke@kslaw.Com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <JCheek@usa.doj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <Jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <Mshortnacy@kslaw.Com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <mmarshall2@usa.doj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>
Subject: [EXTERNAL] RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Hi Amie,

I'm writing on a couple of fronts.

First, given the trial schedule in this case, Defendants want to tee up for the Court as many unresolvable discovery disputes as possible for the March 21 hearing. To that end, we are planning to file a motion to compel that would require the United States to provide more complete responses to the following interrogatories: 11, 12, 13, 14, 15, 16, 17, and 18. The United States only answered those interrogatories on behalf of three offices within the Department of Justice. Given the brief you all filed yesterday and our prior discussions, we think we have a good understanding of the United States's position and do not believe that further efforts to meet and confer about the scope of the United States' interrogatory responses would be productive. But to the extent you disagree, we are happy to talk this week. To ensure

that the motion to compel on these interrogatories can be argued on March 21, Defendants plan to file the motion on Monday (February 20).

Second, I wanted to follow up on our proposal with respect to RFPs 11, 12, and 13. We last communicated about those RFPs three weeks ago, when you said that you would consider our proposal and get back with us "as soon as possible." Can you give us a timeline for when we will be hearing back from you on this? Consistent with my first point above, Defendants may seek to put this issue before the Court ahead of the March 21 hearing if we cannot reach agreement soon.

Best regards,

Brian

From: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>
Sent: Tuesday, January 24, 2023 10:38 AM
To: Brian Barnes <BBarnes@cooperkirk.com>; Melody H. Eagan <meagan@lightfootlaw.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <Areinke@kslaw.Com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <Jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <Mshortnacy@kslaw.Com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>
Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Thanks, Brian. Your clarifications are very helpful. We will get back to you on this as soon as possible.

From: Brian Barnes <BBarnes@cooperkirk.com>
Sent: Monday, January 23, 2023 3:21 PM
To: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>; Melody H. Eagan <meagan@lightfootlaw.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <Areinke@kslaw.Com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <JCheek@usa.doj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <Jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <Mshortnacy@kslaw.Com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <mmarshall2@usa.doj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>
Subject: [EXTERNAL] RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Hi Amie,

Thanks for your note on RFPs 11, 12, and 13. Here are answers to your questions:

1. We're not completely certain what you mean by the administrative record "as defined and assembled by HHS." To clarify, our proposal on RFPs 11, 12, and 13 is that the United States produce "the full administrative record that was before the Secretary at the time he made" the decisions referenced in each of those RFPs. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971). That would include "all information [the agency] considered either directly or indirectly." *Marcum v. Salazar*, 751 F. Supp. 2d 74, 78 (D.D.C. 2010).

2. We agree that privileged documents aren't part of the administrative record (as defined above). So if the United States agrees to our proposal on RFPs 11, 12, and 13, no privilege log would need to be produced for purposes of responding to those requests. To be clear, we aren't offering to abandon the request for a privilege log as to other RFPs, but we would agree to give up on a privilege log for purposes of RFPs 11, 12, and 13 if the United States agrees to our proposal on those RFPs.

3. Our thought on RFP 11 was that the agency may have already assembled the materials it has considered so far even though there isn't yet a final rule. But if that isn't correct, our proposal may not be feasible with respect to RFP 11.

Best regards,

Brian

From: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>
Sent: Friday, January 20, 2023 2:06 PM
To: Brian Barnes <BBarnes@cooperkirk.com>; Melody H. Eagan <meagan@lightfootlaw.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <Areinke@kslaw.Com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <Jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <Mshortnacy@kslaw.Com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>
Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Hi Brian-

Thanks for taking the time to continue our discussion on the RFPs yesterday. As we discussed, we are considering your request for "administrative records" regarding RFPs 11-13. On that note, we want to clarify three points:

1) Defendants are only seeking the administrative record, as defined and assembled by HHS;
2) Defendants agree that the administrative record does not include privileged materials (e.g., documents that fall within the deliberative process privilege, attorney-client privilege, and work product privilege). Since deliberative process materials, including internal memoranda, are not considered part of the administrative record, there will be no expectation that the United States create a privilege log; and

3) RFP 11 is specific to the current Section 1557 NPRM. Since the rulemaking process is ongoing, please specify what Defendants are seeking with respect to this RFP.

Best,

Amie

From: Brian Barnes <BBarnes@cooperkirk.com>
Sent: Thursday, January 12, 2023 10:19 PM
To: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>; Melody H. Eagan <meagan@lightfootlaw.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <Areinke@kslaw.Com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <JCheek@usa.doj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <Jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <Mshortnacy@kslaw.Com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <mmarshall2@usa.doj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>
Subject: [EXTERNAL] RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Hi Amie,

The proposal in my note of January 5 was for the United States to identify custodians it would use to respond to a subset of the RFPs (RFP 18, RFP 19, RFP 20, RFP 23, RFP 24, RFP 29, and RFP 30) and to use that list of custodians to help frame a discussion around whether and how to limit the scope of the remaining RFPs on which we haven't offered to stand down. We think this is a sensible approach because it's impossible for us to assess the claims of burdensomeness without having any sense for the number of custodians or volume of documents in play. Would the United States be amenable to that approach? And if not, does the United States have a counterproposal?

Your note below doesn't respond to my question about whether there are administrative records for the actions referenced in RFP 11, RFP 12, and RFP 13. As I noted, one path forward on those RFPs would be for the United States to produce the relevant administrative records. If they already exist, it's difficult for us to see how producing them could be unduly burdensome.

We recognize that some documents responsive to some of our RFPs may be covered by the deliberative process privilege, but that's not a basis for refusing to search for responsive documents. Non-deliberative (e.g., factual) material cannot be withheld under the deliberative process privilege even if it's predecisional. That's why the administrative record for a final agency action can be thousands of pages long and isn't limited to whatever an agency says about its decision in the Federal Register. The deliberative process privilege is also a qualified privilege that can be overcome when a litigant makes a sufficient showing of need. For those reasons among others, the deliberative process privilege can only be asserted on a document-by-document basis, and the privilege issue you raise is premature.

Finally, while we appreciate the offer to send links to the documents referenced in RFPs 11-13, 18, 19, 20, 23, 24, 29, and 30, we obviously already have those documents. The thrust of those RFPs is not to request copies of the documents themselves but the factual inputs and other non-privileged materials behind them.

If you aren't able to respond to this note by Monday, please let me know when between now and then you are available to meet and confer by telephone. Given the schedule in this case, we think it's essential to complete these negotiations no later than the end of next week.

Best regards,

Brian

From: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>
Sent: Wednesday, January 11, 2023 1:25 PM
To: Brian Barnes <BBarnes@cooperkirk.com>; Melody H. Eagan <meagan@lightfootlaw.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <Areinke@kslaw.Com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <Jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <Mshortnacy@kslaw.Com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>
Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Brian-

Thanks again for your email. Our position remains that HHS is not a part of the United States for purposes of this case. However, without waiving our objections and while fully preserving our rights on the issue, we remain open to the possibility of attempting to facilitate a production of responsive documents on behalf of HHS provided we can come to agreement on the boundaries of the requests at issue.

We appreciate your efforts to provide greater specificity as to which RFPs Defendants believe will most likely yield relevant information. However, a number of RFPs that you refer to as the "broader" ones remain unaddressed. Because those requests remain in play, the totality of Defendants' requests remain overly broad and unduly burdensome, in addition to raising the same significant relevance and deliberative process concerns we have discussed previously during the meet and confer process. For example, we do not see how pre-decisional emails, memos, or pre-final drafts of publicly available studies and reports have any bearing on this lawsuit or are properly discoverable.

We also wanted to flag, in case it's useful and in the interest of expediency, that many of the reports and studies mentioned in your email can be accessed online. We could provide links to certain publications responsive to RFPs 11-13, 18, 19, 20, 23, 24, 29, and 30 if you would like. Please let us know if that would be helpful.

Amie

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From: Murphy, Amie (CRT)
Sent: Friday, January 6, 2023 5:04 PM
To: Brian Barnes <BBarnes@cooperkirk.com>; Melody H. Eagan <meagan@lightfootlaw.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <Areinke@kslaw.Com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <JCheek@usa.doj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <Jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <Mshortnacy@kslaw.Com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <mmarshall2@usa.doj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>
Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Thanks, Brian. We're working through this issue as expeditiously as possible and will know early next week which day works best to schedule the call. Have a nice weekend.

From: Brian Barnes <BBarnes@cooperkirk.com>
Sent: Friday, January 6, 2023 3:21 PM
To: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>; Melody H. Eagan <meagan@lightfootlaw.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <Areinke@kslaw.Com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <JCheek@usa.doj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <Jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <Mshortnacy@kslaw.Com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <mmarshall2@usa.doj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>
Subject: [EXTERNAL] RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Thanks, Amie. Just in the interest of keeping the ball rolling, should we schedule another call for late in the day Tuesday or sometime on Wednesday? We can always cancel if a call proves unnecessary, but I think it would be good to have another time on the calendar when we can discuss after you respond to my last note in writing.

I hope you have a nice weekend.

Brian

From: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>
Sent: Friday, January 6, 2023 11:19 AM
To: Brian Barnes <BBarnes@cooperkirk.com>; Melody H. Eagan <meagan@lightfootlaw.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <Areinke@kslaw.Com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <Jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <Mshortnacy@kslaw.Com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>
Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Thanks for giving the issue more consideration. We will give this some thought and get back to you on Monday or Tuesday.

From: Brian Barnes <BBarnes@cooperkirk.com>
Sent: Thursday, January 5, 2023 5:23 PM
To: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>; Melody H. Eagan <meagan@lightfootlaw.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <Areinke@kslaw.Com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <JCheek@usa.doj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <Jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <Mshortnacy@kslaw.Com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <mmarshall2@usa.doj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>
Subject: [EXTERNAL] RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Dear Amie,

Here are a few thoughts and responses relevant to your email below and the issues we discussed during our call on January 3.

1. This issue will hopefully turn out to be academic, but we strongly disagree with your position that HHS documents are beyond the scope of materials that the United States is required to review and produce under Rule 34. Under that rule, documents are in bounds if they are in the "responding party's possession, custody, or control." The "responding party" here is the United States. The United States—not the Attorney General or the Department of Justice—is the entity listed in the intervention papers and which now appears on the case caption. Nor could it be otherwise: the statute the United States relied on to intervene specifies that "the

Attorney General *for or in the name of the United States* may intervene." 42 U.S.C. § 2000h-2 (emphasis added). The Attorney General and the DOJ may serve as attorneys for the United States, but it is the United States itself that is the party. So it is the United States itself that is responsible for complying with discovery obligations *as a party*. The pertinent question is thus what documents the *United States* has in its "possession, custody or control." And as relevant here, the answer is that the United States has "possession, custody, or control" over documents and communications at HHS because HHS is an executive agency of the United States.

2. As we discussed during our January 3 call, the fundamental thing we are after with most of the discovery requests directed to the United States is evidence relevant to the safety and efficacy of the treatments that are the subject of the lawsuit. We know that HHS has relevant evidence on this topic based on things that agency has said and done in recent years. Some of our RFPs are targeted requests that specifically seek documents concerning a subset of those actions that we view as especially likely to yield highly relevant documents –

    a. RFP 18 (documents concerning an NIH-funded study on the impact of early medical treatment for transgender youth);

    b. RFP 19 (documents concerning an NIH-funded study on the physiologic response to cross-sex hormones among transgender youth);

    c. RFP 20 (documents concerning NIH-funded research by Natalie Nokoff regarding transitioning and gender dysphoria);

    d. RFP 23 (documents concerning the FDA's decision to add a warning about pseudotumor cerebri to the label for puberty blockers);

    e. RFP 24 (documents concerning the FDA's review of puberty blockers);

    f. RFP 29 (documents concerning a topic brief on treatments for gender dysphoria by the Agency for Healthcare Research and Quality); and

    g. RFP 30 (documents concerning a publication by the Office of Population Affairs on gender-affirming care and young people).

    In terms of a path forward, we think a logical next step is for the United States to identify the custodians who are most likely to have documents responsive to those RFPs. We could then have a conversation about whether those same custodians would be appropriate for purposes of responding to some of the broader RFPs.

3. RFP 11, RFP 12, and RFP 13 all seek documents relating to administrative actions taken or being considered by HHS. Has HHS maintained administrative records relating to those actions? If so, producing those records to us could be a way of satisfying those requests with minimal burden.

4. We understand your concerns about burdensomeness, and as part of a broader compromise we would be willing to withdraw the following RFPs: RFP 2, RFP 3, RFP 17, RFP 21, RFP 26, RFP 27, RFP 32, RFP 33, RFP 44, and RFP 45. Although we do not think that the United States's decision to abandon its challenge to the features of the Act that regulate surgeries makes evidence concerning surgeries irrelevant, I note that we are offering to withdraw RFP 26 (documents concerning reporting of adverse events for surgical procedures used to treat gender dysphoria).

5. As I mentioned at the end of our call, the documents we are seeking in fact discovery will be important inputs for our experts' analysis. Accordingly, if we come close to the March 20 deadline for disclosure of defendants' expert reports and still have significant document discovery requests outstanding, it is very likely that we will seek an extension of the March 20 deadline. I am raising this issue now because the plaintiffs' expert reports are

due on January 23. Given the current status of fact discovery, defendants would not oppose an extension of that deadline (assuming a similar extension of the deadline for disclosure of defendants' expert reports).

6. Concerning the ESI protocol, the concern I raised during our last call was with respect to the following sentence that plaintiffs proposed to add to Section V(E): "The Parties further agree that when producing Documents and ESI, privileged, data privacy protected, or irrelevant material contained within an otherwise discoverable Document or ESI record should be redacted." We read that sentence to permit redactions of "irrelevant material contained within an otherwise discoverable Document." As I mentioned during the call, we are very reluctant to agree to a protocol that permits redactions based on relevance. (We are uncertain what plaintiffs have in mind by way of "data privacy protected" redactions but also would likely object to that.)

Especially in light of the Court's decision yesterday to move up the trial date by two months, we think it's urgent to conclude these discussions so that the United States can begin reviewing and producing documents as soon as possible. To that end, please let us know your availability for a call to discuss these issues on Monday or Tuesday of next week.

Best regards,

Brian

From: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>
Sent: Thursday, January 5, 2023 9:17 AM
To: Brian Barnes <BBarnes@cooperkirk.com>; Melody H. Eagan <meagan@lightfootlaw.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <Areinke@kslaw.Com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <Jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <Mshortnacy@kslaw.Com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>
Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Hi Brian:

Thanks for taking the time to speak with us yesterday. I'm writing to memorialize a couple thoughts that were exchanged during the call.

First, the United States reaffirms that it is not contesting the constitutionality of the portion of the statute related to surgical procedures and that discovery related to surgeries is not relevant to this matter. Please confirm that Defendants will withdraw certain requests accordingly.

Second, we reaffirm that HHS is not a party to the case and this case was not referred to DOJ by HHS. Private Plaintiffs also no longer assert a claim under Section 1557 of the Patient Protection and Affordable Care Act. Finally, the RFPs implicating HHS are unduly broad and overly burdensome, and seek documents that are not relevant to this case. Yet, in the interest of cooperation and efficiency, we are willing to consider facilitating a production through HHS if you narrow

your requests so that we may have a productive conversation with agency counsel. Please confirm our understanding that Defendants are considering this request and will get back to us this week.

I think that covers it, but please let me know if I've left something out or you disagree with my representations.

Best,

Amie

Amie S. Murphy
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From: Brian Barnes <BBarnes@cooperkirk.com>
Sent: Friday, December 23, 2022 12:10 PM
To: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>; Melody H. Eagan <meagan@lightfootlaw.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <Areinke@kslaw.Com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <JCheek@usa.doj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <Jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <Mshortnacy@kslaw.Com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <mmarshall2@usa.doj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>
Subject: [EXTERNAL] RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Hi Amie,

Thanks for your note on Wednesday. Here are a few responses and reactions --

1. The only document requests for which we don't think it's necessary to use HHS custodians are RFPs 4 and 5. Given that the core factual dispute in this case is over the safety and efficacy of medical treatments, our view is that HHS (including agencies housed within HHS such as FDA and NIH) is by far the most important place for the United States to look for relevant documents. We're of course open to a conversation about ways to limit the burden of responding to our document requests, including by narrowing the scope of some of the RFPs and identifying appropriate custodians and search terms. But it still isn't clear to us whether the United States is willing to search the ESI of HHS custodians and produce responsive materials (including emails). Please clarify the United States' position on that threshold issue.

2. The treatments referenced in my note of December 16 are the ones prohibited by Section 4 of S.B. 184. That includes: (1) puberty blocking medication, (2) cross-sex hormones, and (3) surgeries that sterilize, that artificially construct tissue with the appearance of genitalia, or that remove any healthy body part or tissue except male circumcision. We are puzzled by your statement that surgery "is not relevant here" given that the United States' complaint asks the Court to permanently enjoin Section 4 of the Act in full, including the provisions that regulate surgeries. *See also* U.S. Complaint ¶¶ 38, 39, 42, and 51. If the United States no longer intends to challenge the Act's regulation of surgeries, please let us know since that would affect our thinking about various discovery issues.

3. Provided that the same limitation applies to Defendants' attorneys, we agree that there is no need for the United States to search DOJ attorneys' ESI or log privileged responsive documents found in a DOJ attorney's ESI.

4. We cannot agree to limit the United States' production to documents that the United States may use to support its claims. RFP 4 requests all such materials, but the other document requests Defendants served on the United States are not so limited.

We're available to discuss these issues any time on January 3. Please let us know a time that works for you.

Best regards,

Brian W. Barnes
Cooper & Kirk, PLLC
(202) 220-9623

From: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>
Sent: Wednesday, December 21, 2022 4:02 PM
To: Brian Barnes <BBarnes@cooperkirk.com>; Melody H. Eagan <meagan@lightfootlaw.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <Areinke@kslaw.Com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <Jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <Mshortnacy@kslaw.Com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>
Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Dear Brian,

Thank you for clarifying that the scope of your requests regarding scientific evidence pertains only to documents within the possession, custody, and control of HHS and its agencies, which include FDA, NIH, and the Centers for Medicare and Medicaid Services.

In order for us to answer the questions in your email, we first need to understand the breadth of the commitment you are asking us to undertake. Simply put, it would help to know which of the 45 RFPs you believe apply to HHS. Even if we were to agree to your request right now, we would still need to identify the particular RFPs prior to connecting with the agency in order to guide our discussion. For sake of efficiency, we would like to know that information now in order to

decide whether making that commitment is even feasible. Additionally, your email states that you are seeking "medical and scientific evidence surrounding the treatments at issue here." Please specify the treatments you are referring to—is this limited to hormones and puberty blockers? Surgery is not relevant here and so shouldn't be covered by your request.

The United States anticipates making its initial production of documents by January 20, given that we have not yet agreed to the terms of the ESI protocol. In light of your December 20 email to Melody, stating that it would be disproportional to the needs of the case to search ESI held by attorneys at the Attorney General's Office, we assume the same limitation can apply to attorneys at the Department of Justice and thus we will not search attorneys' ESI or log privileged responsive documents found in a DOJ attorney's ESI. We also propose limiting the United States' production to documents that the United States may use to support its claims.

We propose having a discussion about this after the holidays, during the week of January 2. If you are able to send us a list of RFPs prior to the call, please do that. It seems as though we are making some headway and we are hopeful that we can reach a resolution.

Best,

Amie

P.S. Wishing everyone on this chain a happy holiday!

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Sent: Friday, December 16, 2022 3:52 PM
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Subject: [EXTERNAL] Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Dear Amie,

Thank you for taking the time to speak with us yesterday regarding the United States's position with respect to Defendants' requests for production. We appreciate that your client is generally willing to work with us regarding those requests, but we need more clarity regarding your position—especially as it relates to the Department of Health and Human Services (HHS).

As we stated during the call, we think that the medical and scientific evidence surrounding the treatments at issue here is highly relevant to the claims in this case. And we know that the federal government employs healthcare and medical professionals who research, study, and make decisions based upon that evidence. We are therefore seeking documents and communications in the possession, custody, or control of those professionals. As we explained during the call, in an effort to narrow the requests, we are willing to focus only on HHS (with the understanding that this includes the agencies within HHS such as the FDA and the NIH). The call left us with a few questions that we need you to answer to chart a path forward:

1. Is the United States willing to identify custodians at HHS, including at agencies within HHS such as FDA and NIH, that would be the most likely to possess documents and communications concerning the scientific evidence surrounding the safety and efficacy of the treatments at issue in this case?

2. Assuming that we can agree upon relevant search terms, is the United States willing to search the ESI of HHS custodians for responsive documents using agreed-upon search terms?

3. Would those searches extend to the custodians' emails?

Once we know the answers to these questions, it will make it much easier to discern next steps—whether that is proceeding to identify custodians and search terms or instead teeing up for the Court a dispute over the United States's discovery obligations. Given the schedule in this case, we ask that you respond to this note by December 21.

Best regards,

Brian W. Barnes
Cooper & Kirk, PLLC
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EXHIBIT D

Gender Identity 5 Years After Social Transition

Kristina R. Olson, PhD,[a] Lily Durwood, PhD,[b] Rachel Horton, BS,[a] Natalie M. Gallagher, PhD,[a] and Aaron Devor, PhD[c]

abstract

BACKGROUND AND OBJECTIVES: Concerns about early childhood social transitions among transgender youth include that these youth may later change their gender identification (ie, retransition), a process that could be distressing. The current study aimed to provide the first estimate of retransitioning and to report the current gender identities of youth an average of 5 years after their initial social transitions.

METHODS: The current study examined the rate of retransition and current gender identities of 317 initially transgender youth (208 transgender girls, 109 transgender boys; $M = 8.1$ years at start of study) participating in a longitudinal study, the Trans Youth Project. Data were reported by youth and their parents through in-person or online visits or via e-mail or phone correspondence.

RESULTS: We found that an average of 5 years after their initial social transition, 7.3% of youth had retransitioned at least once. At the end of this period, most youth identified as binary transgender youth (94%), including 1.3% who retransitioned to another identity before returning to their binary transgender identity. A total of 2.5% of youth identified as cisgender and 3.5% as nonbinary. Later cisgender identities were more common among youth whose initial social transition occurred before age 6 years; their retransitions often occurred before age 10 years.

CONCLUSIONS: These results suggest that retransitions are infrequent. More commonly, transgender youth who socially transitioned at early ages continued to identify that way. Nonetheless, understanding retransitions is crucial for clinicians and families to help make retransitions as smooth as possible for youth.

Increasing numbers of children are socially transitioning to live in line with their gender identity, rather than the gender assumed by their sex at birth, a process that typically involves changing a child's pronouns, first name, hairstyle, and clothing. Some concerns about childhood social transitions have been raised,[1] including that these children may not continue to identify as transgender, rather they might "retransition" (also called a "detransition" or "desistence"), which some suggest could be distressing for youth.[1–3] Research has suggested that ages 10 to 13 years may be particularly key times for retransition and that identity may be more stable after this period for youth who show early gender nonconformity.[3]

Other clinicians argue that early social transitions can be beneficial for some gender-diverse youth.[4–6] Some clinicians and scholars who support early childhood social transitions encourage families to remain open to later retransitions,[7,8] which are seen by some as part of a youth's exploration of their gender.[9]

Unfortunately, very few data about retransitions exist in the scientific literature. We have been able to find limited data on the number of youth

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Dr Olson conceptualized the current study, supervised data collection, carried out the initial analyses, and drafted the initial manuscript. Dr Durwood and Dr Devor conceptualized the current study and provided extensive revisions on the manuscript. Ms Horton acquired and compiled the data and tables and provided feedback on the manuscript. Dr Gallagher acquired, compiled, and analyzed the data and provided feedback on the manuscript. All authors approved the manuscript as submitted and agree to be accountable for all aspects of the work.

DOI: https://doi.org/10.1542/peds.2021-056082

Accepted for publication Apr 22, 2022

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PEDIATRICS (ISSN Numbers: Print, 0031-4005; Online, 1098-4275).

FUNDING: The collection of data in this report and some of the authors' time (Dr Olson, Ms Horton, and Dr Gallagher) over the course of this project have been supported by National Institutes of Health grant HD092347; National Science Foundation grants BCS-1523632, SMA-1837857, and SMA-2041463; an Arcus Foundation grant (all to Dr Olson); and a National Science Foundation GRFP grant to Dr Durwood. In addition, Dr Olson receives financial support from the MacArthur Foundation. The funders played no role in determining the research questions asked nor have they seen the results before review.

CONFLICT OF INTEREST DISCLOSURES: The authors have indicated that they have no potential conflicts of interest to disclose.

To cite: Olson KR, Durwood L, Horton R, et al. Gender Identity 5 Years After Social Transition. *Pediatrics*. 2022;150(2):e2021056082

who socially transition in childhood and then go on to retransition afterward. One paper included 4 youth who socially transitioned; none of them had retransitioned 7 years later.[10] We know of 3 mentions of early-transitioning youth who retransition.[8,9] However, these papers include no mention of how many other youth the same clinical team saw who did not retransition, making it impossible to guess a retransition rate.

In the present paper, we aimed to compute an estimate of retransition among a cohort of more than 300 early-transitioning children. Here, we report the retransition rate an average of 5 years after initial (binary) social transition, as well as how many of these participants are living as binary transgender youth, nonbinary youth, and cisgender youth at the same timepoint.

METHODS

A total of 317 binary socially transitioned transgender children (M_{age} = 8.07; SD = 2.36; 208 initially transgender girls, 109 initially transgender boys; see Table 1 for additional demographics) joined this longitudinal study (The Trans Youth Project) between July 2013 and December 2017. For inclusion in The Trans Youth Project, children had to be between 3 and 12 years of age and had to have made a "complete" binary social transition,[10] including changing their pronouns to the binary gender pronouns that differed from those used at their births.

As part of the larger longitudinal study, parents and youth were regularly asked about whether they had begun using puberty blockers and/or gender-affirming hormones. At most visits, they were not asked about whether puberty had begun, though our available data suggests that because these youth had socially transitioned at such early ages, most participants were followed by an endocrinologist well before puberty began. The endocrinologists helped families identify the onset of Tanner 2 (the first stage of puberty) and prescribed puberty blockers within a few months of this time; therefore, the onset of puberty blockers is used as our proxy for the onset of puberty in youth who received blockers. Of the youth in this sample, 37 (11.7%) had begun puberty blockers before beginning this study.

This study did not assess whether participants met criteria for the Diagnostic and Statistical Manual of Mental Disorders, Fifth edition, diagnosis of gender dysphoria in children. Many parents in this study did not believe that such diagnoses were either ethical or useful, even if they had been diagnosed, and some children did not experience the required distress criterion after transitioning. Based on data collected at their initial visit, these participants showed signs of gender identification and gender-typed preferences commonly associated with their gender, not their sex assigned at birth.[11] Further, parent report using the Gender Identity Questionnaire for Children[12] indicated that youth showed significant "cross-sex" identification and preferences (when scored based on sex at birth).[12]

Final identity classification for these analyses was based on our most recent interaction with the child and/or their parent before January 1, 2021. Because some families have not participated recently, we also separately report (Table 2) the results of the n = 291 youth with whom the research team had an interaction within the 2 years before that deadline. This additional analysis allows us to assess whether those who retransitioned were more likely to have missed their more recent appointments with our team. Importantly, only 1 of the 26 families with whom we did not meet in the past 2 years has formally dropped out of the study; the others often did not complete participation during these 2 years because of personal circumstances at the time we attempted re-recruitment. We anticipate that many in this group will participate again in the future.

TABLE 1 Participant Demographics (N = 317)

Demographics	%
Race	
White, non-Hispanic	69
White, Hispanic	9
Black	2
Asian	3
Native American	<1
Multiracial	17
Annual household income, $	
<25 000	3
25 001–50 000	10
50 001–75 000	21
75 001–125 000	31
>125 000	35
Location	
Northeast	15
Midwest/Upper Plains	21
Southeast	15
Mountain West	13
Pacific Northwest	20
Pacific South	16

Based on pronouns at follow-up, participants were classified as binary transgender (pronouns associated with the other binary assigned sex), nonbinary (they/them pronouns or, n = 3, a mix of they/them and binary pronouns), or cisgender (pronouns associated with their assigned sex). We confirmed this classification by reviewing other information available to the research team (eg, child's self-categorization in an interview or survey, e-mail communications with the parents). Only 1 classification was debatable; this participant was classified by pronouns (and in this paper) as nonbinary but could have been

TABLE 2 Participant Information and Current Identity at Last Visit Before January 1, 2021, Overall, for Those With Recent Visits Only, and by Initial Social Transition and Gender

	Total Sample	Recent Sample (With Visits in 2019 or 2020)	Sample Who Initially Socially Transitioned Before Age 6	Sample Who Initially Socially Transitioned at Age 6 or Later	Transgender Girls (At Recruitment)	Transgender Boys (At Recruitment)
Sample size	317	291	124	193	208	109
Assigned male at birth, %	65.6	65.3	73.4	60.6	100	0
Mean age at first transition, y	6.5	6.4	4.3	7.9	6.2	7.1
Mean age at start of study, y	8.1	8.0	5.9	9.5	7.7	8.7
Average time since start of study, y	3.8	4.1	3.8	3.8	3.9	3.7
Average time since first transition, y	5.4	5.7	5.4	5.4	5.5	5.3
Current identity, *n* (%)						
Binary transgender	298 (94.0)	276 (94.8)	112 (90.3)	186 (96.4)	194 (93.3)	104 (95.4)
Cisgender	8 (2.5)	6 (2.1)	7 (5.6)	1 (0.5)	7 (3.40)	1 (0.9)
Nonbinary	11 (3.5)	9 (3.1)	5 (4.0)	6 (3.1)	7 (3.40)	4 (3.7)

classified as binary transgender (and not retransitioned).

This study has been approved by the University of Washington and Princeton University institutional review boards.

RESULTS

The overall rate of retransition was 7.3%. An average of 5.37 years (SD = 1.74 years) after their initial binary social transition, most participants were living as binary transgender youth (94.0%; Table 2). Included in this group were 4 individuals (1.3% of the total sample) who retransitioned twice (to nonbinary then back to binary transgender). Some youth (3.5%) were currently living as nonbinary, including one who had retransitioned first to cisgender then to nonbinary. Finally, 2.5% were using pronouns associated with their sex at birth and could be categorized as cisgender at the time of data collection, including one who first retransitioned to live as nonbinary. Similar percentages were observed when examining the 291 youth who were in touch with the research team in the past 2 years (Table 2), when examining only those 280 youth who had not begun puberty blockers at the start of the study (Table 3), or if we examine only the 200 youth who had gone at least 5 years since their initial transition (Table 3).

We observed 1 potential (post hoc) age effect. Youth who initially socially transitioned before age 6 (n = 124), were more likely to be living as cisgender (n = 7; 5.6%) than youth who transitioned at age 6 or later (n = 1 of 193; 0.5%), Fisher exact test (comparing binary, cisgender, nonbinary; before vs. age 6 years or later), P = .02, although low rates of retransition were seen in both groups. In Table 2, we also report the results separately for children assigned male versus female at birth; this distinction was not significantly associated with later identity, P = .47, Fisher exact test. Finally, for exploratory purposes, in Table 3, we report outcomes separately for several subsets of our participants, including youth who had started puberty blockers, youth who had used puberty blockers and gender-affirming hormones, and youth who are at least 14 years old (the age at which past work[3] has suggested retransitions will be less likely).

DISCUSSION

Five years after an initial binary social transition, 7% of youth had retransitioned at least once. Most youth (94%) were living as binary transgender youth at the time of data analysis, including 1.3% who retransitioned initially to cisgender or nonbinary and then retransitioned back to binary trans identities. A small number of youth were living as cisgender youth (2.5%) or nonbinary youth (3.5%). We observed comparable rates when examining all participants who began the study (n = 317), those who had been in touch with the research team in the last two years (n = 291), those who had gone at least 5 years since initial social transition (n = 200), and

TABLE 3 Participant Information and Current Identity at Last Visit Before January 1, 2021, as a Function of Stages of Medical Transition and/or Age

	Total Sample	Sample of Youth Who Had Not Begun Blockers at Start of the Study	Sample of Youth Who Have Begun Blockers (and Not Gender-Affirming Hormones) at the End of the Study	Sample of Youth Who Have Begun Gender-Affirming Hormones at the End of the study	Sample of Youth 5+ y of Age Since Initial Binary Social Transition	Sample of Youth Who Are Currently 14+ y of Age
Sample size	317	280	92	98	200	70
Assigned male at birth, %	65.6	69.6	57.6	58.2	69.0	52.9
Mean age at first transition, y	6.5	6.1	6.6	8.4	6.2	8.9
Mean age at start of study, y	8.1	7.6	8.3	10.2	8.0	10.8
Average time since start of study, y	3.8	3.9	4	4.3	4.5	4.4
Average time since first transition	5.4	5.5	5.8	6.1	6.4	6.3
Current identity						
Binary transgender	$n = 298$; 94.0%	$n = 263$; 93.9%	$n = 88$; 95.7%	$n = 97$; 99.0%	$n = 190$; 95.0%	$n = 69$; 98.6%
Cisgender	$n = 8$; 2.5%	$n = 8$; 2.9%	$n = 1$; 1.1%	$n = 0$	$n = 4$; 2.0%	$n = 1$; 1.4%
Nonbinary	$n = 11$; 3.5%	$n = 9$; 3.2%	$n = 3$; 3.3%	$n = 1$, 1.0%	$n = 6$; 3.0%	$n = 0$

those who started the study before beginning puberty blockers ($n = 280$). We found no differences as a function of participant sex at birth. We observed slightly higher rates of retransition, and particularly later cisgender identity, among youth who initially socially transitioned before age 6 years. However, even in these youth, retransition rates were very low.

Among those who had begun puberty blockers and/or gender-affirming hormones, only 1 had retransitioned to live as cisgender (and this youth had begun blockers, but not gender-affirming hormones). One likely reason so few retransitions to cisgender occurred among those accessing medical transition is that most retransitioning in this cohort happened at early ages. All but 1 of the 8 cisgender youth had retransitioned by age 9 years (the last retransition was at age 11 years). Some of these youth are still not eligible for blockers because they are still prepubertal; we anticipate that those who identify as cisgender are unlikely to seek blockers or hormones, but that the participants who have not begun puberty and who identify as binary transgender or nonbinary likely will.

Past work has suggested that the ages 10 to 13 years are an especially critical time for retransition.[3] In our sample, many of the youth who retransitioned did so before that time frame, particularly the cisgender youth. In the nonbinary group, however, 6 of 11 retransitioned between ages 10 and 13 years, with the remainder retransitioning before age 10. Importantly, our sample differed from the past work on which this age range was determined in several key ways, including that our participants socially transitioned at earlier ages (perhaps pushing retransitions earlier, too), had undergone complete social transitions including pronouns and names (not just hairstyle and clothing changes as in most cases in previous studies[3]), and are living at a different historic time in a different country. Any, or all, of these may turn out to be key differences related to age of retransition.

Our observed low retransition rate is consistent with a study in which 4 youth who had completely socially transitioned had not retransitioned 7 years later.[10] That finding is in the same ballpark as our study's estimate of ~2.5% if we examine the percentage living as cisgender at the end of the study (ie, those "desisting" from gender-diverse outcomes). Together, these papers suggest this outcome is relatively rare in this group.

Our observation that few youth who have begun medical intervention have retransitioned to live as cisgender is consistent with findings in the literature. Several studies reporting on outcomes among transgender youth receiving blockers and gender-affirming hormones have reported relatively low rates of regret or stopping treatment,[13] which are potential indicators of retransition, though stopping treatment can occur for other reasons as well (eg, side

effects), as can regret (eg, experiences of transphobia).

Our key finding, that there was a relatively low rate of retransition about 5 years after initial social transition, may, on the surface, appear contradictory with past clinic-based research on what is sometimes called persistence and desistence[3] of childhood gender dysphoria. Several large studies attempted to recontact adolescents and adults who had previously been evaluated for gender dysphoria in childhood.[14–17] Many of those were formally diagnosed with what was, at the time, called gender identity disorder. Those studies reported that a minority of youth later identified in a way that might indicate a transgender identity by today's definition.

Interpretation of those results, and especially comparison with the present work, is difficult for several reasons. First, in past studies, when asked "are you a boy or a girl?" about 90% of the children supplied answers that aligned with their sex at birth,[18] leading some to question whether the majority of those children were the equivalent of transgender children today or not.[19–21] Second, participants in those studies were children between the 1960s and the 1990s, and many features of society have changed since then, including greater rates of acceptance and acknowledgment of transgender identities. Third, the parents of the youth in the current study support their children's identities, as indicated by their approval of their social transitions, whereas many of the parents of youth in past studies explicitly discouraged gender nonconformity or "cross-gender" identification.[15,22] In addition, it would have been exceedingly rare for youth in those studies to socially transition, especially completely.[1,10] Finally, there were substantial drop-out rates in all of the previous studies,[14,15,17] making the true estimates of persistence or desistence difficult to obtain.[19,21] Because there are so many possible contributors to differences in rates of persistence (in past work) and retransition in the current work, we urge caution about overinterpreting differences, or overconfidence about which contributing factors explain the differences.

There are also some reasons why we might have had such a low retransition rate. First, on average, participants had socially transitioned 1.6 years before joining our study. It is possible that some youth initially try socially transitioning and then change their minds quickly. Such youth would be unlikely to be enrolled in this study because their eligibility period would have been quite short and therefore the odds of finding the study and completing it would have been low. This means the children in our study may have been especially unlikely, compared with all children who transition, to retransition because they had already lived and presumably been fairly content with that initial transition for more than a year. Second, it is possible that families who failed to participate in the past 2 years of our study ($n = 26$) were disproportionately those whose children retransitioned and who were therefore hesitant to participate again. If true, their exclusion could have reduced our retransition rate. We are skeptical of this possibility for a few reasons. First, 4 of these participants did retransition and had told us about that outcome, so it does not appear that hesitancy in telling us was widespread in this group. Second, many of these families continue to be in touch with our research team and only missed participation because of ongoing personal issues (eg, COVID-19, emergency family circumstances). We anticipate that most of these families will be able to participate as we continue to follow these youth. Finally, from the beginning of the study, the research team has been clear in discussing with the families that we are open to any outcome in their youth.

As with past work, the present work has several key limitations. First, this is a volunteer community sample, meaning there could be biases in the kinds of families who sign up to participate. We know, for example, that unlike many samples of transgender youth, this sample of youth have normative levels of depression and only slight elevations in anxiety.[23] The parents of the participants in this study are disproportionately higher income and went to college at higher rates than the general population. We do not know whether these potential biases in the sample reflect biases in the cohort of children who socially transitioned in the mid-2010s in the United States and Canada. Therefore, whether the results generalize to youth without these characteristics is unknown.

Another potential limitation is that we used pronouns as the criterion for retransitions. Not everyone who, for example, uses they/them pronouns identifies as nonbinary and someone might identify as transgender even if they are currently using pronouns associated with their sex at birth. However, examination of other data provided by families suggests that our pronoun-based criteria were largely consistent with classification that would have arisen from other types of information provided to the research team (eg, labels used in an interview). Only 1 of the youth categorized as "retransitioned" might, by some other criteria, not meet that definition. However, because pronouns were the initial

inclusion criterion (that is, to be in the study children had to be using pronouns not associated with their sex at birth), they were the most consistent route of classification.

A related potential concern with these analyses is that we classified a change from using, for example, binary transgender to nonbinary as a retransition. Not everyone would categorize this change as a retransition. Many nonbinary people consider themselves to be transgender.[24] If we had used a stricter criterion of retransition, more similar to the common use of terms like detransition or desistence, referring only to youth who are living as cisgender, then our retransition rate would have been lower (2.5%).

One additional limitation in the present work is that the initial sample was disproportionately made up of trans girls. This is counter to recent reports that more peri- and postpubertal transgender youth seeking clinical services recently are transmasculine.[25–27] Historically, and consistent with our data, samples of parent-identified prepubertal gender nonconforming youth have included more assigned males at birth.[15,16,22] Importantly, we did not observe a significant gender effect in terms of rates of retransition, so we do not predict any change in pattern of results if we had a different ratio of participants by sex at birth.

We anticipate continuing to follow this cohort into adolescence and adulthood. This continued follow-up is necessary because it is possible that as more youth move into adolescence and adulthood, their identities could change. As we already saw, some youth will retransition more than once, so the present identities should not be interpreted as final.

As more youth are coming out and being supported in their transitions early in development, it is increasingly critical that clinicians understand the experiences of this cohort and not make assumptions about them as a function of older data from youth who lived under different circumstances. Though we can never predict the exact gender trajectory of any child, these data suggest that many youth who identify as transgender early, and are supported through a social transition, will continue to identify as transgender 5 years after initial social transition. These results also suggest that retransitions to one's gender assumed at birth (cisgender) might be likely to occur before age 10 years among those who socially transition at the earliest ages (before age 6 years), though retransitions are still unlikely in this group. These data suggest that parents and clinicians should be informed that not all youth will continue the same trajectory over time. Further understanding of how to support youth's initial and later transitions is needed.

ACKNOWLEDGMENTS

The authors thank the families for their participation in this research.

REFERENCES

1. Steensma TD, Cohen-Kettenis PT. Gender transitioning before puberty? *Arch Sex Behav*. 2011;40(4):649–650
2. de Vries ALC, Cohen-Kettenis PT. Clinical management of gender dysphoria in children and adolescents: the Dutch approach. *J Homosex*. 2012;59(3):301–320
3. Steensma TD, Biemond R, de Boer F, Cohen-Kettenis PT. Desisting and persisting gender dysphoria after childhood: a qualitative follow-up study. *Clin Child Psychol Psychiatry*. 2011; 16(4):499–516
4. Ashley F. Thinking an ethics of gender exploration: against delaying transition for transgender and gender creative youth. *Clin Child Psychol Psychiatry*. 2019;24(2):223–236
5. Sherer I. Social transition: supporting our youngest transgender children. *Pediatrics*. 2016;137(3):e20154358
6. Temple Newhook J, Pyne J, Winters K, et al. A critical commentary on follow-up studies and "desistance" theories about transgender and gender-nonconforming children. *Int J Transgenderism*. 2018; 19(2):212–224
7. Leibowitz S. Social gender transition and the psychological interventions. In: Janssen A, Leibowitz S, eds. *Affirmative Mental Health Care for Transgender and Gender Diverse Youth*. New York: Springer International Publishing; 2018:31–47
8. Edwards-Leeper L, Spack NP. Psychological evaluation and medical treatment of transgender youth in an interdisciplinary "Gender Management Service" (GeMS) in a major pediatric center. *J Homosex*. 2012;59(3):321–336
9. Menvielle E. A comprehensive program for children with gender variant behaviors and gender identity disorders. *J Homosex*. 2012;59(3):357–368
10. Steensma TD, McGuire JK, Kreukels BP, Beekman AJ, Cohen-Kettenis PT. Factors associated with desistence and persistence of childhood gender dysphoria: a quantitative follow-up study. *J Am Acad Child Adolesc Psychiatry*. 2013;52(6):582–590
11. Gülgöz S, Glazier JJ, Enright EA, et al. Similarity in transgender and cisgender children's gender development. *Proc Natl Acad Sci USA*. 2019;116(49):24480–24485
12. Johnson LL, Bradley SJ, Birkenfeld-Adams AS, et al. A parent-report gender identity questionnaire for children. *Arch Sex Behav*. 2004;33(2):105–116
13. Kuper LE, Stewart S, Preston S, Lau M, Lopez X. Body dissatisfaction and mental health outcomes of youth on gender-affirming hormone therapy. *Pediatrics*. 2020;145(4):e20193006
14. Drummond KD, Bradley SJ, Peterson-Badali M, Zucker KJ. A follow-up study of girls with gender identity disorder. *Dev Psychol*. 2008;44(1):34–45
15. Green R. *The Sissy Boy Syndrome: The Development of Homosexuality*. New Haven, CT: Yale University Press; 1987

16. Singh D, Bradley SJ, Zucker KJ. A follow-up study of boys with gender identity disorder. *Front Psychiatry*. 2021;12:632784

17. Wallien MS, Cohen-Kettenis PT. Psychosexual outcome of gender-dysphoric children. *J Am Acad Child Adolesc Psychiatry*. 2008; 47(12):1413–1423

18. Zucker KJ, Bradley SJ, Sullivan CB, Kuksis M, Birkenfeld-Adams A, Mitchell JN. A gender identity interview for children. *J Pers Assess*. 1993;61(3):443–456

19. Ashley F. The clinical irrelevance of "desistance" research for transgender and gender creative youth [published online ahead of print 2021]. *Psychol Sex Orientat Gend Divers*. 10.1037/sgd0000504

20. Olson KR. Prepubescent transgender children: what we do and do not know. *J Am Acad Child Adolesc Psychiatry*. 2016;55(3):155–156

21. Temple Newhook J, Pyne J, Winters K, et al. A critical commentary on follow-up studies and "desistance" theories about transgender and gender-nonconforming children. *Int J Transgenderism*. 2018;19(2):212–224

22. Zucker K, Bradley S. Gender identity disorder and psychosexual problems. In: *Children and Adolescents*. New York: Guilford Press; 1995

23. Gibson DJ, Glazier JJ, Olson KR. Evaluation of anxiety and depression in a community sample of transgender youth. *JAMA Netw Open*. 2021;4(4):e214739

24. Darwin H. Challenging the cisgender/transgender binary: nonbinary people and the transgender label. *Gend Soc*. 2020;34(3):357–380

25. Aitken M, Steensma T, Blanchard R, et al. Evidence for an altered sex ratio in clinic-referred adolescents with gender dysphoria. *J Sex Med*. 2015;12(3):756–763

26. de Graaf NM, Carmichael P, Steensma TD, Zucker KJ. Evidence for a change in the sex ratio of children referred for gender dysphoria: data from the Gender Identity Development Service in London (2000-2017). *J Sex Med*. 2018;15(10):1381–1383

27. Meyenburg B, Renter-Schmidt K, Schmidt G. Transidentität in Jugend und Adoleszenz: Zur Veränderung der Sexratio und der Prävalenz in den letzten eineinhalb Jahrzehnten [Changes of sex ratio and prevalence in transgender teenagers over the past 15 years]. *Z Kinder Jugendpsychiatr Psychother*. 2021;49(2):93–100

EXHIBIT E

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

Brianna Boe, *et al.*, *Plaintiffs*, United States of America, *Plaintiff-Intervenor*, v. Hon. 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

DECLARATION OF LISETTE TAYLOR

I, Lisette Taylor, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that my testimony below is true and correct:

1. I am employed in the position of Senior Management Analyst for the U.S. Department of Health and Human Services ("HHS" or "Department").

2. I have held the position of Senior Management Analyst since October 5, 2015. In this capacity, my current job duties include program analysis for nationwide Office of General Counsel ("OGC") programs and policies; coordination and execution of special assignments and management initiatives for the General Counsel, Deputy General Counsel and the Office of Legal Resources Executive Officer; and serving as an authoritative source on management issues and development of operational policy of special concern to OGC.

3. I have a Bachelor's Degree in Anthropology from the University of Virginia, and a J.D. from University of Maryland School of Law.

4. 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.

5. I understand that, as part of the above-captioned litigation, Defendants served on the United States on December 20, 2022 a document entitled Defendants' First Interrogatories to Intervenor-Plaintiff United States of America ("Interrogatories"). I understand that Defendants' Interrogatories required the United States to provide responses on behalf of any executive agency or department in which responsive information may be found.

6. I understand that Defendants are no longer seeking responsive information 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"). I also understand that Defendants filed a Motion to Compel Plaintiff-Intervenor to Answer Interrogatories ("Motion"). I understand that the Motion seeks an order from the Court compelling HHS (rather than Plaintiff-Intervenor) to respond to Interrogatory Nos. 11–18.

7. It is my understanding that Interrogatories 11–18 seek a plethora of information from multiple Operating Divisions. Interrogatories of this nature are likely to result in a wide range of potentially responsive data and information that would need to be collected individually from each of the HHS's various, diverse Operating Divisions.

8. Collections of this size pose multiple problems that will lead to time-consuming delays given the federated nature of HHS as an Agency. Each Operating Divisions operates semi-autonomously from the others within HHS. And each Operating Division has its own specialization and expertise that is distinct from other Operating Divisions within HHS.

9. Defendants' demand for information "from HHS (including subcomponents of HHS such as FDA and NIH)" is predicated on a misunderstanding of HHS's structure and how information is collected throughout the Department. The primary burden in collective requests like those posed by the Interrogatories is the federated nature of HHS, similar to the burden of collective requests like those posed by Defendants' First Requests for Production to Intervenor-Plaintiff United States of America.

10. The Office of the Chief Information Officer ("OCIO"), Office of Operations runs a system that covers certain HHS Staff Divisions, including 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.

11. 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. (nearly all of which would be expected to have information potentially responsive to Defendants' Interrogatories as part of HHS, even though Defendants have not specified they are seeking documents from these sub-agencies) all run their own systems, employ their own personnel, and would have to be individually queried.

12. Each of these Operating Divisions has its own area of specialization and expertise and therefore would have potentially responsive information that would be distinct from that contained in other Operating Divisions. Further, as noted in the Declaration of Dr. Karl Mathias, HHS's Chief Information Officer, each Operating Division stores its information in distinct, segregated technical systems, including bespoke databases, that are inaccessible to personnel from other Operating Divisions.

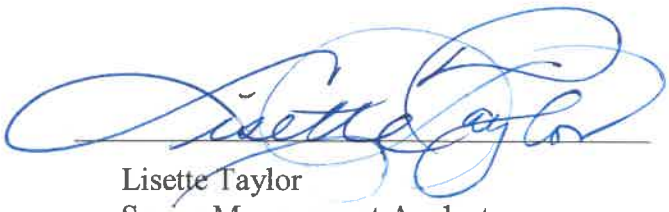
13. For example, if multiple, distinct Operating Divisions house information that is potentially responsive to a particular Interrogatory—and I understand that this is likely—each particular Operating Division will have to search for, locate, collect, review, and produce the responsive information. Given that each Operating Division maintains their own databases and information storage systems that would contain this information, there is no unified HHS entity that would be able to conduct searches across the Agency but rather multiple teams of personnel would have to individually respond to each Interrogatory. Moreover, the inherent, unique expertise of each Operating Division would require multiple teams of specialized personnel to review the collected information to determine whether it could be released in the litigation.

14. Therefore, it is my understanding that each Interrogatory served on "HHS" would actually constitute multiple Interrogatories served on each particular Operating Division in that each Operating Division that might have responsive information would have to search, individually, for anything responsive to a given Interrogatory. HHS does not have the ability to conduct a single search for information across all Operating Divisions as a unitary function.

15. I understand that Defendants are aware of the inherent burdens described above but continue to discount them through their argument that they are "only" seeking "interrogatory

responses from HHS (including subcomponents of HHS such as FDA and NIH)." However, these "limitations" do not recognize how burdensome the requests that Defendants have served on a diverse range of Operating Divisions that will each have to individually respond to any particular Interrogatory to which they might have responsive information.

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



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