

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

Brianna Boe, <i>et al.</i> ,)	
)	
<i>Plaintiffs</i> ,)	
)	
United States of America,)	
)	
<i>Intervenor Plaintiff</i> ,)	
)	
v.)	Civil Action No. 2:22-cv-184-LCB
)	
Hon. Steve Marshall, in his official)	
capacity as Attorney General,)	
of the State of Alabama, <i>et al.</i> ,)	
)	
<i>Defendants</i> .)	

**DEFENDANTS’ REPLY IN SUPPORT OF
MOTION TO AMEND SCHEDULING ORDER (DOC. 279)**

This reply will be brief given that it is being filed shortly before the hearing on Defendants’ motion to amend the scheduling order. But a few points may be useful in charting a possible path forward.

First, no party objects to amending the scheduling order. The Private Plaintiffs “do not object to a modest extension of the current deadlines,” Doc. 283 at 2, while the United States “does not oppose the dates set forth in Defendants’ Proposed Fifth Amended Scheduling Order,” Doc. 284 at 1. Both parties object to an extension of the deadline for Defendants’ disclosure of their expert reports, but those objections are moot: Defendants disclosed their expert reports on Friday, May 19, and plan to

have their experts create supplemental reports as needed. As for the Private Plaintiffs' concerns over a six-month extension, Defendants share their frustration with the current situation; Defendants requested discovery *eight months ago* from the United States and *seven months ago* from WPATH, yet still have not received *any* of the discovery this Court has ordered. Without that discovery, Defendants do not believe a full and fair adjudication is possible. Defendants thus request a schedule that allows for a complete production of the discovery Defendants are entitled to and time enough for Defendants and their experts to review and make use of that discovery. It would be manifestly unfair if time exigencies *caused by the United States and WPATH* allowed those entities to avoid producing the complete discovery Defendants need to try the case fully and fairly.

Second, though WPATH insists it “has been busy collecting, reviewing, and preparing to produce many hundreds of documents that are directly responsive to the State’s subpoena,” Doc. 280 at 1, WPATH has produced *none* of the documents this Court ordered it to produce—not even the hard drive WPATH told the Court was ready to go back in March. *See* 3/21 Tr.11. And though WPATH seems to have taken some steps to collect documents responsive to *some* of Defendants’ discovery requests, *see* Doc. 280 at 4-5, it has not explained what it is doing to respond to the *other* requests the Court ordered. So far as Defendants are aware, WPATH has only taken steps to collect documents responsive to requests related to its Standards of

Care 8, but the Court ordered WPATH to produce documents on several additional topics. Those include requests related to “WPATH’s reaction to members’ concerns about pediatric transitioning care in America; WPATH’s involvement, if any, in the creation of standards of care or diagnostic standards for other organizations related to pediatric transitioning; WPATH’s cancellation of Dr. Zucker’s talk; ... and WPATH’s knowledge of pediatric transitioning treatments in Alabama.” Doc. 263 at 2 (internal quotation marks omitted).

Instead, as WPATH notes, it has rejected Defendants’ proposal to use custodians and search terms to find the relevant information. The first reason WPATH offers is that its board members and contributing authors use personal email accounts that WPATH has no control over. Doc. 280 at 5. Of course, this excuse would mean that a corporation could avoid producing responsive discovery simply by having its leadership use Gmail accounts rather than company ones. Fortunately, “[c]ontrol is defined not only as possession, but as the legal right to obtain documents upon demand,” *Searock v. Stripling*, 736 F.2d 650, 653 (11th Cir. 1983), and there is no reason to think WPATH could not ask its board members and other leaders for WPATH-related emails. If WPATH will not do this, or WPATH leaders disregard WPATH, Defendants can send third-party subpoenas to those individual WPATH leaders as needed.

WPATH's second objection to the use of custodians and search terms is that it thinks that its administrative personnel—who *do* have WPATH email accounts—are unlikely to have responsive materials. This claim is hard to credit given that two of the custodians Defendants proposed—Sue O'Sullivan, WPATH's managing director; and Jamison Green, a former president of WPATH and the communications director for WPATH's administrative agency—are seen on video discussing WPATH's response to the cancelation of Dr. Zucker's talk, to give just one example. *See* Doc. 219-6. Again, this excuse is merely an attempt to artificially narrow if not entirely evade this Court's order for WPATH to produce responsive materials.

Third, when Defendants filed their motion to amend the scheduling order, they explained that they thought they were near an agreement with the United States “on which search terms to use for an initial search.” Doc. 279 at 8. The United States' response to the motion on Friday afternoon is the first time Defendants have been told that, based on a test search, HHS estimates that “Defendants' approach would result in more than 165,000 documents.” Doc. 284 at 5. Defendants are of course willing to work with the United States to narrow search terms and chart a path forward, and they believe it is premature for the Court to limit the discovery parameters when the parties are still working to reach a compromise. Defendants thus suggest another hearing in 3-4 weeks should the parties need the Court's guidance on search terms and custodians.

With that said, Defendants do not think the United States’ suggestions of (1) eschewing search terms for network drives, and (2) using only 11 custodians and “10 narrow search terms to be used to search the email folders of the 11 custodians” is likely to result in a fair path forward. Doc. 284 at 6-7. Eschewing search terms for network drives means relying solely on agency employees to subjectively interpret the requests, determine what categories of documents are responsive, recall where responsive documents might be stored, and voluntarily provide those documents—even though those employees might not have been at the agency when those documents were created. There is no objective check, and no objective way to ensure that unfavorable or simply forgotten documents are being reviewed and produced.

As for the United States’ proposal of “10 narrow search terms,” it is important to understand that the number of search terms is not directly related to burdensomeness or efficiency. It is often the case that 20 precise search terms, designed to target specific materials, will be *less* burdensome than 10 broader search terms. The question is whether the searches result in the right universe of documents that will then be reviewed for responsiveness. A mix of search terms, some broader, some narrower, is usually a good way to find this universe. Artificially limiting the number to 10 search terms is not.

Defendants attach the parties’ back-and-forth regarding the proposed search terms, from Defendants’ initial proposal on April 6 through Defendants’ last

proposal on May 10, so the Court can see the kinds of discussions the parties are still having. To take just one example, consider the evolution of one of the proposed search terms. To respond to HHS’s invitation for a list of proposed search terms to use to determine a possible universe of documents—i.e., to determine the number of “hits” for a specific term, which is helpful for then refining the terms as needed—Defendants suggested the search <gender /3 dysphoria>. *See* Ex. A. That search would target documents in which the word “gender” appeared within three words of “dysphoria.” The United States responded by suggesting changing the search to <gender /3 dysphoria AND (youth or children) AND transition!>. *See* Ex B. This search would return documents that used the word “gender” within three words of “dysphoria,” *and* contained the words “youth” or “children,” *and* used a word that began with the prefix “transition” (such as “transitioned” or “transitioning”). Defendants then suggested further refining the search to <gender /3 dysphoria AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!)> to encompass various ways in which a minor might be discussed. They also suggested removing the limiter <transition!> because a document that discusses gender dysphoric minors is *already* likely to be responsive. Adding the limiter <transition!> would inappropriately *exclude* documents that discuss providing hormones to a child suffering from gender dysphoria unless the document also included a word

beginning with “transition.” There is no reason for such a limitation, yet the United States added the limiters <transition! or treat!> back into the search term. *See* Ex. E.

This is just one example, and the point isn’t that the Court should resolve the dispute now. The point is simply that the parties are still working to negotiate how the United States can efficiently produce the complete production Defendants are entitled to, and it is premature for the Court to impose a specific limit of search terms or custodians.

For these reasons, Defendants suggest that the Court (1) reset the trial date for March 2024 or as soon thereafter as the Court is available; (2) impose a deadline specific to HHS and WPATH for their production so there is sufficient time remaining in the discovery period for Defendants and their experts to review that production and follow-up as needed (Defendants suggest October 1); and (3) set a status conference for 3-4 weeks from now to work through any specific discovery issues that remain.

Date: May 21, 2023

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I electronically filed this document using the Court's CM/ECF system on May 21, 2023, which will serve all counsel of record.

s/ A. Barrett Bowdre
Counsel for Defendants

Exhibit A

Defendants' First Proposed Search Terms

Attached to email of April 6, 2023

“Senate Bill 184” or “SB 184”

“Child Compassion and Protection Act”

gender /3 dysphoria

gender /3 affirming

transphobi!

GAC

puberty /3 Block!

pubertal /3 Block!

puberty /3 supress!

pubertal /3 supress!

gonadotropin

GNRH

GnRH_a

GAHT

Lupron and (puberty or block! or bone or pediatric or “side effect” or “off label” or osteo! or depress! or suicid! or seizur! or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or Eugster or mitochondria)

cross-sex /3 hormones

CSH

desist! AND gender

detrans!

WPATH

USPATH

“Nondiscrimination in Health Programs and Activities”

“Nondiscrimination in Health Education Programs or Activities”

Olson-Kennedy

Laidlaw

Malone AND gender

Horvath

Nokoff

“Trans health”

“LGBTQI+” and (youth or children)

“non-conforming gender”

“gender identity”

(“Gender Minority” or SGM!) and (Endocrine or Pediatrics or AAP or “Human rights campaign” or HRC or “southern poverty” or SPLC or “civil rights” or “ACLU”)

(Becerra or Levine or Collins or Hall or pace or Lasure or Parker) and (Endocrine or Pediatrics or AAP or “Human rights campaign” or HRC or “southern poverty” or SPLC or “civil rights” or “ACLU” or (gender /3 dysphoria) or (gender /3 affirming) or (puberty /3 Block!) or (cross-sex /3 hormones) or CSH or (gender /3 suger!) or GAT or GAC or WPATH or SEGM)

Bowers and gender

Anderson and gender

Ryan /4 Anderson

Socialstyrelsen

Hecox

(NICE or “Nat’l Inst. for Health and Care Excellence”) and Gender

Karolinska

Tavistock

Shrier and (Abigail or gender)

JCEM or “journal of clinical endocrinology”

“Rapid onset gender dysphoria”

ROGD

precocious /3 puberty

gatekeeping AND gender

Cass /3 review

Hilary /3 Cass

Dutch /3 protocol

Ehrensaft AND gender

Ukom

Palveluvalikoima

Littman AND gender

Abbruzzese AND gender

Biggs AND gender

Kaltiala-Heino AND gender

Consent and ((gender /3 affirming) or GAT or GAC or (puberty /3 Block!) or hormone or CSH or trans!)

“pseudotumor cerebi” and (gonadotropin or GNRH or (puberty /3 Block!))

Tanner and (puberty /3 Block!)

SOC8

“standards of care 8”

“standards of care v. 8”

Rafferty and (gender or trans!)

("Endocrine Society" or Hembree) and gender

Finland and gender

Sweden and gender

("United Kingdom" or UK) and gender

(De /2 vries)

Devries

Trans /3 youth

Chen and (gender or trans!)

Trevor /2 project

(Conversion /3 therapy) and (trans! or gender)

TGD /3 youth

“Trans Youth Care Research Network”

Adverse and (trans! or gender or GAT or GAC)

Exhibit B

United States' Proposed Edits to Search Terms

Attached to email of April 13, 2023

~~“Senate Bill 184” or “SB 184”~~

~~“Child Compassion and Protection Act”~~

~~gender /3 dysphoria AND (youth or children) AND transition!~~

~~gender /3 affirming AND (youth or children) AND transition!~~

~~transphobi!~~

~~GAC~~

~~puberty /3 Block! AND transgend! /5 (youth or children) AND transition!~~

~~pubertal /3 Block! AND transgend! /5 (youth or children) AND transition!~~

~~puberty /3 suppress! AND transgend! /5 (youth or children) AND transition!~~

~~pubertal /3 suppress! AND transgend! /5 (youth or children) AND transition!~~

~~gonadotropin AND transgend! /5 (youth or children) AND transition!~~

~~GNRH AND transgend! /5 (youth or children) AND transition!~~

~~GnRHa AND transgend! /5 (youth or children) AND transition!~~

~~GAHT AND transgend! /5 (youth or children) AND transition!~~

~~Lupron and (puberty or block! or bone or pediatric or “side effect” or “off label” or osteo! or depress! or suicid! or seizur! or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or Eugster or mitochondria) AND (transgend! /5 (youth or children) AND transition!)~~

~~cross-sex /3 hormones AND (transgend! /5 (youth or children)) AND transition!~~

~~CSH~~

~~desist! AND gender AND (youth or children) AND transition!~~

~~detrans! AND (youth or children)~~

~~WPATH AND (youth or children) AND transition!~~

~~USPATH AND (youth or children) AND transition!~~

~~“Nondiscrimination in Health Programs and Activities”~~

~~“Nondiscrimination in Health Education Programs or Activities”~~

~~Olson-Kennedy~~

~~Laidlaw~~

~~Malone AND gender~~

~~Horvath~~

~~Nokoff AND transgend! /5 (youth or children) AND transition!~~

~~“Trans health” AND (youth or children) AND transition!~~

~~“LGBTQI+” and (youth or children)~~

~~“non-conforming gender” AND (youth or children) AND transition!~~

~~“gender identity” AND (youth or children) AND transition!~~

~~((“Gender Minority” or SGM!) and (Endocrine or Pediatrics or AAP or “Human rights campaign” or HRC or “southern poverty” or SPLC or “civil rights” or “ACLU”)) /5 transition! AND transgend! /5 (youth or children)~~

~~(Becerra or Levine or Collins or Hall or paece or Lasure or Parker) and (Endocrine or Pediatrics or AAP or “Human rights campaign” or HRC or “southern poverty” or SPLC or “civil rights” or “ACLU” or (gender /3 dysphoria) or (gender /3 affirming) or (puberty /3 Block!) or (cross-sex /3 hormones) or CSH or (gender /3 suger!) or GAT or GAC or WPATH or SEGM)~~

~~Bowers and gender~~

~~Anderson and gender~~

~~Ryan /4 Anderson~~

~~Socialstyrelsen AND transgend! /5 (youth or children) AND transition!~~

~~Hecox~~

~~(NICE or “Nat’l Inst. for Health and Care Excellence”) AND transgend! /5 (youth or children) AND transition! and Gender~~

~~Karolinska~~

~~Tavistock AND transgend! /5 (youth or children) AND transition!~~

~~Shrier and (Abigail or gender)~~

~~JCEM or “journal of clinical endocrinology”~~

~~“Rapid onset gender dysphoria” AND (youth or children) AND transition!~~

~~ROGD AND (youth or children) AND transition!~~

~~precocious /3 puberty AND transgend! /5 (youth or children) AND transition!~~

~~gatekeeping AND transgend! /5 (youth or children) AND transition! gender~~

~~Cass /3 review~~

~~Hilary /3 Cass~~

~~Dutch /3 protocol~~ AND transgend! /5 (youth or children) AND transition!

~~Ehrensaft~~ AND transgend! /5 (youth or children) AND transition!~~AND gender~~

~~Ukom~~

~~Palveluvalikoima~~ AND transgend! /5 (youth or children) AND transition!

~~Littman~~ ~~AND gender~~

~~Abbruzzese~~ ~~AND-~~ transgend! /5 (youth or children) AND transition!~~gender~~

~~Biggs~~ ~~AND gender~~

~~Kaltiala-Heino~~ ~~AND~~ transgend! /5 (youth or children) AND transition!~~gender~~

~~Consent~~ AND transgend! /5 (youth or children) AND transition! and ((gender /3 affirming) ~~or~~ ~~GAT~~ ~~or~~ ~~GAC~~ ~~or~~ (puberty /3 Block!) or hormone ~~or~~ ~~CSH~~ ~~or~~ ~~trans!~~)

~~“pseudotumor cerebi”~~ and (gonadotropin or GNRH or (puberty /3 Block!)) AND transgend!

~~(“Tanner stage” OR “Tanner scale”)~~ and (puberty /3 Block!) AND transgend!

~~SOC8~~ AND transgend! /5 (youth or children) AND transition!

~~“standards of care 8”~~ AND transgend! /5 (youth or children) AND transition! AND WPATH

~~“standards of care v. 8”~~ AND transgend! /5 (youth or children) AND transition! AND WPATH

~~Rafferty~~ ~~and~~ ~~(gender or trans!)~~

~~(“Endocrine Society” or Hembree)~~ and transgend! /5 (youth or children) AND transition!~~gender~~

~~Finland~~ ~~and-~~ transgend! /5 (youth or children) AND transition!~~gender~~

~~Sweden~~ ~~and-~~ transgend! /5 (youth or children) AND transition!~~gender~~

~~(“United Kingdom” or UK)~~ ~~and-~~ transgend! /5 (youth or children) AND transition!~~gender~~

~~(De /2 vries)~~

~~Devries~~

~~Trans /3 youth~~

~~Chen~~ ~~and~~ ~~(gender or trans!)~~

~~Trevor /2 project~~

~~(Conversion /3 therapy)~~ ~~and-~~ transgend! /5 (youth or children) AND transition!~~(trans! or gender)~~

~~TGD /3 youth~~ AND transition!

~~“Trans Youth Care Research Network”~~ AND transition!

Adverse AND transgend! /5 (youth or children) AND transition!~~and (trans! or gender or GAT or GAC)~~

Exhibit C

Defendants' Proposed Edits to Search Terms

Attached to email of April 24, 2023

gender /3 dysphoria AND (youth or ~~children~~)~~AND transition!~~child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!)

gender /3 affirming AND (youth or ~~children~~)~~AND transition!~~child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!)

GAC

puberty /3 Block!~~AND transgend! /5 (youth or children)AND transition!~~

pubertal /3 Block!~~AND transgend! /5 (youth or children)AND transition!~~

puberty /3 supress!~~AND transgend! /5 (youth or children)AND transition!~~

pubertal /3 supress!~~AND transgend! /5 (youth or children)AND transition!~~

gonadotropin AND ~~transgend! /5 (youth or children)AND transition!~~(trans! or gender)

GNRH AND ~~transgend! /5 (youth or children)AND transition!~~(trans! or gender)

GnRHa AND ~~transgend! /5 (youth or children)AND transition!~~(trans! or gender)

~~GAHT~~~~AND transgend! /5 (youth or children)AND transition!~~

GAHT

Lupron and (puberty or block! or bone or pediatric or “side effect” or “off label” or osteo! or depress! or suicid! or seizur! or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguan or Eugster or mitochondria) AND (~~transgend! /5 (youth or children)AND transition!~~youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!)

(cross-sex /3 hormones) AND (~~transgend! /5 (youth or children)~~child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!)

CSH AND ~~transition~~trans!

(Hormone /3 therapy) AND (trans! or gender or youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!)

desist! ~~AND gender~~AND (youth or ~~children~~)child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) AND ~~transition!~~(trans! or gender)

detrans! AND (youth or ~~children~~)child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!)

WPATH AND (youth or ~~children~~)~~AND transition!~~child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student! or guidelines or SOC8)

USPATH AND (youth or ~~children~~)~~AND transition!~~child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!)

“Olson-Kennedy” AND trans! AND (youth or child! or minor! or kid! or teen! or boy! or girl! or student! or TYC)

Laidlaw AND (trans! or gender!) AND endocrin!

Malone AND (trans! or gender!) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!)

Nokoff AND ~~transgend! /5 (youth or children)~~AND ~~transition!~~trans! AND youth

“Trans health” AND (youth or ~~children~~)~~AND transition!~~child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!)

“non-conforming gender” AND (youth or ~~children~~)~~AND transition!~~child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!)

“gender identity” AND (youth or ~~children~~)~~AND transition!~~child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!)

((“Gender Minority” or SGM!) and (Endocrine or Pediatrics or AAP)) /5 ~~transition!~~AND ~~transgend! /5 (youth or children)~~(trans! or affirm! or gender) /5 (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!)

Levine AND (gender /3 affirming) AND trans! AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student)

Marci /3 Bowers AND WPATH AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student)

Erica /3 Anderson AND (WPATH or USPATH) AND gender AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student)

Ryan /3 Anderson AND (Harry /3 Sally)

Socialstyrelsen AND ~~transgend! /5 (youth or children)~~child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) AND ~~transition~~trans!

(~~“Nat’l Inst.~~ (“National Institute for Health and Care Excellence”) AND transgend! /5 (youth or children) ~~AND transition!~~

Tavistock AND ~~transgend! /5 (youth or children)~~AND ~~transition!~~

- Karolinska AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student) AND (trans! or gender)

Tavistock AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) AND trans!

(Shrier /3 Abigail) AND transgender AND (irreversible /3 damage)

“Rapid onset gender dysphoria” AND ~~(youth or children) AND transition!~~

ROGD AND ~~(youth or children) AND transition!~~

ROGD

precocious /3 puberty AND (transgend! /5 ~~(youth or children) AND transition!)~~

gatekeeping AND ~~transgend! /5 (youth or children) child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!~~ AND ~~transitiontransgender!~~

“Cass Review” (Hilary /3 Cass) AND (UK or England or NHS) AND (transgender or gender) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!)

Dutch /3 protocol AND ~~transgend! /5 (youth or children) AND transition!~~

Ehrensaft AND ~~transgend! /5 (youth or children) child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!~~ AND ~~transitiontrans!~~

(Ukom or Norway) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) AND (trans! or gender)

Palveluvalikoima AND ~~transgend! /5 (youth or children) child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!~~ AND ~~transitiontrans!~~

Abbruzzese AND ~~transgend! /5 (youth or children) AND transition!~~

Littman AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) AND trans!

Abbruzzese AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) AND trans!

(Michael /3 Biggs) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) AND (“gender dysphoria” or trans! or suicid! or “Dutch protocol” or “bone mineral density”)

Kaltiala-Heino AND ~~transgend! /5 (youth or children) child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!~~ AND ~~transitiontrans!~~

Consent AND ~~transgend! /5 (youth or children) AND transition!~~ (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) and ((gender /3 affirming) or (puberty /3 Block!) or hormone or CSH)

“pseudotumor cerebi” and (gonadotropin or GNRH or (puberty /3 Block!)) AND ~~transgend!~~

(“Tanner stage” OR “Tanner scale”) and (puberty /3 Block!) AND ~~transgend!~~

SOC8 AND ~~transgend! /5 (youth or children) AND transition!~~

“standards of care 8” AND ~~transgend! /5 (youth or children) AND transition! AND WPATHWPATH~~

“standards of care v. 8” AND ~~transgend! /5 (youth or children) AND transition! AND WPATHWPATH~~

(~~“Rafferty AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) and trans!(“Endocrine Society” or Hembree) and transgend! /5 (youth or children) AND transition!~~

~~Finland and transgend! /5 (youth or children)child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) AND ~~transition~~trans!~~

~~Sweden and transgend! /5 (youth or children) AND transition!~~

~~Finland and (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) AND (transgender or “gender affirming”)~~

~~Sweden and (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) AND (transgender or “gender affirming”)~~

~~(“United Kingdom” or UK) and transgend! /5 (youth or children) AND transition!(youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) AND (transgender or “gender affirming”)~~

~~de Vries AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) AND trans!~~

~~Chen AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) AND trans! AND (psychosocial or fertil! or “Trans Youth Care”)~~

~~(Conversion /3 therapy) and transgend! /5 (youth or children)child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) AND ~~transition~~trans!~~

~~TGD /3 youth AND transition!~~

~~“Trans Youth Care Research Network” AND transition!~~

~~Adverse AND transgend! /5 (youth or children) AND transition! /5 (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) AND and (trans! or gender or GAT or GAC)~~

Exhibit D

Defendants' Further Proposed Edits to Search Terms

Attached to email of May 3, 2023

gender /3 dysphoria AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~-or student!~~)

gender /3 affirming AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~-or student!~~)

GAC

puberty /3 Block!

pubertal /3 Block!

puberty /3 supress!

pubertal /3 supress!

gonadotropin AND (trans! or gender)

GNRH AND (trans! or gender)

GnRH α AND (trans! or gender)

GAHT

Lupron and (puberty or block! or bone or pediatric or “side effect” or “off label” or osteo! or depress! or suicid! or seizur! or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or Eugster or mitochondria) AND youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~-or student!~~)

(cross-sex /3 hormones) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~-or student!~~!) AND transgend!

CSH AND ~~tran~~transition!

(Hormone /3 therapy) AND (trans! or gender or youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~-or student!~~)

desist! AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~-or student!~~) AND (~~trans! or gender~~)transgend!

detrans! AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~-or student!~~)

WPATH AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or ~~student!~~ or guidelines or SOC8)

USPATH AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~-or student!~~)

~~“Olson-Kennedy” AND trans! AND (youth or child! or minor! or kid! or teen! or boy! or girl! or student! or TYC)~~

~~Laidlaw AND (trans! or gender!) AND endocrin!~~

~~Malone AND (trans! or gender!) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!)~~

Nokoff AND trans! AND youth

~~“Trans health” AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) AND transition!~~

~~“non-conforming gender” AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!)~~

~~“gender identity” AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!)~~

((“Gender Minority” or SGM!) and (Endocrine or Pediatrics or AAP)) /5 (trans! or affirm! or gender) /5 (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!)

~~Levine AND (gender /3 affirming) AND trans! Socialstyrelsen AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student)~~

~~Marei /3 Bowers AND WPATH AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student)~~

~~Erica /3 Anderson AND (WPATH or USPATH) AND gender AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student)~~

~~Ryan /3 Anderson AND (Harry /3 Sally)~~

~~Socialstyrelsen AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! Or girl! or student!) AND trans!(transition! OR transgender)~~

(“National Institute for Health and Care Excellence”) AND transgend! /5 (youth or children)

Karolinska AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) AND (transttransition! or gendertransgender)

Tavistock AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!) AND trans!

~~(Shrier /3 Abigail) AND transgender AND (irreversible /3 damage)~~

“Rapid onset gender dysphoria”

ROGD

precocious /3 puberty AND (transgend! or transition!)

gatekeeping AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~or student!~~) AND transgender!

“Cass Review” (Hilary /3 Cass) AND (UK or England or NHS) AND (transgender or gender) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~or student!~~)

Dutch /3 protocol

Ehrensaft AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~or student!~~) AND ~~tran~~transition!

(Ukom or Norway) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~or student!~~) AND (~~trans! or gender~~)transgender OR transition!

Palveluvalikoima AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~or student!~~) AND ~~trans!~~(transition! OR transgender)

Littman AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~or student!~~) AND ~~trans!~~(transition! OR transgender)

Abbruzzese AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~or student!~~) AND ~~trans!~~(transition! OR transgender)

~~(Michael /3 Biggs) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~or student!~~) AND (“gender dysphoria” or trans! or suicid! or “Dutch protocol” or “bone mineral density”)~~

Kaltiala AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~or student!~~) AND ~~tran~~transition!

Consent AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~or student!~~) and ((gender /3 affirming) or (puberty /3 Block!) or hormone or CSH)

“pseudotumor cerebi” and (gonadotropin or GNRH or (puberty /3 Block!))

~~(Tanner~~ and (puberty /3 Block!)

“standards of care 8” AND WPATH

“standards of care v. 8” AND WPATH

~~Rafferty AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~or student!~~) and ~~trans!~~(“Endocrine Society” or Hembree) and (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~or student!~~) AND ~~trans!~~transgender~~

Finland and (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~or student!~~) AND (transgender or “gender affirming”)

Sweden and (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~!-or student!~~)
AND (transgender or “gender affirming”)!

(“United Kingdom” or UK) and (youth or child! or adolescent! or minor! or kid! or teen! or boy!
or girl!~~!-or student!~~) AND (transgender or “gender affirming”)!

de Vries AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!~~!-or student!~~) AND ~~trans!~~(transgender OR transition!)

~~Chen AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or student!
AND trans! AND (psychosocial or fertil! or “Trans Youth Care”)~~

(Conversion /3 therapy) and (youth or child! or adolescent! or minor! or kid! or teen! or boy! or
girl!~~!-or student!~~) AND trans!

~~TGD /3 youth~~

“Trans Youth Care Research Network”

Adverse AND transgend! /5 (youth or child! or adolescent! or minor! or kid! or teen! or boy! or
girl!~~!-or student!~~) AND and (trans! or gender or GAT or GAC)

Exhibit E

United States' Proposed Edits to Search Terms

Attached to email of May 5, 2023

gender /3 dysphoria AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (transition! or treat!)

gender /3 affirming AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (transition! or treat!)

GAC AND (transition! or treat!)

puberty /3 Block! and (-“side effect” or “off label” or osteo! or depress! or suicid! or seizur! or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or Eugster or mitochondria) AND youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!)

pubertal /3 Block! and (-“side effect” or “off label” or osteo! or depress! or suicid! or seizur! or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or Eugster or mitochondria) AND youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!)

puberty /3 supress! and “side effect” or “off label” or osteo! or depress! or suicid! or seizur! or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or Eugster or mitochondria) AND youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!)

pubertal /3 supress! and (-“side effect” or “off label” or osteo! or depress! or suicid! or seizur! or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or Eugster or mitochondria) AND youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!)

gonadotropin AND (trans! or gender) and (“side effect” or “off label” or osteo! or depress! or suicid! or seizur! or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or Eugster or mitochondria) AND youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!)

GNRH AND (trans! or gender) and (“side effect” or “off label” or osteo! or depress! or suicid! or seizur! or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or Eugster or mitochondria) AND youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!)

GnRH_a AND (trans! or gender) and (“side effect” or “off label” or osteo! or depress! or suicid! or seizur! or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or Eugster or mitochondria) AND youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!)

GAHT and (“side effect” or “off label” or osteo! or depress! or suicid! or seizur! or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or

Eugster or mitochondria) AND youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!)

Lupron and (puberty or block! or bone or pediatric or “side effect” or “off label” or osteo! or depress! or suicid! or seizur! or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or Eugster or mitochondria) AND youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!)

(cross-sex /3 hormones) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND transgend!

CSH AND transition!

(Hormone /3 therapy) AND (transition! or transgender) ~~or~~ AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!)

desist! AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND transgend!

detrans! AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND treat!

WPATH AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or ~~or~~ guidelines or SOC8)

USPATH AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!)

Nokoff AND trans! AND youth

“Trans health” AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND transition!

((“Gender Minority” or SGM!) and (Endocrine or Pediatrics or AAP)) /5 (trans! or affirm! ~~or~~ gender) /5 (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND transgend! AND treat!

Socialstyrelsen AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! Or girl!) AND (transition! OR transgender) AND treat!

(“National Institute for Health and Care Excellence”) AND transgend! /5 (youth or children) AND treat!

Karolinska AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (transition! or transgender) AND treat!

Tavistock AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (transition! or transgender)trans! AND treat!

“Rapid onset gender dysphoria” AND (transition! or treat!)

ROGD AND (transition! or treat!)

precocious /3 puberty AND (transgend! or transition!)

gatekeeping AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND transgender! AND treat!

“Cass Review” (Hilary /3 Cass) AND (UK or England or NHS) AND (transgender or gender) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!)

~~Dutch /3 protocol~~ AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!)
AND (transgender OR transition!)

Ehrensaft AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND transition!

(Ukom or Norway) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (transgender OR transition!)

Palveluvalikoima AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (transition! OR transgender)

Littman AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (transition! OR transgender)

Abbruzzese AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (transition! OR transgender)

Kaltiala AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND transition!

Consent AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) and ((gender /3 affirming) or (puberty /3 Block!) or hormone or CSH)

“pseudotumor cerebi” and (gonadotropin or GNRH or (puberty /3 Block!))

Tanner and (puberty /3 Block!)

“standards of care 8” AND WPATH

“standards of care v. 8” AND WPATH

("Endocrine Society" or Hembree) and (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND transgender

Finland and (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (transgender or “gender affirming”)! AND (transition! or treat!)

Sweden and (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (transgender or “gender affirming”)! AND (transition! or treat!)

(“United Kingdom” or UK) and (youth or child! or adolescent! or minor! or kid! or teen! or boy!
or girl!) AND (transgender or “gender affirming)! AND (transition! or treat!)

“de Vries” AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND
(transgender OR transition!)

(Conversion /3 therapy) and (youth or child! or adolescent! or minor! or kid! or teen! or boy! or
girl!) AND trans!

“Trans Youth Care Research Network”

Adverse AND transgend! /5 (youth or child! or adolescent! or minor! or kid! or teen! or boy! or
girl!) AND and (trans! or gender or GAT or GAC)

Exhibit F

Defendants' Proposed Edits to Search Terms

Attached to email of May 10, 2023

gender /3 dysphoria AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (transition! or treat! or care or affirm!)

gender /3 affirming AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (transition! or treat! or care or hormon!)

GAC AND (~~transition~~trans! or treat! or care or affirm!)

puberty /3 Block! and (~~“side effect” or “off label” or osteo! or depress! or suicid! or seizur! or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or Eugster or mitochondria~~)AND youth or ehildaffirm! or adolescent!pause or minorrevers! or kidtrans! or teen! or boy! or girl!)gender)

pubertal /3 Block! and (“side effect” or “off label” or osteo! or depress! or suicid! or seizur! or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or Eugster or mitochondria)AND youth or ehildaffirm! or adolescent!pause or minorrevers! or kidtrans! or teen! or boy! or girl!)gender)

puberty /3 supress! and “side effect” or “off label” or osteo! or depress! or suicid! or seizur! or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or Eugster or mitochondria)AND youth or ehildaffirm! or adolescent!pause or minorrevers! or kidtrans! or teen! or boy! or girl!)gender)

pubertal /3 supress! ~~and~~And (“side effect” or “off label” or osteo! ~~or~~Or depress! ~~or~~Or suicid! ~~or~~Or seizur! ~~or~~Or safe! ~~or~~Or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or Eugster or mitochondria or affirm! or pause or revers! or trans! or gender) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! ~~or~~Or girl!)

gonadotropin AND (trans! or gender) and (“side effect” or “off label” or osteo! ~~or~~Or depress! ~~or~~Or ~~suieid!~~ ~~or~~Or ~~suicide!~~ Or seizur! ~~or~~Or safe! ~~or~~Or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or Eugster or mitochondria)or affirm! or pause or revers!) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! ~~or~~Or girl!)

GNRH AND (trans! or gender) and (“side effect” or “off label” or osteo! ~~or~~Or depress! ~~or~~Or suicid! or seizur! or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or Eugster or mitochondria)or affirm! or pause or revers!) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! ~~or~~Or girl!)

GnRHa AND (trans! or gender) and (“side effect” or “off label” or osteo! ~~or~~Or depress! ~~or~~Or ~~suieid!~~ ~~or~~Or ~~suicide!~~ Or seizur! ~~or~~Or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or Eugster or mitochondria)or affirm! or pause or revers!) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!)

~~GAHT~~and GAHT AND (“side effect” or “off label” or osteo! or depress! or suicid! or seizur! or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or

Gueriguian or Eugster or mitochondria) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!)

Lupron and (puberty or block! or bone or pediatric or “side effect” or “off label” or osteo! or depress! or suicid! or seizur! or safe! or unapproved or vision or asthma or tumor or cancer or fracture or bone or joint or Gueriguian or Eugster or mitochondria) or affirm!) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!)

(cross-sex /3 hormones) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND transgend!

CSH AND transition!

(Hormone /3 therapy) AND (transition! or transgender) or affirm!) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!)

desist! AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND transgend!

detrans! AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) ~~AND treat!~~

WPATH AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl! or guidelines or SOC8)

USPATH AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!)

Nokoff AND trans! AND youth

“Trans health” AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND transition!

(“Gender Minority” or SGM!) and (Endocrine or Pediatrics or AAP)) /5 (trans! or affirm!) /5 (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) ~~AND transgend!~~ AND treat!

Socialstyrelsen AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! Or girl!) AND (transition! OR transgender) AND (treat! or care or affirm!)

(“National Institute for Health and Care Excellence”) AND transgend! /5 (youth or children) AND (treat! or care or affirm!)

Karolinska AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (~~transition! or transgender~~)trans!) AND (treat! or care or affirm!)

Tavistock AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (~~transition! or transgender~~)trans!) AND (treat! or care or affirm!)

“Rapid onset gender dysphoria” ~~AND (transition! or treat!)~~

ROGD ~~AND (transition! or treat!)~~

precocious /3 puberty AND (transgend! or transition!)

gatekeeping AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND transgender! ~~AND treat!~~

“Cass Review” (Hilary /3 Cass) AND (UK or England or NHS) AND (transgender or gender) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!)

(Dutch /3 protocol) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (transgender OR transition!)

Ehrensaft AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND transition!

(Ukom or Norway) AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (transgender OR transition!)

Palveluvalikoima AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (transition! OR transgender)

Littman AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (transition! OR transgender)

Abbruzzese AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (transition! OR transgender)

Kaltiala AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND transition!

Consent AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) and ((gender /3 affirming) or (puberty /3 Block!) or hormone or CSH)

“pseudotumor cerebi” and (gonadotropin or GNRH or (puberty /3 Block!))

Tanner and (puberty /3 Block!)

“standards of care 8” AND WPATH

“standards of care v. 8” AND WPATH

(“Endocrine Society” or Hembree) and (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND transgender

Finland and (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (transgender or “gender affirming”)! AND (transition! or treat! or care or affirm!)

Sweden and (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND (transgender or “gender affirming”)! AND (transition! or treat! or care)

(“United Kingdom” or UK) and (youth or child! or adolescent! or minor! or kid! or teen! or boy!
or girl!) AND (transgender or “gender affirming)! AND (transition! or treat!); or care)

“de Vries” AND (youth or child! or adolescent! or minor! or kid! or teen! or boy! or girl!) AND
(transgender OR transition!)

(Conversion /3 therapy) and (youth or child! or adolescent! or minor! or kid! or teen! or boy! or
girl!) AND trans!

“Trans Youth Care Research Network”

Adverse AND transgend! /5 (youth or child! or adolescent! or minor! or kid! or teen! or boy! or
girl!) AND and (trans! or gender or GAT or GAC)

Exhibit G

Email Correspondence

Bowdre, Barrett

From: Brian Barnes <BBarnes@cooperkirk.com>
Sent: Wednesday, May 10, 2023 5:16 PM
To: Murphy, Amie (CRT)
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; Melody H. Eagan; Adam Reinke; Diego Soto; Jessica Stone; Montag, Coty (CRT); Marshall, Margaret (USAALN); Williams, Renee (CRT); Toyama, Kaitlin (CRT); Bowdre, Barrett; John Ramer
Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents
Attachments: 5.10.23_Plfs Revised HHS Search Terms v. f.docx

This message has originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Hi Amie,

Here are some further proposed tweaks to search terms from us. Hopefully you all can live with these proposed changes at least for purposes of running a first set of searches that will generate a hit report we can all assess. Happy to hop on the phone tomorrow to discuss our thinking on these further changes if useful.

Brian

From: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>
Sent: Friday, May 5, 2023 3:51 PM
To: Brian Barnes <BBarnes@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>; Melody H. Eagan <meagan@lightfootlaw.com>; Adam Reinke <Areinke@kslaw.Com>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; John Ramer <jramer@cooperkirk.com>
Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Hi Brian-

I think we're close. We made a couple edits that are aimed at linking transitioning with the safety and efficacy of the treatments. Please let me know if you think we should discuss them.

Have a nice weekend.

Amie

From: Brian Barnes <BBarnes@cooperkirk.com>
Sent: Wednesday, May 3, 2023 5:06 PM
To: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>
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>; Melody H. Eagan <meagan@lightfootlaw.com>; Adam Reinke <Areinke@kslaw.Com>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <mmarshall2@usa.doj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; John Ramer <jramer@cooperkirk.com>
Subject: [EXTERNAL] RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Hi Amie,

I've attached a new set of proposed terms that shows changes to the last version we sent over in redline. We've tried to accommodate many of the concerns you raised about the previous version, but please let me know if you think it would be useful to have another conversation about any remaining disagreements.

Best regards,

Brian

From: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>
Sent: Wednesday, May 3, 2023 10:00 AM
To: Brian Barnes <BBarnes@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>; Melody H. Eagan <meagan@lightfootlaw.com>; Adam Reinke <Areinke@kslaw.Com>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; John Ramer <jramer@cooperkirk.com>
Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Good morning, Brian-

Will you be prepared to send your thoughts on the search terms soon? I believe we left things with the ball in your court and we would like to get to a point ASAP where we can begin running test searches.

Amie

Amie S. Murphy
Trial Attorney
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
Tel: (202) 305-5003
Fax: (202) 514-1116
amie.murphy2@usdoj.gov

From: Brian Barnes <BBarnes@cooperkirk.com>
Sent: Friday, April 28, 2023 12:57 PM
To: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>
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>; Melody H. Eagan <meagan@lightfootlaw.com>; Adam Reinke <Areinke@kslaw.Com>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <mmarshall2@usa.doj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; John Ramer <jramer@cooperkirk.com>
Subject: [EXTERNAL] RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Thanks for sending around a dial-in, Amie. That time still works for us.

From: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>
Sent: Friday, April 28, 2023 12:16 PM
To: Brian Barnes <BBarnes@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>; Melody H. Eagan <meagan@lightfootlaw.com>; Adam Reinke <Areinke@kslaw.Com>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; John Ramer

<jramer@cooperkirk.com>

Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Brian-

Does 2:30 ET still work for today's call? If so, the following dial-in information may be used by anyone who wishes to join.

WebEx2 (202) 600-2533, Attendee Access Code 96401039

Amie

From: Murphy, Amie (CRT)

Sent: Thursday, April 27, 2023 8:02 PM

To: 'Brian Barnes' <BBarnes@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>; Melody H. Eagan <meagan@lightfootlaw.com>; Adam Reinke <Areinke@kslaw.Com>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <mmarshall2@usa.doj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; John Ramer <jramer@cooperkirk.com>

Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Brian:

Thank you for sending over your proposed edits to the search terms. Our comments are as follows:

1. By removing "transition!" Defendants are expanding most of the terms to anything to do with transgender youth rather than focusing on *transitioning* transgender youth, which goes far beyond the scope of the lawsuit as well as the Court's order. In rejecting RFP 6 ("[a]ll Communications and Documents since January 1, 2017, concerning Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition," the Court said that a search for anything relating to transitioning or treatment was too broad but that "effects of transitioning" was narrow enough. We cannot agree to any terms that go further than the court's order.
2. Any term that refers to a medication, treatment, or Tanner Scale without the limiter "transgen!" or "transition!" goes far beyond the scope of this lawsuit.
3. The inclusion of "student" as a connector is not necessary and goes beyond the scope of the lawsuit. For example, the United States is not challenging the provisions in SB 184 about what teachers are required to disclose to parents re: information about a student's gender identity.
4. We also have some concerns about the names such as Levine, Marci Bowers, Erica Anderson, etc. whose names were referenced in RFPs that Defendants chose not include in their motion to compel.

5. At some point, the value of continuing to add search terms is outweighed by the additional time and cost it will incur to run them, particularly since HHS's document search system runs each search term consecutively. Put another way, a long list of broad terms will generate more documents, however it will not necessarily result in a larger production because many of the documents will likely be nonresponsive as they will be hitting on broad search terms but won't actually relate to the RFPs subject to the Court's order. If the narrower terms are meant to capture information that Defendants believe to be responsive and relevant, we suggest utilizing the narrow searches to find the information Alabama seeks rather than a long list of broader terms that will likely collect nonresponsive data that will require additional review time to weed out irrelevant documents, thereby delaying production.

We may have some more specific concerns that we can address tomorrow, but these are the ones that stood out at first glance. We look forward to discussing these tomorrow.

Amie

From: Brian Barnes <BBarnes@cooperkirk.com>

Sent: Tuesday, April 25, 2023 9:16 AM

To: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>

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>; Melody H. Eagan <meagan@lightfootlaw.com>; Adam Reinke <Areinke@kslaw.Com>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <mmarshall2@usa.doj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; John Ramer <jramer@cooperkirk.com>

Subject: [EXTERNAL] RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Thanks, Amie. Let's plan to talk on Wednesday at noon Eastern, assuming that time still works on your end. I'll send around a dial-in we can use later this morning.

From: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>

Sent: Monday, April 24, 2023 7:57 PM

To: Brian Barnes <BBarnes@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>; Melody H. Eagan <meagan@lightfootlaw.com>; Adam Reinke <Areinke@kslaw.Com>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; John Ramer

<jramer@cooperkirk.com>

Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Hi Brian-

Thanks for sending these over. How is your availability for a call on Wednesday? I'm available from 11:00-2:00 ET, and again from 3:30-5:00 ET.

Amie

From: Brian Barnes <BBarnes@cooperkirk.com>

Sent: Monday, April 24, 2023 9:17 AM

To: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>

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>; Melody H. Eagan <meagan@lightfootlaw.com>; Adam Reinke <Areinke@kslaw.Com>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <mmarshall2@usa.doj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; John Ramer <jramer@cooperkirk.com>

Subject: [EXTERNAL] RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Hi Amie,

I hope you had a nice weekend. I've attached some proposed revisions to the search terms for your consideration – I'd be happy to discuss our thinking on these changes to the extent useful.

Also, is there a time today or tomorrow when we could hop on the phone to discuss the schedule? To the extent that HHS needs more time to comply with the Court's discovery order than the current schedule allows, we think that it makes sense to alert the Court to this sooner rather than later.

Best regards,

Brian W. Barnes
Cooper & Kirk, PLLC

From: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>

Sent: Thursday, April 13, 2023 2:17 PM

To: Brian Barnes <BBarnes@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>; Melody H. Eagan <meagan@lightfootlaw.com>; Adam Reinke <Areinke@kslaw.Com>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; John Ramer <jramer@cooperkirk.com>

Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Hi Brian-

Thanks for a productive call last week. Should we set something up for tomorrow? We are available between 11:00 and 4:00 EST, except from 1:00 to 2:00 EST.

In advance of our next call, I am attaching our suggestions to the list of search terms.

Amie

Amie S. Murphy
Trial Attorney
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
Tel: (202) 305-5003
Fax: (202) 514-1116
amie.murphy2@usdoj.gov

From: Brian Barnes <BBarnes@cooperkirk.com>

Sent: Thursday, April 6, 2023 7:55 PM

To: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>

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>; Melody H. Eagan <meagan@lightfootlaw.com>; Adam Reinke <Areinke@kslaw.Com>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <mmarshall2@usa.doj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; John Ramer <jramer@cooperkirk.com>

Subject: [EXTERNAL] RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Hi Amie,

In advance of tomorrow afternoon's call, please find attached a list of suggested search terms. We're providing this list in the hope that it will facilitate the negotiations, but these search terms will certainly need to be tweaked once we've agreed upon a list of custodians. Some of these terms may be too broad and others may be too narrow.

Best regards,

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

From: Brian Barnes
Sent: Tuesday, April 4, 2023 8:49 AM
To: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>
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>; Melody H. Eagan <meagan@lightfootlaw.com>; Adam Reinke <Areinke@kslaw.Com>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; John Ramer <jramer@cooperkirk.com>
Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Hi Amie,

I'll follow up on the other items you raise in your note in the next day or so, but let's pencil in 3.30pm on Friday for a call if that still works for the relevant folks on your end.

Best regards,

Brian

From: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>
Sent: Friday, March 31, 2023 11:53 AM
To: Brian Barnes <BBarnes@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>; Melody H. Eagan <meagan@lightfootlaw.com>; Adam Reinke <Areinke@kslaw.Com>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; John Ramer <jramer@cooperkirk.com>
Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Hi Brian,

Thanks for your email. I will not be in the office next week until Friday, so that's the soonest we can schedule a call. We will have counsel from HHS on the line, so hopefully that will streamline the conversation a bit. In the meantime, it would be helpful if you send us a few proposed search strings. They can be general since we are only using them to help identify custodians, and can fine-tune them once we have that list.

I appreciate your willingness to consider excluding certain operating divisions. We will take ACL, ASPR, and ATSD off the list, and are considering whether we have any to suggest as well. Regarding your question about other HHS offices that sit outside the operating divisions, are you referring to the Staff Divisions that fall under the Office of the Secretary? If so, we suggest excluding ASA, ASFR, ASL, ASPE, ASPA, DAB, OGC, OGA, OIG, OMHA, ONC, and OCIO.

Please let me know your availability between 11:00 ET and 4:30 ET next Friday.

Amie

From: Brian Barnes <BBarnes@cooperkirk.com>

Sent: Thursday, March 30, 2023 2:07 PM

To: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>

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>; Melody H. Eagan <meagan@lightfootlaw.com>; Adam Reinke <Areinke@kslaw.Com>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <mmarshall2@usa.doj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; John Ramer <jramer@cooperkirk.com>

Subject: [EXTERNAL] RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Hi Amie,

Thanks for your note. In looking over the list of HHS operating divisions, there are three of them that don't appear likely to us to have responsive documents: (1) the Administration for Community Living (ACL); (2) the Administration for Strategic Preparedness and Response (ASPR); and (3) the Agency for Toxic Substances and Disease Registry (ATSD). There may be additional operating divisions that it makes sense to exclude – we're open to adding others to the list but would need to know more about other divisions that you would propose to exclude. Our understanding of HHS's organizational structure is that the agency also has various offices that sit outside the operating divisions – if that's right, it might make sense to go through a similar exercise for the offices.

We're also eager to engage with you on custodians and search terms. Would it make sense to set up a call to discuss early next week?

Best regards,

Brian

From: Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>

Sent: Tuesday, March 28, 2023 9:21 PM

To: Brian Barnes <BBarnes@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>; Melody H. Eagan <meagan@lightfootlaw.com>; Adam Reinke <Areinke@kslaw.Com>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; John Ramer <jramer@cooperkirk.com>

Subject: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- HHS Documents

Brian-

We are working with HHS to develop a plan for producing documents in the most efficient way possible, which I'm sure you know by now will be a massive undertaking. We can agree to discuss custodians and search terms, but before we do that, we would like to know which of the operating divisions within HHS you believe have relevant information. For instance, perhaps we can agree that HHS does not need to search the databases for divisions that have a very specific focus.

Once we receive your response, we will identify custodians for each of those divisions and begin considering division-specific search terms.

Please let me know if it would be helpful to discuss this or any other aspect of the plan in a call.

Amie

Amie S. Murphy
Trial Attorney
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
Tel: (202) 305-5003
Fax: (202) 514-1116
amie.murphy2@usdoj.gov

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>](mailto: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>](mailto:Amie.Murphy2@usdoj.gov)

Sent: Wednesday, January 11, 2023 1:25 PM

To: Brian Barnes [<BBarnes@cooperkirk.com>](mailto:BBarnes@cooperkirk.com); Melody H. Eagan [<meagan@lightfootlaw.com>](mailto:meagan@lightfootlaw.com); Montag, Coty (CRT) [<Coty.Montag@usdoj.gov>](mailto:Coty.Montag@usdoj.gov); Bowdre, Barrett [<Barrett.Bowdre@AlabamaAG.gov>](mailto:Barrett.Bowdre@AlabamaAG.gov); Adam Reinke [<Areinke@kslaw.Com>](mailto:Areinke@kslaw.Com); John Ramer [<jramer@cooperkirk.com>](mailto:jramer@cooperkirk.com)

Cc: Cheek, Jason (USAALN) [<Jason.Cheek@usdoj.gov>](mailto:Jason.Cheek@usdoj.gov); LaCour, Edmund [<Edmund.LaCour@AlabamaAG.gov>](mailto:Edmund.LaCour@AlabamaAG.gov); Wilson, Thomas [<Thomas.Wilson@AlabamaAG.gov>](mailto:Thomas.Wilson@AlabamaAG.gov); Davis, Jim [<Jim.Davis@AlabamaAG.gov>](mailto:Jim.Davis@AlabamaAG.gov); Seiss, Ben [<Ben.Seiss@AlabamaAG.gov>](mailto:Ben.Seiss@AlabamaAG.gov); Christopher Mills [<cmills@spero.law>](mailto:cmills@spero.law); Pete Patterson [<ppatterson@cooperkirk.com>](mailto:ppatterson@cooperkirk.com); David Thompson [<dthompson@cooperkirk.com>](mailto:dthompson@cooperkirk.com); Jeffrey P. Doss [<jdoss@lightfootlaw.com>](mailto:jdoss@lightfootlaw.com); Amie A. Vague [<avague@lightfootlaw.com>](mailto:avague@lightfootlaw.com); AOrr [<Aorr@nclrights.Org>](mailto:Aorr@nclrights.Org); Jennifer Levi [<Jlevi@glad.Org>](mailto:Jlevi@glad.Org); Sarah Warbelow [<Sarah.Warbelow@hrc.Org>](mailto:Sarah.Warbelow@hrc.Org); Cynthia Weaver [<cynthia.Weaver@hrc.Org>](mailto:cynthia.Weaver@hrc.Org); Andy Pratt [<Apratt@kslaw.Com>](mailto:Apratt@kslaw.Com); Misty Peterson [<Mpeterson@kslaw.Com>](mailto:Mpeterson@kslaw.Com); Brent Ray [<Bray@kslaw.Com>](mailto:Bray@kslaw.Com); Abigail Terry [<ATerry@kslaw.com>](mailto:ATerry@kslaw.com); Michael Shortnacy [<Mshortnacy@kslaw.Com>](mailto:Mshortnacy@kslaw.Com); Scott McCoy [<Scott.Mccoy@splcenter.Org>](mailto:Scott.Mccoy@splcenter.Org); Diego Soto [<Diego.Soto@splcenter.Org>](mailto:Diego.Soto@splcenter.Org); Jessica Stone [<Jessica.Stone@splcenter.Org>](mailto: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

Amie S. Murphy
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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

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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>

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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!

Amie S. Murphy

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From: Brian Barnes <BBarnes@cooperkirk.com>
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
(202) 220-9623

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