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**THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

AMERICAN CIVIL LIBERTIES UNION OF	)	
NORTHERN CALIFORNIA; JANE DOE, on	)	
behalf of herself and others similarly situated,	)	
	)	Civil No. 3:16-cv-3539-LB
Plaintiffs,	)	
	)	<b>SECOND AMENDED COMPLAINT</b>
v.	)	
	)	<b>CLASS ACTION</b>

DON WRIGHT, Acting Secretary of Health  
and Human Services, in his official capacity,  
STEPHEN WAGNER, Acting Assistant  
Secretary for Administration for Children and  
Families, in his official and individual  
capacity; SCOTT LLOYD, Director of Office  
of Refugee Resettlement, in his official and  
individual capacity,  
Defendants.

v.

UNITED STATES CONFERENCE OF  
CATHLIC BISHOPS,  
Defendant-Intervenors.

Plaintiff American Civil Liberties Union of Northern California (“ACLU of Northern California”), and Plaintiff Jane Doe, on behalf a class of similarly situated pregnant unaccompanied immigrant minors in the legal custody of the federal government, for their complaint in the above-captioned matter, allege as follows:

**PRELIMINARY STATEMENT**

1. There are currently thousands of unaccompanied immigrant minors (also known as unaccompanied children, or “UC”) in the legal custody of the federal government. These young people are extremely vulnerable: Many have come to the United States fleeing abuse and torture in their home countries; many have been sexually abused or assaulted either in their home countries, during their long journey to the United States, or after their arrival; some have also been trafficked for labor or prostitution in the United States or some other country; and many have been separated from their families.

2. The federal government is legally required to provide these young people with basic necessities, such as housing, food, and access to emergency and routine medical care, including family planning services, post-sexual assault care, and abortion.

3. Defendants have recently revised nationwide policies that allow them to wield an unconstitutional veto power over unaccompanied immigrant minors’ access to abortion. Under

1 these nationwide policies, Defendants also force unaccompanied minors who request abortion to  
2 visit a pre-approved anti-abortion crisis pregnancy center, which requires the minor to divulge  
3 the most intimate details of their life to an entity hostile to their abortion decision, in violation of  
4 her First and Fifth Amendment rights. Defendants also force minors to notify parents or other  
5 family members of their request for abortion and/or the termination of their pregnancy, or notify  
6 family members themselves, in violation of the Fifth and First Amendment.

7 4. Recently, an unaccompanied immigrant minor in the legal custody of the federal  
8 government, Jane Doe, learned she was pregnant and asked staff at the shelter in Texas where  
9 she lives for access to abortion. Because Texas requires parental consent or a judicial waiver of  
10 that requirement, Jane Doe went to court and, with the assistance of an attorney ad litem and a  
11 guardian ad litem, received judicial permission to consent to the abortion on her own.  
12 Defendants have, however, taken the position that Jane Doe is prohibited from accessing an  
13 abortion: Defendants will not transport her for the abortion, nor will allow anyone to do so.  
14 Defendants are blatantly violating Jane Doe's constitutional rights. Defendants have also forced  
15 Ms. Doe to visit a crisis pregnancy center, and, over Ms. Doe's objections, told Ms. Doe's  
16 mother that Ms. Doe was pregnant. Jane Doe seeks an immediate TRO to grant her access to  
17 abortion, and a preliminary injunction to prevent Defendants from obstructing, interfering with,  
18 or blocking other unaccompanied immigrant minors' access to abortion.

19 5. In addition to the newly revised policy obstructing access to abortion, Defendants  
20 also authorize religiously affiliated grantees, including Defendant-Intervenor U.S. Conference of  
21 Catholic Bishops, to deny access to reproductive health care in violation of the Establishment  
22 Clause.

23 6. ORR issues grants to private entities, including a number of religiously affiliated  
24 organizations, to provide unaccompanied immigrant minors with basic necessities.

25 7. According to documents obtained through the Freedom of Information Act,  
26 Defendants authorize a few of these religiously affiliated organizations—such as the United  
27 States Conference of Catholic Bishops (“USCCB”) and its subgrantees across the country,

1 including Catholic Charities of Santa Clara County in California—to refuse on religious grounds  
2 to provide information about, access to, or referrals for contraception and abortion, even if the  
3 young person in their care has been raped.

4 8. For example, Defendants approved grants to USCCB—nearly \$10 million in 2014  
5 alone—even though ORR was well aware that USCCB’s agreement with its subgrantees  
6 explicitly prohibits them from providing, referring, encouraging, or in any way facilitating access  
7 to contraceptives and abortion services. Defendants also allow these organizations to reject  
8 young women seeking abortion from their programs, and to expel young women who ask for an  
9 abortion.

10 9. Defendants’ decision to authorize this religiously motivated denial of services has  
11 extraordinary consequences for the vulnerable unaccompanied immigrant minor population. For  
12 example, one young woman—who was hospitalized for suicidal ideation after she became  
13 pregnant as the result of rape by one of her “guides” to the United States—was kicked out of her  
14 Catholic-affiliated shelter because she asked for an abortion. As a result, she was transferred to  
15 another shelter, away from the social workers and other shelter support staff who constituted her  
16 only support system in this country. Another young woman, who had also become pregnant as a  
17 result of rape on her journey to the United States, was denied placement at a shelter near her  
18 family in Florida because the two available shelters both had religious objections to caring for  
19 teens who seek abortions.

20 10. ORR has authorized USCCB and other grantees to impose religiously based  
21 restrictions on young women’s access to reproductive health care—care that these young women  
22 are entitled to receive by law. Defendants have therefore violated the Establishment Clause by  
23 failing to remain neutral with respect to religion, by subsidizing grantees’ religious beliefs to the  
24 detriment of unaccompanied immigrant minors, and by underwriting religious restrictions on  
25 vital government-funded services.

26 11. This is not the first time that Defendants have violated the Establishment Clause  
27 in this manner. In 2012, a federal district court held that Defendants violated the Establishment  
28

1 Clause when they authorized USCCB to prohibit its subcontractors from referring or providing  
2 access to abortion or contraception for trafficking victims in a federal program, despite clear law  
3 requiring such services. *ACLU of Massachusetts v. Sebelius*, 821 F. Supp. 2d 474 (D. Mass.  
4 2012), *vac'd*, 705 F.3d 44 (1st Cir. 2013) (holding that the case was moot because Defendants'  
5 contract with USCCB had expired).

6 12. In 2013, the government successfully asserted in *ACLU of Massachusetts* that the  
7 case was moot because it was “completely speculative whether USCCB” would receive any  
8 future contract award to care for trafficking victims. Yet, in September 2015, Defendants  
9 awarded USCCB a multi-million dollar contract to care for trafficking survivors. According to  
10 documents obtained through a Freedom of Information Act lawsuit, USCCB’s application  
11 indicated that “all activities conducted by USCCB . . . will be consistent with Catholic teaching.”  
12 Once again, USCCB objected to providing access to certain reproductive health care. It also  
13 objected to assisting with visas for spouses of trafficking victims unless “they are in a legal union  
14 of one man and one woman.”

15 13. Defendants have not only provided a grant to USCCB despite its objection to  
16 provide legally required care and services to beneficiaries of this particular federal program but  
17 have also allowed USCCB to enter into subcontracts exclusively with agencies that share its  
18 religious objection to providing trafficking survivors with access to reproductive health care and  
19 to assisting same-sex couples with visas. In doing so, like their actions in the UAC program,  
20 Defendants have violated the Establishment Clause by failing to remain neutral with respect to  
21 religion in a government aid program, by allowing a government grantee to select subgrantees  
22 based on religious criteria, by subsidizing grantees’ religious beliefs to the detriment of  
23 trafficking survivors, and by underwriting religious restrictions on vital government-funded  
24 services.

25 14. Plaintiff ACLU of Northern California members include federal taxpayers, whose  
26 tax dollars finance the grants provided by Defendants to these religious organizations. Plaintiff  
27  
28

1 ACLU of Northern California seeks, among other relief, an injunction ordering Defendants to  
2 ensure that federal grants are implemented without the above-mentioned religious restrictions.

3 **JURISDICTION AND VENUE**

4 15. This action arises under the First and Fifth Amendments of the United States  
5 Constitution and presents a federal question within this Court's jurisdiction under Article III of  
6 the Constitution and 28 U.S.C. § 1331.

7 16. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C.  
8 §§ 2201 and 2202, by Federal Rules of Civil Procedure 57 and 65, and by the inherent equitable  
9 powers of this Court.

10 17. Plaintiff Jane Doe is entitled to damages based on civil rights violations  
11 committed by federal officials contrary to the Fifth and First Amendments to the United States  
12 Constitution pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

13 18. The Court has authority to award costs and attorneys' fees under 28 U.S.C. §  
14 2412.

15 19. Venue is proper in this district under 28 U.S.C. § 1391(e).

16 **INTRADISTRICT ASSIGNMENT**

17 20. This action arises in the San Francisco Division because Plaintiff ACLU of  
18 Northern California's headquarters are in San Francisco.

19 **PARTIES**

20 21. Plaintiff ACLU of Northern California is a nonprofit membership organization  
21 devoted to protecting the basic civil liberties embodied in the United States Constitution,  
22 including those religious liberties of belief and conscience safeguarded by the Establishment  
23 Clause of the First Amendment. The ACLU of Northern California is a state affiliate of the  
24 national American Civil Liberties Union and is domiciled in the State of California, with its  
25 principal place of business in San Francisco, California. Members of the ACLU of Northern  
26 California pay federal taxes into the general revenues from which Congress appropriates funds to  
27 satisfy the government's obligations to provide care to unaccompanied immigrant minors under

1 the Homeland Security Act (“HSA”) and the William Wilberforce Trafficking Victims  
2 Protection Reauthorization Act (“TVPRA”). Plaintiff and its members object to, and are injured  
3 by, the use of federal tax dollars pursuant to the HSA and the TVPRA in a manner that is non-  
4 neutral with respect to religion, subsidizes religious beliefs to which they do not subscribe, and  
5 underwrites religious restrictions on critical government-funded services.

6 22. Jane Doe came to the United States without her parents from her home country.  
7 She was detained by the federal government and placed in a federally funded shelter in Texas.  
8 Ms. Doe is pregnant, and asked the staff at the shelter where she is currently housed if she could  
9 obtain an abortion. Ms. Doe faced extreme resistance from Defendants. After Plaintiffs’ counsel  
10 contacted Defendants’ counsel, Ms. Doe was allowed to pursue a judicial bypass in lieu of  
11 securing parental consent for the abortion as required by Texas law. With the assistance of  
12 attorney and guardian ad litem, Ms. Doe secured a court order permitting her to have an  
13 abortion without parental consent. Nevertheless, Defendants have now taken the position that  
14 they will not allow Ms. Doe to access abortion. Ms. Doe was forced to cancel her appointments  
15 for state-mandated counseling and the abortion. Defendants’ obstruction of Ms. Doe’s abortion  
16 has pushed her later into pregnancy; although abortion is very safe, each week of delay increases  
17 the risks. Abortion is approximately 14 times safer than childbirth in terms of morbidity. Absent  
18 a TRO from this Court, Ms. Doe will be forced to carry to term against her will. Defendants also  
19 forced Ms. Doe to visit an anti-abortion crisis pregnancy, and over Ms. Doe’s objection,  
20 Defendants told Ms. Doe’s mother about her pregnancy. Defendants’ actions have caused, and  
21 continue to cause, Ms. Doe physical, mental, and emotional pain and suffering. Ms. Doe is  
22 proceeding under a pseudonym to protect her privacy; she fears retaliation because she has  
23 requested an abortion.

24 23. Defendant Don Wright is the Acting Secretary of the United States Department of  
25 Health and Human Services (“HHS”) and is responsible for the administration and oversight of  
26 the Department. Defendant Wright has authority over the Administration for Children and  
27 Families (“ACF”), a subdivision of HHS. By interfering with, prohibiting and/or obstructing



1 unaccompanied immigrant minors' access to abortion, Defendant Wright is violating the First  
2 and Fifth Amendment. Furthermore, by permitting USCCB and other organizations to impose  
3 their religiously based restrictions on the services unaccompanied immigrant minors and  
4 trafficking survivors can receive with taxpayer funds, and allowing USCCB to subgrant  
5 exclusively to entities that share its religious beliefs, Defendant Wright has violated the  
6 Establishment Clause. Defendant Wright and his successors are sued in their official capacities.

7 24. Defendant Steven Wagner is the Acting Assistant Secretary for ACF. Defendant  
8 Wagner has authority over ORR, a subdivision of ACF. By interfering with, prohibiting and/or  
9 obstructing unaccompanied immigrant minors' access to abortion, Defendant Wagner is  
10 violating the First and Fifth Amendment. Furthermore, by permitting USCCB and other  
11 organizations to impose their religiously based restrictions on the services unaccompanied  
12 immigrant minors and trafficking survivors can receive with taxpayer funds, and allowing  
13 USCCB to subgrant exclusively to entities that share its religious beliefs, Defendant Wagner has  
14 violated the Establishment Clause. Defendant Wagner and his successors are sued in their  
15 official capacities, and Defendant Wagner is sued in his individual capacity.

16 25. Defendant Scott Lloyd is the Director of ORR. By interfering with, prohibiting  
17 and/or obstructing unaccompanied immigrant minors' access to abortion, Defendant Lloyd is  
18 violating the First and Fifth Amendment. Furthermore, by permitting USCCB and other  
19 organizations to impose their religiously based restrictions on the services unaccompanied  
20 immigrant minors and trafficking survivors can receive with taxpayer funds, and allowing  
21 USCCB to subgrant exclusively to entities that share its religious beliefs, Defendant Lloyd has  
22 violated the Establishment Clause. Defendant Lloyd and his successors are sued in their official  
23 capacities, and Defendant Lloyd is sued in his individual capacity.

24 **FACTS GIVING RISE TO THIS ACTION**

25 **The Unaccompanied Children ("UC") Program**



26. Unaccompanied immigrant minors come into federal custody in a variety of ways.<sup>1</sup> Many of these young people are apprehended at or near the border by the United States Department of Homeland Security's Customs and Border Protection Unit ("CBP"). After their initial apprehension, these young people are held in "holding tanks" or cells maintained by CBP. After several days, they are transferred to ORR. Other unaccompanied immigrant minors are apprehended within the interior of the United States, including after contact with the juvenile justice system, or during immigration enforcement activities inside the country.

27. ORR has responsibility for the "care and custody of all unaccompanied [] children, including responsibility for their detention, where appropriate." 8 U.S.C. § 1232(b)(1). By statute, any federal department or agency that determines that it has an unaccompanied immigrant minor in its custody must transfer the minor to ORR within 72 hours of making that determination. *Id.* § 1232(b)(3). The federal government reports that in Fiscal Year 2015, 33,726 unaccompanied immigrant minors were referred to ORR.

28. The federal government and all of its programs are required to ensure that the best interests of the unaccompanied immigrant minor are protected. Section 462 of the Homeland Security Act ("HSA") requires ORR to "ensur[e] that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied child." 6 U.S.C. § 279(b)(1)(B). It also requires ORR to conduct "investigations and inspections of facilities and other entities in which unaccompanied children reside, including regular follow-up visits . . . to assess the continued suitability of such placements." *Id.* § 279(b)(1)(L).

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<sup>1</sup> By statutory definition, unaccompanied immigrant minors are under 18 years old, have no legal immigration status, and either have no parent or legal guardian in the United States, or there is no parent or legal guardian in the United States able to provide care and physical custody. 6 U.S.C. § 279(g)(2).

1           29. In addition, Section 235 of the TVPRA directs HHS to ensure that  
2 unaccompanied immigrant minors are “promptly placed in the least restrictive setting that is in  
3 the best interest of the child.” 8 U.S.C. § 1232(c)(2)(A).

4           30. Most unaccompanied immigrant minors who are referred to ORR are eventually  
5 released from custody to parents or sponsors who live in the United States. Such minors are often  
6 held in short-term facilities or shelters while they await release to their parents or sponsors. A  
7 significant number of unaccompanied immigrant minors are not released to parents or sponsors,  
8 and spend longer periods of time in custody. For some minors, ORR cannot identify an  
9 individual who can serve as a viable sponsor. Young people who are expected to be in the  
10 government’s custody for an extended period or those who have special needs are sometimes  
11 transferred to group homes or a foster family. For others, ORR may determine that the minor  
12 should be placed in a more restrictive custodial setting. Young people who are flight risks, for  
13 example, are held in jail-like facilities with limited, if any, freedom.

14           31. Unaccompanied immigrant minors in ORR’s legal custody are cared for through a  
15 network of ORR-funded facilities and shelters—including a number of religiously affiliated  
16 entities, such as USCCB subgrantees; Catholic Charities Boystown; His House; and Youth for  
17 Tomorrow.

18           32. USCCB does not provide services directly to unaccompanied immigrant minors,  
19 but instead issues subgrants to Catholic Charities and other organizations around the country that  
20 do so, including, according to documents obtained by the ACLU under the Freedom of  
21 Information Act: Bethany Christian Services (Grand Rapids, Michigan), Catholic Charities Forth  
22 Worth (Fort Worth, Texas), Catholic Charities Houston (Houston, Texas), Catholic Charities  
23 Santa Clara County (San Jose, California), Catholic Community Services Tacoma (Tacoma,  
24 Washington), Catholic Family Center (Rochester, New York), and Commonwealth Catholic  
25 Charities (Richmond, Virginia).

26 **Unaccompanied Immigrant Minors Are Legally Entitled to Receive Access to Reproductive**  
27 **Health Care**

1           33. Unaccompanied immigrant minors have an acute need for reproductive health  
2 care, which is both time-sensitive and is needed over the course of their time in federal custody.  
3 For example, a high number of these young women are victims of sexual assault. Some of these  
4 women will need access to emergency contraception, and some will need access to abortion. Any  
5 female aged 10 or older must undergo a pregnancy test within 48 hours of admission to an ORR-  
6 funded facility. This is the point at which many young women first learn they are pregnant.  
7 Many unaccompanied minors need pregnancy prevention services and/or access to abortion  
8 during their short or long periods in ORR custody.

9           34. The federal government is legally obligated to ensure that all programs that  
10 provide care to these young people comply with the minimum requirements detailed in the  
11 *Flores v. Reno* Settlement Agreement, CV-85-4544-RJK (Jan. 17, 1997) (“*Flores* agreement”).  
12 The *Flores* agreement requires the government to provide or arrange for, among other things,  
13 “appropriate routine medical . . . care,” including specifically “family planning services[] and  
14 emergency health care services.”

15           35. Additionally, in response to its obligations under the Prison Rape Elimination Act  
16 (“PREA”) and the Violence Against Women Reauthorization Act of 2013 (“VAWA 2013”),  
17 ORR issued a regulation requiring all ORR-funded care provider facilities to, among other  
18 things, provide unaccompanied immigrant minors who are victims of sexual assault with access  
19 to reproductive healthcare. The regulation states, in relevant part, that grantees providing care to  
20 unaccompanied immigrant minors who have experienced sexual abuse while in federal custody  
21 must ensure “unimpeded access to emergency medical treatment, crisis intervention services,  
22 emergency contraception, and sexually transmitted infections prophylaxis.” 45 C.F.R. §  
23 411.92(a). The regulation further provides that grantees must ensure that a young person subject  
24 to sexual abuse is offered a pregnancy test, and “[i]f pregnancy results from an instance of sexual  
25 abuse, [the] care provider facility must ensure that the victim receives timely and comprehensive  
26 information about all lawful pregnancy-related medical services.” *Id.* § 411.93(d). Grantees were  
27 required to comply with this regulation by June 24, 2015.

36. Upon information and belief, unaccompanied immigrant minors face significant barriers to obtaining services not provided by the government and/or its grantees. For example, even if a teen can leave the shelter, she still may not be able to obtain access to abortion or contraceptives without assistance because she likely speaks little or no English; she may have no support system, other than that provided by the federal program; she may have no means of transportation to the doctor's office; and she may have little or no financial resources. If she is not informed that contraceptives and abortions are available in the United States, she may not even know that these options exist, given that many of these young people come from countries where abortion is illegal.

**Defendants' Interference With, Obstruction, or Prohibition On Unaccompanied Immigrant Minors' Access to Abortion**

37. Defendants are wielding an unconstitutional veto power over unaccompanied immigrant minors' access to abortion. In March 2017, ORR revised its policies to prohibit all federally funded shelters from taking "any action that facilitates" abortion access for unaccompanied minors in their care without "direction and approval from the Director of ORR." This includes scheduling appointments with medical providers, ensuring access to non-directive options counseling, ensuring access to court to seek a judicial bypass in lieu of parental consent, and providing access to the abortion itself.

38. In an email to all ORR staff, then-Acting Director of ORR Ken Tota summarized the policy: "Grantees are prohibited from taking any actions in [requests for abortion] without . . . signed authorization from the Director of ORR."

39. Defendants have exercised its unconstitutional veto power to deny Jane Doe access to abortion. After Plaintiffs' counsel's intervention, Defendants permitted Jane Doe to seek a judicial bypass in lieu of parental consent required by Texas law. Ms. Doe secured that court order with the assistance of an attorney ad litem and a guardian ad litem. Ms. Doe had an appointment scheduled with a health center for options counseling, but Defendants refused to transport, or allow Ms. Doe to be transported by her ad litem, to the health center. Defendants

1 also made clear that Ms. Doe would be prohibited from obtaining the abortion itself. Upon  
2 information and belief, Stephen Wagner and/or Scott Lloyd personally authorized ORR to block  
3 Ms. Doe's access to abortion.

4 40. Defendants have also interfered with abortion access for other minors. In fact, the  
5 Director of ORR, Scott Lloyd, has taken the position that "[g]rantees should not be supporting  
6 abortion services pre or post-release; only pregnancy services and life-affirming options  
7 counseling."

8 41. In March 2017, an unaccompanied minor at a federally funded shelter in Texas  
9 decided to have an abortion. After obtaining a judicial bypass and receiving counseling, she  
10 started the medical abortion regimen for terminating a pregnancy. This regimen begins with a  
11 dose of mifepristone, followed by a dose of misoprostol within 48 hours later. After the minor  
12 took the mifepristone, ORR intervened, and forced her to go to an "emergency room of a local  
13 hospital in order to determine the health status of [her] and her unborn child." The Acting  
14 Director of ORR, Ken Tota, directed ORR as follows: "[i]f steps can be taken to preserve the  
15 life of . . . her unborn child, those steps should be taken." Eventually, after the intervention of  
16 other advocates, ORR allowed the minor to complete the medication abortion and take the  
17 second dose of pills.

18 42. Furthermore, Defendant ORR Director, Scott Lloyd, has personally contacted one  
19 or more unaccompanied immigrant minors who was pregnant and seeking abortion, and  
20 discussed with them their decision to have an abortion. Upon information and belief, Defendant  
21 Lloyd is trying to use his position of power to coerce minors to carry their pregnancies to term.

22 43. ORR has also created a nationwide list of "Trusted Providers in HHS Cities,"  
23 which is predominately comprised of anti-abortion crisis pregnancy centers. Crisis pregnancy  
24 centers (CPCs) are categorically opposed to abortion, and generally do not provide information  
25 about pregnancy options in a neutral way. Many are also religiously affiliated, and proselytize to  
26 women. Defendants forced Jane Doe to visit one of these centers for "counseling," forcing her to  
27 divulge her most private personal and medical information to an entity that is hostile to her

1 decision to have an abortion. Defendants have also required other minors to be counseled by  
2 crisis pregnancy centers, including at the explicit direction of Defendant ORR Director Scott  
3 Lloyd. Such “counseling” infringes on unaccompanied minors’ informational privacy rights and  
4 free speech rights.

5 44. Defendants have also unconstitutionally forced unaccompanied immigrant minors  
6 to tell parents and/or immigration sponsors about their abortion decision, or Defendants  
7 themselves has told minors’ family members or sponsors about the minors’ pregnancy and/or  
8 abortion decision, against the express wishes of the minor. Indeed, Defendants told Ms. Doe’s  
9 mother about Ms. Doe’s pregnancy – over Ms. Doe’s objections – and are trying to force Ms.  
10 Doe to also tell her mother she is pregnant and seeking an abortion. In another minor’s case,  
11 Defendant Lloyd explicitly required “the grantee or the federal field staff [to] notify her parents  
12 of the termination,” even after she had obtained a judicial bypass to be allowed to access  
13 abortion without her parents’ involvement or knowledge.

14 **ORR Authorizes Grantees’ Religious Restrictions on Young Women’s Access to Abortion**  
15 **and Contraception**

16 45. Defendants knowingly permit religiously affiliated grantees with religious  
17 objections to abortion and contraception to impose restrictions on unaccompanied immigrant  
18 minors’ access to these forms of reproductive healthcare. In so doing, Defendants allow these  
19 grantees to flout *Flores*, the PREA/VAWA regulation, and their obligations under the HSA,  
20 including by: allowing objecting programs to refuse to provide young women in their care with  
21 information about, referrals for, or access to contraception, abortion, and, upon information and  
22 belief, possibly the human papillomavirus (HPV) vaccine; transferring young women who seek  
23 access to contraception or abortion out of objecting programs; and refusing to place young  
24 women who are seeking access to emergency contraception or abortion in objecting programs,  
25 even if that placement would otherwise be in the young woman’s best interest.

1           46.     For example, Defendants altered the language used in its cooperative agreements  
2 with UC program grantees in response to USCCB's objection to providing access to reproductive  
3 health care.

4           47.     In early 2011, ORR included specific family-planning language in its cooperative  
5 agreements. Among other things, these agreements stated: "Family planning services are already  
6 required by the Flores settlement agreement, and therefore this cooperative agreement . . . . The  
7 grantees will refer female [unaccompanied immigrant minors] to medical care providers who can  
8 provide a broad range of acceptable and effective medically approved family planning methods  
9 and services. The grantees will refer female [unaccompanied immigrant minors] to medical care  
10 providers who offer pregnant [unaccompanied immigrant minors] the opportunity to be provided  
11 information and counseling regarding prenatal care and delivery; infant care, foster care, or  
12 adoption; and pregnancy termination."

13           48.     ORR removed this language based on USCCB's objection to the contraception  
14 and abortion requirements.

15           49.     In fact, USCCB has made quite clear that they refuse to provide access to these  
16 reproductive healthcare services for the young people in their care. In response to ORR's  
17 PREA/VAWA regulation requiring access to reproductive health care for unaccompanied  
18 immigrant minors who are subject to sexual assault, USCCB issued a public letter stating that it  
19 cannot "help ensure access" to any medical care that is contrary to its religious beliefs. In other  
20 words, USCCB said that it should be free "from any requirement to provide, facilitate the  
21 provision of, provide information about, or refer or arrange for items or procedures to which they  
22 have a religious or moral objection." This includes freedom from notifying the federal  
23 government that a minor in their care is seeking an abortion, even in cases of rape in federal  
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1 custody, so that the federal government could step in and provide the minor with access to  
2 abortion.<sup>2</sup>

3 50. Defendants also allow USCCB to prohibit its subgrantees from providing  
4 information about or access to contraception and abortion. USCCB's cooperative agreements  
5 with individual Catholic Charities and other subgrantees, which are provided to ORR, explicitly  
6 state that subgrantees "must ensure that services provided to those served under this Agreement  
7 are not contrary to the authentic teaching of the Catholic Church, its moral convictions, and  
8 religious beliefs. Accordingly, [USCCB] expects that the Sub-recipient will provide services  
9 under this Agreement within certain parameters including, among other things, that the Sub-  
10 recipient will not provide, refer, encourage, or in any way facilitate access to contraceptives or  
11 abortion services."

12 51. Defendants have likewise approved grant applications for religiously affiliated  
13 grantees, including individual Catholic Charities, even though the grant applications explicitly  
14 state that the grantees will not provide family planning information or services to the young  
15 people in their care.

16 52. For example, in a 2014–2015 direct grant application, the Catholic Charities of  
17 the Archdiocese of Galveston-Houston stated: "Due to our religiously-affiliated institution's  
18 philosophy and policies, family planning practices are not discussed with clients. Clients are  
19 encouraged to practice abstinence." The grant application further provided that, "[i]n cases where  
20 the pregnancy has been the result of a rape, the Clinician and Pregnancy Support Specialist work  
21

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22 <sup>2</sup> In the preamble to its regulation, ORR stated that organizations that refuse to provide or refer  
23 for certain services could serve as subgrantees or as members of a consortium of service  
24 providers, so that other organizations without religious objections could provide unaccompanied  
25 immigrant minors with the required services. Alternatively, ORR stated that a grantee may notify  
26 federal officials if a young person in its care requires services to which the grantee objects, and  
27 that ORR would then either provide the services itself or transfer the young person to a grantee  
28 willing to provide the required services. USCCB has even objected to this accommodation.

1 to preserve confidentiality, helping clients process the trauma of the rape while also exploring  
2 the decision of whether to keep the baby or plan an adoption.”

3 53. Upon information and belief, Defendants approved the Archdiocese of Galveston-  
4 Houston’s grant application, without comment or modification. The Archdiocese of Galveston-  
5 Houston received more than \$8 million in federal taxpayer funds for the care of unaccompanied  
6 immigrant minors between November 1, 2013, and September 30, 2016, despite its explicit  
7 refusal to provide the young people in its charge with legally required access to reproductive  
8 healthcare.

9 54. Finally, Defendants facilitate the ostracization of young women who have  
10 accessed or seek to access abortion. At grantees’ request, Defendants have transferred several  
11 young women who requested access to abortion to other providers. Such transfers delay the  
12 young person’s access to the requested healthcare, unfairly stigmatize her for choosing to  
13 terminate the pregnancy, and uproot her from the support network developed at her initial  
14 placement, including friends, social workers, mental and physical health professionals, teachers,  
15 and lawyers assisting with asylum or deportation proceedings.

16 55. In other cases, Defendants have made decisions about where to initially place a  
17 young person based on whether she had an abortion or is seeking an abortion. In those situations,  
18 Defendants are allowing religiously affiliated programs to prevent them from making a  
19 placement in the young person’s best interest. Thus, a young woman who has requested an  
20 abortion may be forced into a program that is already operating at capacity, far from any family  
21 members she has in the United States, and/or far from the reproductive health care clinic  
22 performing her procedure.

23 56. The individual stories of these young women confirm the detrimental effects of  
24 religiously based restrictions on access to reproductive health care.<sup>3</sup>

25 <sup>3</sup> Pursuant to a Freedom of Information Act request filed by the American Civil Liberties Union,  
26 Plaintiff has obtained a number of documents and emails describing the experiences young  
27 women who have requested access to abortion while in ORR custody. Working from those

Rosa

57. Rosa, a 17-year-old, left her home country for the United States in 2014. She was raped during her journey by one of her “guides” in Mexico.

58. Rosa learned that she was pregnant while in ORR custody at Catholic Charities in Miami, Florida. She was distraught by the possibility of being denied an abortion, and said that if she could not get an abortion, she would kill herself. As a result, she was hospitalized for suicidal ideation.

59. When Rosa was going to be released from the hospital, the Catholic Charities facility refused to allow her back into the program because she was seeking an abortion. Another religiously affiliated ORR grantee, His House, also refused to accept her for the same reason.

60. Rosa was ultimately transferred to another facility, but even after she was transferred, one of her clinicians at her new facility reported that Rosa was “anxious and preoccupied with this abortion and when it will happen,” and that the issue had become urgent because she “might start to inflict trauma to the fetus or herself.”

61. ORR ultimately approved the request for federal funding of Rosa’s abortion, and she was able to obtain the abortion.

Maria

62. Maria was 14 years old when she fled from her home country in 2014. She had been living there with her aunt, while her parents were in the United States. She was physically abused by her maternal grandmother, and had been threatened with physical discipline by her parents when they lived with her.

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documents, Plaintiff has pieced together several individual narratives, which are described below. These narratives are based on information and belief. The names used here are pseudonyms.

1           63.     After entering the United States, Maria was placed with an ORR shelter in Texas.  
2     At a doctor's visit, Maria discovered she was pregnant—likely because of the rape she  
3     experienced on her journey to the United States.

4           64.     An email from an ORR official indicates that the agency had looked into the  
5     possibility of transferring Maria to Florida, to be near her family, but was unable to do so  
6     because “both of the shelters in Florida are faith-based and will not take the child to have this  
7     procedure.” Another ORR email cautions that Maria's post-release social worker should not  
8     work for a “religion-based agency” because of the abortion.

9                                 Laura

10          65.     Laura, a 17-year-old placed at a short term shelter in Texas, was 17–18 weeks  
11     pregnant and seeking an abortion. Because Laura was swiftly approaching her 20th week of  
12     pregnancy, after which abortion is illegal in Texas, ORR was looking to transfer her to another  
13     program. ORR sought to place her somewhere on the East Coast, so she could be near her  
14     brothers and sisters. One ORR official raised the possibility of transferring her to Youth for  
15     Tomorrow (“YFT”), a faith-based program in Virginia. Another official rejected this possibility,  
16     stating: “YFT would be unable to take this youth. YFT is a religious organization and is pro-life.  
17     I just had a UAC who requested that she wanted to terminate her pregnancy and I had to transfer  
18     her due to YFT position on abortion.”

19                                 Zoe

20          66.     Zoe left her home country in January 2015, when she was roughly 16-years-old.  
21     She was apprehended near the U.S. border, and she was placed in the YFT program in Virginia  
22     in early 2015.

23          67.     Zoe's initial physical examination revealed that she was pregnant. Zoe told her  
24     doctor that she wanted to have an abortion. After expressing her desire to terminate the  
25     pregnancy multiple times for nearly two weeks, she finally received counseling. After the  
26     counseling session, she reiterated her desire for an abortion.

1           68.     Although Zoe was thriving at YFT, YFT asked ORR to transfer Zoe to another  
2 program where she would be permitted to terminate her pregnancy.

3                                   **Defendants' Trafficking Program**

4           69.     It is estimated that more than 14,000 individuals are trafficked into the United  
5 States each year. Human trafficking is a form of modern-day slavery, in which individuals are  
6 recruited or obtained through force or coercion and then made to labor against their will. Many  
7 women who are trafficked are raped by traffickers or acquaintances of traffickers. As a result,  
8 some women who have been trafficked experience unintended pregnancy and are at risk for  
9 sexually transmitted infection. Victims of severe forms of human trafficking frequently need  
10 reproductive health care services and referrals to lead safe lives, become self-sufficient, and  
11 protect themselves and others. These services include emergency contraception, condoms, and in  
12 some cases abortion.

13          70.     Congress passed the Trafficking Victims Protection Act, and subsequently the  
14 TVPRA, to combat human trafficking and expand benefits and services for those who are  
15 trafficked into the United States from other countries. Under the TVPA, Defendants are charged  
16 with providing an array of services to these individuals once they escape their traffickers,  
17 including medical services, to help them become self-sufficient. The TVPRA specifies that  
18 trafficking victims must receive the same level of benefits and services as refugees, which  
19 includes contraception, and in limited circumstances abortion.

20          71.     Rather than provide services directly to trafficking survivors, Defendants give  
21 grants to non-profit organizations to do so. Trafficking victims often do not know where to  
22 access medical care, and often do not speak English. As a result, trafficking victims rely on case  
23 managers at the non-profit that is assisting them to help them navigate an array of services,  
24 including by providing information, referrals, and transportation to these services. If case  
25 managers do not provide information about services, trafficking survivors may not understand  
26 the scope of medical care they are entitled to; and if case managers do not provide referrals and  
27 access to medical care, many trafficking survivors will not be able to access that care.

1           72.     Nevertheless, in 2006, Defendants provided a multi-year, multi-million dollar  
2 contract to USCCB to distribute as subcontracts to organizations that directly serve trafficked  
3 individuals. In that contract, Defendant permitted USCCB to prohibit all subcontractors from  
4 using federal funds to pay for abortion and contraception services and referrals, even though  
5 trafficking survivors are legally entitled to receive those services.

6           73.     The ACLU of Massachusetts brought a court challenge, and in 2012 a federal  
7 district court held that Defendants' contract with USCCB violated the Establishment Clause.

8           74.     During the course of litigation, ORR issued a new Funding Opportunity  
9 Announcement ("FOA"), which made clear that trafficking victims need reproductive health  
10 services and referrals. ORR selected three organizations to receive grants under the new FOA  
11 that would provide those reproductive health services and referrals. USCCB was not among the  
12 recipients.

13           75.     On appeal, ORR maintained that the expiration of its contract with USCCB  
14 rendered the case moot, in part because "it is completely speculative whether USCCB will  
15 receive any future contract award similar to the one plaintiff challenges here." The U.S. Court of  
16 Appeals for the First Circuit accepted this argument, concluding that "we can safely assume that  
17 for the foreseeable future the challenged contract terms will not recur." The court gave particular  
18 weight "to the fact that the defendants are high-ranking federal officials, including a cabinet  
19 member, who have, as a matter of policy, abandoned the prior practice and adopted a concededly  
20 constitutional replacement."

21           76.     In 2015, ORR issued a Funding Opportunity Announcement, HHS-2015-ACF-  
22 ORR-ZV-0976, stating that "it will accept competing applications for cooperative agreements to  
23 administer the Trafficking Victim Assistance Program (TVAP)."

24           77.     The FOA sought to fund organizations to provide "comprehensive case  
25 management" to trafficking survivors, including providing access to "medical care, including  
26 treatment for sexually transmitted infections, family planning services and the full range of  
27  
28

1 legally permissible gynecological and obstetric care, including but not limited to exams, tests,  
2 pre-natal services and non-directive health-related counseling.”

3 78. The FOA explicitly addressed potential religious objections to the Trafficking  
4 Victim Assistance Program’s service and referral requirements. It states: “If an organization has  
5 a religious objection to providing any of the services or referrals required in the program, it may  
6 propose an approach to meeting its grant obligations consistent with ACF’s faith-based policy.  
7 The alternative approach must be one that accomplishes the goal of ensuring that trafficking  
8 victims understand the full range of services available to them, including reproductive health  
9 services, and that there is a mechanism by which victims requesting such services can receive  
10 appropriate referrals. If an alternative approach is proposed, ORR will decide whether to accept  
11 the alternative approach, based upon a determination of whether the alternative approach will  
12 ensure timely referrals to all services and/or referrals for which the individual is eligible, is not  
13 burdensome to the client, and is operationally feasible for ACF.”

14 79. Despite Defendants’ representations in the *ACLU of Massachusetts* litigation, in  
15 2013, Defendants awarded USCCB a \$2 million dollar grant in September 2015, and, upon  
16 information and belief, another \$2 million dollar grant in September 2016. Upon information and  
17 belief, USCCB is the primary grantee to serve trafficking survivors in two regions of the country,  
18 which include Delaware, Washington, D.C., Maryland, Pennsylvania, Virginia, West Virginia,  
19 Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. Two other organizations also  
20 received grants to provide services, primarily in other parts of the country.

21 80. Upon information and belief, the Cooperative Agreement between USCCB and  
22 Defendants requires USCCB to “adhere to all requirements in the FOA,” and states that there  
23 must be “a mechanism by which victims requesting [reproductive health] services can receive  
24 appropriate referrals” in a timely manner that is not burdensome to the client and is operationally  
25 feasible for Defendants.

26 81. Upon information and belief, in the process of negotiating its contract with  
27 Defendants, USCCB sent an email to ACF staff stating: “we concur that we would not impose  
28



our religious objections on subrecipients but rather would enter into agreements with subrecipients that share our religious objection and that would elect to refrain from facilitating or referring for those specific services.” Another email confirms that all of USCCB’s subrecipients have made clear their “intention to administer” the program “in alignment with Catholic teaching.” USCCB would not subcontract with an entity that did not share its religious opposition to providing access to certain forms of reproductive health care. If a subcontractor was unable to meet a client’s needs due to a religious objection, USCCB would possibly transfer the client to another grantee.

82. Upon information and belief, USCCB’s subrecipients provide a brochure to trafficking survivors that says: “This grantee (USCCB) is affiliated with the Catholic Church, which has moral and religious objections to direct sterilizations, contraception, and abortion. You are free to discuss all health matters with your medical provider.”

#### **Congressional Knowledge of ORR’s Grants to Religiously Affiliated Entities**

83. Congress is aware that ORR is providing HSA and TVPRA funds to religiously affiliated entities. For example, on June 25, 2014, Bishop Mark Seitz testified before the House Judiciary Committee regarding USCCB’s participation in ORR’s program for the care of unaccompanied children. In his testimony, Bishop Seitz recommended on behalf of USCCB that “Congress appropriate \$2.28 billion in Fiscal Year 2015 for care of unaccompanied children, consistent with the Administration’s request.” Bishop Seitz also stated that “[a]ny funding should be administered in a manner that respects the religious liberty and conscience rights of organizations providing this care.” *Hearing on Unaccompanied Children: H. Comm. on the Judiciary*, 113th Cong. 40 (2014) (statement of Rev. Mark Seitz, USCCB).<sup>4</sup> Similarly, on February 4, 2016, USCCB’s Associate Director of Children’s Services submitted testimony to the House Judiciary Subcommittee on Immigration and Border Security explaining that USCCB provides “short-term and long-term foster care to unaccompanied children in HHS/ORR

<sup>4</sup> Available at <https://judiciary.house.gov/wp-content/uploads/2016/02/113-84-88437.pdf>.

1 custody,” including “medical and mental health screening and care,” though “cooperative  
 2 agreements with HHS/ORR.” Kristyn Peck, Associate Director of Children’s Services (USCCB),  
 3 *Testimony for the Record Before the H. Subcomm. on Immigration and Border Security of the H.*  
 4 *Judiciary Comm.*, 114 Cong. 117 (Feb. 4, 2016).<sup>5</sup>

5 84. A recent report by the Senate’s Permanent Subcommittee on Investigations on  
 6 ORR’s role in protecting unaccompanied immigrant minors states: “HHS’s [UC] program  
 7 functions through grants and contracts with a number of private care providers and other third  
 8 parties who perform daily tasks associated with [UC] placement. Those functions include  
 9 running shelters for children who have not yet been placed with sponsors, identifying and  
 10 screening potential sponsors, evaluating homes in which children will be placed, making release  
 11 recommendations to HHS, and providing post-release services to children. HHS awarded 56  
 12 grants to over 30 care providers for the [UC] program in FY 2016, including . . . the U.S.  
 13 Conference of Catholic Bishops.” Staff of S. Permanent Subcomm. on Investigations of the S.  
 14 Comm. on Homeland Security & Governmental Affairs, *Protecting Unaccompanied Alien*  
 15 *Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement*  
 16 (2016).<sup>6</sup>

17 85. In 2011, Congress held hearings on Defendants’ trafficking program, and whether  
 18 USCCB should have been awarded a contract to provide care to trafficking victims even though  
 19 it refuses to allow subrecipients to refer for abortion and contraceptives. *See, e.g.*, Verbatim  
 20 Transcript, *Rep. Darrell Issa Holds a Hearing on HHS Grant Denial for U.S. Conference of*  
 21 *Catholic Bishops*, Roll Call, Inc., Dec. 14, 2011, 2011 WL 6254061; *HHS and the Catholic*

23  
 24 <sup>5</sup> Available at <http://docs.house.gov/meetings/JU/JU01/20160204/104402/HHRG-114-JU01-20160204-SD001.pdf>.

25 <sup>6</sup> Available at [http://www.hsgac.senate.gov/subcommittees/investigations/hearings/adequacy-of-](http://www.hsgac.senate.gov/subcommittees/investigations/hearings/adequacy-of-the-department-of-health-and-human-services-efforts-to-protect-unaccompanied-alien-children-from-human-trafficking)  
 26 [the-department-of-health-and-human-services-efforts-to-protect-unaccompanied-alien-children-](http://www.hsgac.senate.gov/subcommittees/investigations/hearings/adequacy-of-the-department-of-health-and-human-services-efforts-to-protect-unaccompanied-alien-children-from-human-trafficking)  
 27 [from-human-trafficking](http://www.hsgac.senate.gov/subcommittees/investigations/hearings/adequacy-of-the-department-of-health-and-human-services-efforts-to-protect-unaccompanied-alien-children-from-human-trafficking).

1 *Church: Examining the Politicization of Grants Hearing Before the Comm. on Oversight and*  
2 *Gov't Reform*, H.R., 112th Cong. 112-124 (2011).<sup>7</sup>

3 86. The Attorney General's Annual Report to Congress and Assessment of U.S.  
4 Government Activities to Combat Trafficking in Persons for Fiscal Year 2015 includes a  
5 description of the trafficking grant provided to USCCB on September 30, 2015, including the  
6 fact that "USCCB expressed its plan to have subcontracts with certain services providers."<sup>8</sup>

7 87. In the Consolidated Appropriations Act, 2016, Pub. L No. 114-113, Congress  
8 appropriated nearly \$1.6 billion for ORR's Refugee and Entrant Assistance Programs in FY2016,  
9 including "for carrying out" the government's obligations under the TVPA, Section 462 of the  
10 HSA, and Section 235 of the TVPRA.

11 **CLASS ALLEGATIONS**

12 88. Pursuant to Federal Rule of Civil Procedure 23(b)(1) and (b)(2), Plaintiff Jane  
13 Doe brings this action as a class on her own behalf and on behalf of all the other pregnant  
14 unaccompanied immigrant minors nationwide.

15 89. The class is so numerous that joinder is impracticable. In any given year, there are  
16 hundreds of pregnant UCs in defendants' custody. Joinder is inherently impractical because  
17 unnamed, future class members who will be pregnant while in ORR custody is unknown and  
18 unknowable, especially given the transient nature of the UC population and the temporal  
19 limitations of pregnancy. The young people affected by ORR's abortion restriction policy are  
20 geographically dispersed across the country. Proposed class members are highly unlikely to file  
21 individual suits on their own behalf given the practical, legal, linguistic, monetary, and fear-

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23  
24  
25 <sup>7</sup> Available at <https://www.gpo.gov/fdsys/pkg/CHRG-112hrg73939/pdf/CHRG-112hrg73939.pdf>.

26 <sup>8</sup> Available at <https://www.justice.gov/ag/file870826/download>.

1 based barriers at work to prevent their ability to access independent counsel to challenge ORR's  
2 abortion restrictions.

3 90. The claims of the Plaintiff Class members share common issues of law, including  
4 but not limited to whether ORR's policy of holding and exercising a veto power over a UC's  
5 abortion access, whether HHS's policy of requiring a forced visit to an anti-abortion crisis  
6 pregnancy center, whether disclosing – or forcing the minor to disclose - to parents or  
7 immigration sponsor her abortion decision, and/or whether preventing access to an abortion  
8 provider violates the Constitution.  
9

10 91. The claims of the Plaintiff Class members share common issues of fact, including  
11 but not limited to Defendants' policy and practice of obstructing or preventing of access to  
12 abortion in the various ways detailed above.

13 92. The claims or defenses of the named Plaintiff are typical of the claims or defenses  
14 of members of the Plaintiff Classes.  
15

16 93. The named Plaintiff will fairly and adequately protect the interests of the Plaintiff  
17 Classes. The named Plaintiff has no interest that is now or may be potentially antagonistic to the  
18 interests of the Plaintiff Classes. The attorneys representing the named Plaintiff are experienced  
19 civil rights attorneys and are considered able practitioners in federal constitutional litigation.  
20 These attorneys should be appointed as class counsel.

21 94. Defendants have acted, have threatened to act, and will act on grounds generally  
22 applicable to the Plaintiff Class, thereby making final injunctive and declaratory relief  
23 appropriate to the class as a whole. The Plaintiff Class may therefore be properly certified under  
24 Fed. R. Civ. P. 23(b)(2).  
25

26 95. Prosecution of separate actions by individual members of the Plaintiff Class  
27 would create the risk of inconsistent or varying adjudications and would establish incompatible  
28

standards of conduct for individual members of the Plaintiff Class. The Plaintiff Class may be therefore properly certified under Fed. R. Civ. P. 23(b)(1).

### **CAUSES OF ACTION**

#### **COUNT ONE FIFTH AMENDMENT RIGHT TO PRIVACY AND LIBERTY (PLAINTIFF JANE DOE AND CLASS AGAINST DEFENDANTS)**

96. Plaintiffs realleges and incorporates by reference the allegations contained in paragraphs 1 through 95.

97. Defendants violate unaccompanied immigrants minors' right to privacy guaranteed by the Fifth Amendment by wielding a veto power over their abortion decision, and obstructing, interfering with, or blocking access to abortion, including forcing the minor to visit a crisis pregnancy center.

98. Defendants violate the Fifth Amendment by revealing, or forcing the minor to reveal, information about the abortion to the minors' parents or other family members.

#### **COUNT TWO FREEDOM OF SPEECH (PLAINTIFF JANE DOE AND CLASS AGAINST DEFENDANTS)**

99. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 98,

100. By compelling unaccompanied immigrant minors to discuss their decision to have an abortion and the circumstances surrounding that decision with a crisis pregnancy center, Defendants violate unaccompanied immigrant minors' right against compelled speech guaranteed by the First Amendment.

#### **COUNT THREE INFORMATIONAL PRIVACY (PLAINTIFF JANE DOE AND CLASS AGAINST DEFENDANTS)**

101. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 100.

102. By requiring unaccompanied immigrant minors to disclosure their identities, and decision to seek an abortion, to a crisis pregnancy center, parents, and/or immigration sponsors, Defendants violate the minors' right to informational privacy guaranteed by the Fifth Amendment.

**COUNT FOUR**  
**FIFTH AND FIRST AMENDMENT AND *BIVENS***  
**(PLAINTIFF JANE DOE AGAINST DEFENDANTS WAGNER AND LLOYD)**

103. Plaintiff Jane Doe realleges and incorporates by reference the allegations contained in paragraphs 1 through 102.

104. Defendants Wagner and/or Lloyd acted intentionally and unlawfully in violating Plaintiff Jane Doe's clearly established rights under the Fifth and First Amendment by vetoing her abortion decision and blocking her ability to obtain an abortion, and otherwise obstructing, interfering with access to abortion, including forcing Jane Doe to visit a crisis pregnancy center, telling Jane Doe's mother about her pregnancy, and attempting to force Jane Doe to discuss her pregnancy and abortion decision with her mother.

105. Defendants Wagner and Lloyd acted with reckless indifference or callous disregard for Jane Doe's Fifth and First Amendment rights, thus entitling her to punitive damages.

106. These violations, committed by Defendants' employees, are redressable under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

**COUNT FIVE**  
**FIRST AMENDMENT – ESTABLISHMENT CLAUSE**  
**(ALL PLAINTIFFS AGAINST DEFENDANTS)**

107. Plaintiffs reallege and incorporates by reference, as if fully set forth herein, the allegations of paragraphs 1 through 106.

108. Defendants have violated and continue to violate the Establishment Clause of the First Amendment by permitting USCCB and its subgrantees (such as Catholic Charities), His House, Youth for Tomorrow, and similar organizations to impose religiously based restrictions on the use of taxpayer funds.

109. Defendants also violate the Establishment Clause by requiring unaccompanied immigrant minors to obtain counseling at crisis pregnancy centers that are often religiously affiliated, and that proselytize.

110. Defendants' actions alleged herein disburse taxpayer funds in a manner that is not neutral with respect to religion.

111. Defendants' actions alleged herein have the predominant effect of advancing a particular set of religious beliefs.

112. Defendants' actions alleged herein endorse a particular set of religious beliefs.

113. Defendants' actions alleged herein coerce Plaintiff and its members into supporting and subsidizing a particular set of religious beliefs.

114. Defendants' actions alleged herein have the predominant purpose of advancing a particular set of religious beliefs.

**RELIEF REQUESTED**

WHEREFORE, Plaintiffs respectfully requests that the Court enter judgment in their favor and:

1. Declare, pursuant to 28 U.S.C. § 2201, that Defendants' actions, as set forth above, violate the Establishment and Free Speech Clauses of the First Amendment to the United



1 States Constitution, and the Fifth Amendment right to privacy, liberty, and informational  
2 privacy;

3 2. Enter a permanent injunction ordering Defendants to ensure that the HSA and  
4 TVPRA grants are implemented without the imposition of religiously based restrictions;

5 3. Enter a permanent injunction preventing Defendants from wielding a veto power  
6 over an unaccompanied minors' abortion decision, including interfering, obstructing, or blocking  
7 her abortion;

8 4. Enter a permanent injunction preventing Defendants from forcing unaccompanied  
9 immigrant minors from visiting a crisis pregnancy center as a condition of having an abortion or  
10 after an abortion;

11 5. Enter a permanent injunction preventing Defendants from revealing, or forcing  
12 unaccompanied immigrant minors to reveal, to the minors' parents or immigration sponsors  
13 information about the minors' abortion decision, either prior to or after the abortion decision;

14 6. Award damages compensatory and punitive damages against Defendants Wagner  
15 and Lloyd in an amount to be determined at trial;

16 7. Award costs and fees for this action, including attorneys' fees;

17 8. Award such further relief as this Court deems appropriate.  
18

19 DATED: October 5, 2017  
20 ACLU FOUNDATION OF NORTHERN  
21 CALIFORNIA, INC.

22 By: /s/ Brigitte Amiri  
23 Brigitte Amiri  
24 Attorneys for Plaintiff  
25  
26  
27  
28