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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMERICAN CIVIL LIBERTIES UNION OF)
NORTHERN CALIFORNIA,)

Plaintiff,)

v.)

THOMAS E. PRICE, Secretary of Health and)
Human Services, *et al.*)

Defendants,)

and)

U.S. CONFERENCE OF CATHOLIC)
BISHOPS,)

Defendant-Intervenor.)

Case No. 3:16-cv-3539-LB

**PLAINTIFF'S FIRST REQUESTS FOR
PRODUCTION FOR GOVERNEMNT
DEFENDANTS**

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1 PROPOUNDING PARTY: PLAINTIFF ACLU OF NORTHERN CALIFORNIA
2 RESPONDING PARTY: DEFENDANTS THOMAS E. PRICE, AMANDA BARLOW,
3 KENNETH TOTA, IN THEIR OFFICIAL CAPACITIES
4 SET NUMBER: ONE (1)

5 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff American Civil
6 Liberties Union of Northern California requests that Defendants Thomas E. Price, Secretary of
7 Health and Human Services; Amanda Barlow, Acting Assistant Secretary for Administration for
8 Children and Families; and Kenneth Tota, Acting Director of Office of Refugee Resettlement, in
9 their official capacities (collectively “Defendants”), produce the documents and things described
10 below for inspection and copying at American Civil Liberties Union, 125 Broad Street, 18th
11 Floor, New York, New York 10004, within thirty (30) days of service of these discovery
12 requests, in accordance with the Definitions and Instructions below.

13 **DEFINITIONS**

14 1. “DEFENDANTS” include Thomas E. Price, Secretary of Health and Human
15 Services; Amanda Barlow, Acting Assistant Secretary for Administration for Children and
16 Families; and Kenneth Tota, Acting Director of Office of Refugee Resettlement, in their official
17 capacities; and any components, officers, representatives, agents, assigns, agencies, branches,
18 and employees of the U.S. Department of Health and Human Services, the Administration for
19 Children and Families, and the Office of Refugee Resettlement.

20 2. “UC” as used herein means unaccompanied immigrant minor.

21 3. “GRANTEE” as used herein means any entity or organization receiving funding
22 as a grantee, subgrantee, or sub-recipient from Defendants to carry out Defendants’ obligations
23 under the Homeland Security Act, the Trafficking Victims Protection Act, and the William
24 Wilberforce Trafficking Victims Protection Reauthorization Act.

25 4. “SUBGRANTEE” means any entity or organization receiving funding through or
26 from a GRANTEE to carry out Defendants’ obligations under the Homeland Security Act, the
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1 Trafficking Victims Protection Act, and the William Wilberforce Trafficking Victims
2 Reauthorization Act.

3 5. “DOCUMENT” OR “DOCUMENTS” means any original and every non-
4 identical copy, draft or reproduction of any document, writing or record within the broad context
5 of Rule 34, Fed. R. Civ. P., in the possession, custody or control of Defendants or their agents,
6 assigns, or representatives, including, for example, but not limited to: correspondence, telegrams,
7 memoranda, communications, minutes or records of meetings and conferences, lists of persons
8 attending meetings or conferences, summaries, records of conversations, text messages, instant
9 messaging that logs, social media postings, social media messages, statements, announcements,
10 tape recordings, audio recordings, electronic voice message recordings, motion pictures, video
11 recordings, drafts, notes, notebooks, logs, drawings, graphs, charts, photographs, data
12 compilations, intake forms, time cards, computer records or printouts, facsimile, email or other
13 electronic communications (including their metadata), computer files, reports, opinions, and
14 summaries, whether printed, recorded, written by hand, stored electronically or on computer disc
15 or in some other tangible medium of expression from which the information can be retrieved,
16 perceived or understood. Electronically stored information must be produced in a searchable
17 format that retains both data and metadata.

18 6. “COMMUNICATIONS” means oral communications, including face-to-face
19 conversations, conferences and telephone conversations, written and computerized
20 communications and correspondence, and the delivery of DOCUMENTS.

21 7. “IDENTIFY” means to establish the identity of some person and/or the nature
22 and definitive characteristics of something, with as much specificity as possible. For a person or
23 entity, it further means to provide the full name, last known address, and last known telephone
24 number of the person or entity, or as much of that information that is available to Defendants
25 after a reasonable and diligent search.
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1 5. A representation of inability to comply with a particular demand shall affirm that
2 a diligent search and a reasonable inquiry have been made. The statement shall also specify
3 whether the inability to comply is because the item has never existed, has been destroyed, has
4 been lost, misplaced or stolen, or has never been, or no longer is, in Defendants' possession,
5 custody, or control. If the item is not in Defendants' possession, custody, or control, the
6 statement shall specify the name and address of any natural person or organization believed to
7 have such possession, custody, or control.

8 6. If Defendants or Defendants' counsel objects to any demand, please set forth the
9 extent of and specific ground for the objection. If an objection pertains to only a portion of a
10 demand, or a word, phrase, or clause contained within it, please state Defendants' objection to
11 that portion only and respond with a statement of compliance, or a representation of Defendants
12 inability to comply, with respect to the remainder of the demand.

13 7. If Defendants or Defendants' counsel claim that the attorney-client privilege, the
14 work product doctrine, or any other privilege or reason for withholding otherwise responsive
15 documents is applicable to any document request, Defendants must:

- 16 a. Identify the document date, creator, addressee, and type of document;
- 17 b. Provide sufficient further information concerning the document and the
18 circumstances thereof to explain the claim of privilege and to allow a court to decide
19 whether the claim is proper;
- 20 c. Provide the location of the document;
- 21 d. Identify the custodian of the document; and
- 22 e. Identify the persons to whom the information, or any portion thereof, has been
23 revealed.

24 8. The Requests for Production of Documents set forth below shall be deemed
25 continuous up to and following the date of Defendants' response and/or production such that any
26 document or thing demanded herein which is either discovered by Defendants or comes within
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1 Defendants' possession, custody, or control subsequent to Defendants' initial production should
2 be produced immediately upon its discovery or receipt.

3 9. As used herein, the conjunctive "and" and "or" shall be construed both
4 conjunctively and disjunctively such that the meaning is as broad as possible in scope.

5 10. As used herein, the singular form shall include the plural and *vice versa* whenever
6 such dual construction will serve to make the meaning as broad as possible in scope.

7 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

8 **REQUEST FOR PRODUCTION NO. 1:**

9 All documents and communications from November 13, 2015 until present, pertaining to
10 access to abortion, contraception—including emergency contraception—or HPV vaccines, for
11 UCs. These documents should include but are not limited to:

- 12 a. All correspondence, electronic mail, notes of telephone calls from communications
13 between or among Defendants, any of Defendants' grantees, and/or any of
14 Defendants' subgrantees about a minor's request for abortion or contraception;
 - 15 b. Completed treatment authorization forms for abortion or contraception;
 - 16 c. All of Defendants' policies, procedures, manuals, guidance to grantees,
17 communications, etc. about access to abortion or contraceptives for UCs, including
18 but not limited to formal or informal memoranda regarding access to abortion or
19 contraceptives for UCs in the custody or care of facilities;
 - 20 d. Any of Defendants' policies, procedures, manuals, communications, etc. regarding
21 Defendants' screening or assessment of pregnancy before deciding where to place
22 UCs;
 - 23 e. Any of Defendants' or Defendants' grantees' or subgrantees' policies, procedures,
24 manuals, guidance, etc. about access to abortion or contraception for UCs;
 - 25 f. Complaint(s) submitted by the Inspector General.
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1 **REQUEST FOR PRODUCTION NO. 2:**

2 Any notice of award, request for proposal, application for the award, cooperative
3 agreements published or submitted and any contracts entered into with Defendants after
4 November 13, 2015, pertaining to the care of UCs by a religiously affiliated entity.

5 **REQUEST FOR PRODUCTION NO. 3:**

6 Significant Incident Documentation and Reporting Manual for UCs, if published after
7 November 13, 2015.

8 **REQUEST FOR PRODUCTION NO. 4:**

9 Medical Services Manual for UCs, if published after November 13, 2015.

10 **REQUEST FOR PRODUCTION NO. 5:**

11 Current list of all entities that receive funding through grants or contracts with
12 Defendants to provide day-to-day care for UCs, including short-term shelters and long-term
13 foster care.

14 **REQUEST FOR PRODUCTION NO. 6:**

15 All documents and communications from November 13, 2015 until present, pertaining to
16 access to abortion or contraception, including emergency contraception, for trafficking victims.

17 These documents should include but are not limited to:

- 18 a. Any of Defendants' policies, procedures, manuals, communications, etc. regarding
19 Defendants' screening or assessment of pregnancy before deciding where to place
20 trafficking victims;
- 21 b. Any of Defendants' or Defendants' grantees' or subgrantees' policies, procedures,
22 manuals, guidance, etc. about access to abortion or contraception for trafficking
23 victims.

24 **REQUEST FOR PRODUCTION NO. 7:**

25 All documents and communications from November 13, 2015 until present, pertaining to
26 USCCB's religious preferences with respect to the implementation of Funding Opportunity
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1 Number HHS-2015-ACF-ORR-ZV-0976 (Primary CFDA Number 93.598), including but not
2 limited to any materials related to the implementation of the grant as it pertains to religious
3 accommodations and medical care, including abortion or contraception, assisting same-sex
4 couples with visas, and selection of sub-grantees based on religious criteria.

5 **REQUEST FOR PRODUCTION NO. 8:**

6 All documents and communications from November 13, 2015 until present, pertaining to
7 religious exemptions and/or accommodations with respect to Defendants' policies or regulations
8 that apply to the UC and trafficking victims programs, including but not limited to:

- 9 a. Any of Defendants' policies, procedures, manuals, memoranda, guidance to
10 contractors, etc., relating to a religious exemption or religious accommodation;
- 11 b. Any and all documents related to Section 4 of the ORR Guide: Children Entering the
12 United States Unaccompanied (requiring grantees with religious objections to
13 providing information and access to required services for child victims of sexual
14 abuse to notify ORR and cooperate in implanting a plan to ensure adequate access to
15 required services), including but not limited to the service plans put in place for every
16 objecting grantee under 4.9.4;
- 17 c. Any and all documents and communications—including policies, procedures,
18 manuals, memoranda, guidance to contractors, correspondence, electronic, notes of
19 telephone calls, etc.—related to ACF's Policy on Grants to Faith-Based
20 Organizations.

21 **REQUEST FOR PRODUCTION NO. 9:**

22 Subgrantee agreements between any of Defendants' grantees and any subgrantees
23 pertaining to the care of UCs or trafficking victims, where either the grantee or the subgrantee is
24 a religiously affiliated entity, if entered into after November 13, 2015.

1 **REQUEST FOR PRODUCTION NO. 10:**

2 All documents and communications between Defendants and members of Congress or
3 their staff pertaining to the role of religious grantees in Defendants' UC or trafficking victims
4 program.

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6 Dated: March 16, 2017

Respectfully submitted,

7 By: /s/ Brigitte Amiri
8 Brigitte Amiri*

9 Attorney for Plaintiff

10 * Appearing *pro hac vice*

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