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20 *Attorneys for Plaintiff*  
21 [ADDITIONAL COUNSEL ON FOLLOWING PAGE]

22  
23 **UNITED STATES DISTRICT COURT**  
24 **NORTHERN DISTRICT OF CALIFORNIA**  
25 **SAN FRANCISCO DIVISION**

26 AMERICAN CIVIL LIBERTIES UNION OF )  
27 NORTHERN CALIFORNIA, )  
28 )  
29 Plaintiff, )

30 v. )

31 SYLVIA MATHEWS BURWELL, Secretary )  
32 of Health and Human Services; MARK )  
33 GREENBERG, Acting Assistant Secretary for )  
34 Administration for Children and Families; )  
35 ROBERT CAREY, Director of Office of )  
36 Refugee Resettlement, in their official )  
37 capacities, )  
38 )  
39 Defendants. )

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

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR LEAVE TO FILE  
AMENDED COMPLAINT**

Date: March 9, 2017  
Time: 9:30 a.m.  
Location: Courtroom C  
Judge: Hon. Laurel Beeler

1 MELISSA GOODMAN (SBN 289464)  
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15 *Attorneys for Plaintiff*

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**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 9, 2017, at 9:30 a.m. or as soon thereafter as it may be heard before the Honorable Laurel Beeler of the United States District Court for the Northern District of California, Plaintiff will, and hereby does, move the Court pursuant to Federal Rule of Civil Procedure 15(a)(2), for leave to file an Amended Complaint. This motion is based on the Memorandum of Points and Authorities submitted herewith, all pleadings and filings filed in this action, and such oral arguments and evidence as may be presented at the hearing on the motion.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff moves for leave to file an Amended Complaint to allege newly discovered facts  
4 regarding Defendants' authorization of religious restrictions on government-provided services to  
5 survivors of human trafficking. Defendants do not object to Plaintiff's motion to file the  
6 proposed Amended Complaint, attached as Exhibit A.

7 After Plaintiff filed its initial complaint, it received information pursuant to a Freedom of  
8 Information Act (FOIA) lawsuit indicating Defendants provided a grant to the U.S. Conference  
9 of Catholic Bishops (USCCB), and allowed USCCB to impose restrictions on reproductive  
10 health care provided to human trafficking victims, and to make subgrants only to organizations  
11 that shared their religious opposition to certain reproductive health care. The authorizing statutes  
12 and sources of federal funding for Defendants' human trafficking victims program are  
13 substantially similar to—and in many instances, the same as—those at issue in Defendants'  
14 unaccompanied immigrant minor program. Rather than engaging in duplicative litigation over  
15 virtually identical questions of law and facts, Plaintiff moves to amend its initial complaint in the  
16 instant case.

17 Leave to amend must be “freely given” unless it is clear that the proposed amendment is  
18 brought after undue and unexplained delay; is offered in bad faith; would be futile; or would be  
19 prejudicial to the other parties. *See* Fed. R. Civ. P. 15(a)(2); *Foman v. Davis*, 371 U.S. 178, 182  
20 (1962). None of those factors apply here. Therefore, in order to promote judicial efficiency and  
21 ensure meaningful relief, the Court should grant Plaintiff's motion for leave to amend its  
22 complaint.

23 **II. BACKGROUND AND FACTS**

24 On June 24, 2016, Plaintiff filed this action to challenge Defendants' authorization of  
25 religiously motivated restrictions on access to reproductive health care for unaccompanied  
26  
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1 immigrant minors (also known as unaccompanied children, or “UC”) in the custody of the U.S.  
2 Office of Refugee Resettlement (ORR). *See* ECF No. 1.

3 After filing its complaint, Plaintiff received information in response to a FOIA lawsuit  
4 about Defendants’ grant to USCCB to provide services for trafficking victims. *See* Declaration of  
5 Brigitte Amiri (Amiri Decl.) ¶ 4. These documents show that, as with Defendants’ actions in the  
6 UC program, Defendants’ trafficking victims program also authorizes USCCB to impose  
7 religious restrictions on reproductive health care for the survivors of trafficking who access their  
8 program. *Id.* ¶ 6. Defendants have also allowed USCCB to provide subgrants based on religious  
9 criteria. Plaintiff now seeks to amend its complaint to allege additional facts regarding the extent  
10 of Defendants’ authorization of religious restrictions on the use of taxpayer funds.

11 Defendants do not object to Plaintiff’s motion to amend its complaint. *Id.* ¶ 8.

### 12 **III. ARGUMENT**

13 Federal Rule of Civil Procedure 15(a)(2) states that courts “should freely give leave [to  
14 amend a pleading] when justice so requires.” The Supreme Court has held that leave to amend  
15 must be permitted unless there is an “apparent or declared reason for denial.” *Foman*, 371 U.S. at  
16 182; *see also Sonoma Cty. Ass’n of Retired Emps. v. Sonoma Cty.*, 708 F.3d 1109, 1117 (9th Cir.  
17 2013) (leave to amend must be applied with “extreme liberality”) (quoting *Owens v. Kaiser*  
18 *Found. Health Plan, Inc.*, 244 F3d. 708, 712 (9th Cir. 2001)). The party seeking to amend need  
19 only establish the reason why justice so requires the amendment, and the party opposing the  
20 amendment bears the burden of demonstrating otherwise. *See DCD Programs, Ltd. v. Leighton*,  
21 833 F.2d 183, 187 (9th Cir. 1987). All inferences must be drawn in favor of the moving party.  
22 *Griggs v. Pace Am. Grp. Inc.*, 170 F.3d 877, 880 (9th Cir. 1999).

23 In making a determination about whether to grant leave to amend, courts must look for  
24 “strong evidence” of the following factors: (1) undue delay; (2) bad faith or dilatory motive on  
25 the part of the movant; (3) repeated failure to cure deficiencies by amendments previously  
26 allowed, (4) futility of amendment, or (5) undue prejudice to the opposing party by virtue of  
27

1 allowance of the amendment. *Sonoma Cty. Ass'n of Retired Emps.*, 708 F.3d at 1117. None of  
2 these factors applies here.

3 **A. Plaintiff Has Not Unduly Delayed in Bringing This Motion.**

4 Plaintiff's Amended Complaint is timely and should be allowed. The facts Plaintiff now  
5 seeks to amend into the complaint were not known at the time the initial complaint was filed on  
6 June 24, 2016. Between March and August 2016, the ACLU received documents in response to a  
7 FOIA lawsuit that indicated that Defendants had awarded another multi-million dollar grant to  
8 USCCB to care for human trafficking victims. After receipt of thousands of pages of responsive  
9 materials, Plaintiff's counsel endeavored to carefully review them and undertook additional  
10 factual investigation. Amiri Decl. ¶¶ 4-5. Plaintiff moves to amend the complaint now, at an  
11 early stage in the litigation but after the motion to dismiss was adjudicated. This motion comes  
12 before Defendants' answer to the complaint is due and before parties begin discovery.

13 **B. Plaintiff Seeks to Amend Its Complaint in Good Faith.**

14 Plaintiff seeks to amend its complaint to avoid the cost, waste, and delay of duplicative  
15 litigation over similar facts with the same parties and the same questions of law. The proposed  
16 amendments address the same concern as the original Complaint (i.e., Defendants' violation of  
17 the Establishment Clause by authorizing religious restrictions on reproductive health care for  
18 vulnerable populations in government-funded programs) against the same Defendants and raises  
19 the same causes of action and legal theories. Even beyond the significant factual similarities  
20 between the ways in which Defendants' unaccompanied immigrant minor program and  
21 trafficking victims program are administered, they share some of the same funding streams and  
22 authorizing statutes. If leave is not granted, Plaintiff will be forced to bring a separate action to  
23 address the government-authorized religious restrictions being placed on services provided to  
24 trafficking victims. This is precisely the type of inefficient and piecemeal litigation that the  
25 Federal Rules are intended to avoid.

1           **C.       Amendment Will Not Be Futile.**

2           In assessing futility, courts apply the same standard governing a Rule 12(b)(6) motion to  
3 dismiss and a proposed amendment is futile only if it does not “contain sufficient factual matter,  
4 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556  
5 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Here,  
6 the additional facts Plaintiff seeks to amend to the complaint are amply supported by the FOIA  
7 documents Plaintiff received from Defendants themselves.

8           **D.       Plaintiff Has Not Failed to Cure Deficiencies by Previous Amendments.**

9           Defendants have not identified any deficiencies with Plaintiff’s complaint; nor has  
10 Plaintiff previously attempted to amend the complaint. This factor, therefore, has no application  
11 here.

12           **E.       Defendants Will Not Be Unduly Prejudiced by Plaintiff’s Proposed**  
13 **Amendment.**

14           To justify denial of leave to amend, prejudice to Defendants must be substantial. *See*  
15 *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). Defendants  
16 have stated they do not oppose Plaintiff’s motion to amend its complaint; therefore, it cannot be  
17 the case that Plaintiff’s proposed amendments would unduly prejudice Defendants, let alone  
18 substantially. The additional facts Plaintiff seeks to amend to the complaint would not “radically  
19 shift” the nature of the case, relating as they do to the same Defendants, overlapping statutory  
20 sources of federal funding, and the same constitutional question of whether Defendants’ actions  
21 violate the Establishment Clause. *See id.* (denying leave to amend where new RICO claim  
22 “would have required defendants to [undertake] . . . an entirely new course of defense”).  
23 Plaintiff’s proposed amendments also do not significantly expand the scope of discovery. The  
24 additional facts Plaintiff is proposing to add—like the facts alleged in Plaintiff’s initial  
25 complaint—are grounded in documents that the ACLU received from Defendants in response to  
26 a FOIA lawsuit.

1 **IV. CONCLUSION**

2 This Court should grant Plaintiff leave to amend its complaint because such leave must  
3 be “freely given,” the amendment is timely and proposed in good faith, and Defendants will not  
4 be prejudiced by Plaintiff’s proposed amendment.

5  
6 Dated: February 1, 2017

Respectfully submitted,

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

9 Attorney for Plaintiff

10 \* Appearing *pro hac vice*

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21 [ADDITIONAL COUNSEL ON FOLLOWING PAGE]

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26 AMERICAN CIVIL LIBERTIES UNION OF )  
27 NORTHERN CALIFORNIA, )  
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29 Plaintiff, )

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

30 v. )  
31 SYLVIA MATHEWS BURWELL, Secretary )  
32 of Health and Human Services; MARK )  
33 GREENBERG, Acting Assistant Secretary for )  
34 Administration for Children and Families; )  
35 ROBERT CAREY, Director of Office of )  
36 Refugee Resettlement, in their official )  
37 capacities, )  
38 Defendants. )

**DECLARATION OF BRIGITTE  
AMIRI IN SUPPORT OF PLAINTIFF'S  
MOTION FOR LEAVE TO FILE  
AMENDED COMPLAINT**

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15 *Attorneys for Plaintiff*

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1 I, Brigitte Amiri, declare as follows:

2 1. I am a Senior Staff Attorney at the American Civil Liberties Union Foundation  
3 and counsel for Plaintiff in the above captioned matter. I have personal knowledge of the facts  
4 stated in this declaration and I could and would testify competently to them, if called to do so.

5 2. At the time Plaintiff filed the complaint in this case, it did not have sufficient  
6 information regarding Defendants' contract with the U.S. Conference of Catholic Bishops  
7 (USCCB) for the care of human trafficking victims to then include the facts and claims it now  
8 seeks to add.

9 3. On November 13, 2015, the ACLU sent a Freedom of Information Act (FOIA)  
10 request to Defendants for documents relating to its human trafficking victims program.  
11 Subsequently, on March 17, 2016, the ACLU filed a lawsuit compelling Defendants to produce  
12 documents pursuant to its FOIA request. *ACLU v. Admin. for Children and Families*, No. 1:16-  
13 cv-01987 (S.D.N.Y. Mar. 17, 2016).

14 4. Between March 18 and August 26, 2016, the ACLU received over two thousand  
15 pages of documents from Defendants in response to its FOIA lawsuit.

16 5. After receipt of these responsive materials, Plaintiff's counsel undertook a careful  
17 review of their contents and conducted additional factual investigation.

18 6. These documents showed that Defendants had provided a grant to USCCB to  
19 provide care for human trafficking victims, and that in the context of this particular federal  
20 program, Defendants were allowing USCCB to object—on religious grounds—to providing  
21 certain assistance to same-sex couples as well as legally required reproductive health care and  
22 services to survivors of human trafficking. They also showed that Defendants allowed USCCB to  
23 subgrant only to entities that shared their religious opposition to reproductive health care access  
24 and certain assistance to same-sex couples.

25 7. After the court denied Defendants' motion to dismiss on November 26, 2016, in  
26 the context of preparing the joint case management order, I indicated to Mr. Phipps that Plaintiff  
27 would likely seek to amend the complaint to add allegations about the trafficking contract.

1           8.       On January 11, 2017, I emailed Mr. Phipps to ask if Defendants would be willing  
2 to stipulate to Plaintiff's filing an amended complaint. I included in the email a redlined copy of  
3 Plaintiff's proposed amended complaint. He responded on January 31, indicating that Defendants  
4 do not object to Plaintiff's motion to amend its complaint.

5           I declare under penalty of perjury that the foregoing is true and correct to the best of my  
6 knowledge. Executed February 1, 2017, in New York, New York.

7  
8   By: /s/ Brigitte Amiri \_\_\_\_\_  
9   Brigitte Amiri

# EXHIBIT A

1 ELIZABETH O. GILL (SBN 218311)  
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7 Attorneys for Plaintiff

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

11 AMERICAN CIVIL LIBERTIES UNION OF )  
12 NORTHERN CALIFORNIA, )  
13 )  
14 Plaintiff, )  
15 )  
16 v. )  
17 )  
18 )  
19 )  
20 )

Civil No. 3:16-cv-03539-LB

**[PROPOSED] FIRST AMENDED  
COMPLAINT**

1 SYLVIA MATTHEWS BURWELL, )  
 Secretary of Health and Human Services; )  
 2 MARK GREENBERG, Acting Assistant )  
 Secretary for Administration for Children )  
 3 and Families; ROBERT CAREY, Director of )  
 Office of Refugee Resettlement, in their )  
 4 official capacities, )  
 5 )  
 Defendants. )  
 6 )

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7  
 8 Plaintiff American Civil Liberties Union of Northern California (“Plaintiff” or “ACLU of  
 9 Northern California”), for its complaint in the above-captioned matter, alleges as follows:

10 **PRELIMINARY STATEMENT**

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

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

21 3. To provide young people with these necessities, the government, through the  
 22 Office of Refugee Resettlement (“ORR”), issues grants to private entities, including a number of  
 23 religiously affiliated organizations.

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

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 5. 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 6. 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 7. 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.



1           8.       This is not the first time that Defendants have violated the Establishment Clause  
2 in this manner. In 2012, a federal district court held that Defendants violated the Establishment  
3 Clause when they authorized USCCB to prohibit its subcontractors from referring or providing  
4 access to abortion or contraception for trafficking victims in a federal program, despite clear law  
5 requiring such services. *ACLU of Massachusetts v. Sebelius*, 821 F. Supp. 2d 474 (D. Mass.  
6 2012), *vac'd*, 705 F.3d 44 (1st Cir. 2013) (holding that the case was moot because Defendants'  
7 contract with USCCB had expired).

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

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

1 11. Plaintiff's members include federal taxpayers, whose tax dollars finance the  
2 grants provided by Defendants to these religious organizations. Plaintiff seeks, among other  
3 relief, an injunction ordering Defendants to ensure that federal grants are implemented without  
4 the above-mentioned religious restrictions.

5 **JURISDICTION AND VENUE**

6 12. This action arises under the First Amendment of the United States Constitution  
7 and presents a federal question within this Court's jurisdiction under Article III of the  
8 Constitution and 28 U.S.C. § 1331.

9 13. Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C.  
10 §§ 2201 and 2202, by Federal Rules of Civil Procedure 57 and 65, and by the inherent equitable  
11 powers of this Court.

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

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

15 **INTRADISTRICT ASSIGNMENT**

16 16. This action arises in the San Francisco Division because Plaintiff's headquarters  
17 are in San Francisco.

18 **PARTIES**

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

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

7 18. Defendant Sylvia Mathews Burwell is the Secretary of the United States  
8 Department of Health and Human Services (“HHS”) and is responsible for the administration  
9 and oversight of the Department. Defendant Burwell has authority over the Administration for  
10 Children and Families (“ACF”), a subdivision of HHS. 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 Burwell has  
14 violated the Establishment Clause. Defendant Burwell and her successors are sued in their  
15 official capacities.

16 19. Defendant Mark Greenberg is the Acting Assistant Secretary for ACF. Defendant  
17 Greenberg has authority over ORR, a subdivision of ACF. By permitting USCCB and other  
18 organizations to impose their religiously based restrictions on the services unaccompanied  
19 immigrant minors and trafficking survivors can receive with taxpayer funds, and allowing  
20 USCCB to subgrant exclusively to entities that share its religious beliefs, Defendant Greenberg  
21 has violated the Establishment Clause. Defendant Greenberg and his successors are sued in their  
22 official capacities.

23 20. Defendant Robert Carey is the Director of ORR. By permitting USCCB and other  
24 organizations to impose their religiously based restrictions on the services unaccompanied  
25 immigrant minors and trafficking survivors can receive with taxpayer funds, and allowing  
26 USCCB to subgrant exclusively to entities that share its religious beliefs, Defendant Carey has  
27

1 violated the Establishment Clause. Defendant Carey and his successors are sued in their official  
2 capacities.

3 **FACTS GIVING RISE TO THIS ACTION**

4 **The Unaccompanied Children (“UC”) Program**

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

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

18 23. The federal government and all of its programs are required to ensure that the best  
19 interests of the unaccompanied immigrant minor are protected. Section 462 of the Homeland  
20 Security Act (“HSA”) requires ORR to “ensur[e] that the interests of the child are considered in  
21 decisions and actions relating to the care and custody of an unaccompanied child.” 6 U.S.C. §  
22 279(b)(1)(B). It also requires ORR to conduct “investigations and inspections of facilities and  
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25 <sup>1</sup> By statutory definition, unaccompanied immigrant minors are under 18 years old, have no legal  
26 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 other entities in which unaccompanied children reside, including regular follow-up visits . . . to  
2 assess the continued suitability of such placements.” *Id.* § 279(b)(1)(L).

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

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

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

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

3 **Unaccompanied Immigrant Minors Are Legally Entitled to Receive Access to Reproductive**  
4 **Health Care**

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

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

19 30. Additionally, in response to its obligations under the Prison Rape Elimination Act  
20 (“PREA”) and the Violence Against Women Reauthorization Act of 2013 (“VAWA 2013”),  
21 ORR issued a regulation requiring all ORR-funded care provider facilities to, among other  
22 things, provide unaccompanied immigrant minors who are victims of sexual assault with access  
23 to reproductive healthcare. The regulation states, in relevant part, that grantees providing care to  
24 unaccompanied immigrant minors who have experienced sexual abuse while in federal custody  
25 must ensure “unimpeded access to emergency medical treatment, crisis intervention services,  
26 emergency contraception, and sexually transmitted infections prophylaxis.” 45 C.F.R. §  
27 411.92(a). The regulation further provides that grantees must ensure that a young person subject

1 to sexual abuse is offered a pregnancy test, and “[i]f pregnancy results from an instance of sexual  
2 abuse, [the] care provider facility must ensure that the victim receives timely and comprehensive  
3 information about all lawful pregnancy-related medical services.” *Id.* § 411.93(d). Grantees were  
4 required to comply with this regulation by June 24, 2015.

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

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

16 32. 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.  
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1           33. 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           34. 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           35. ORR removed this language based on USCCB’s objection to the contraception  
14 and abortion requirements.

15           36. 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 37. 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 38. 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 39. 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  
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22 \_\_\_\_\_  
23 <sup>2</sup> In the preamble to its regulation, ORR stated that organizations that refuse to provide or refer  
24 for certain services could serve as subgrantees or as members of a consortium of service  
25 providers, so that other organizations without religious objections could provide unaccompanied  
26 immigrant minors with the required services. Alternatively, ORR stated that a grantee may notify  
27 federal officials if a young person in its care requires services to which the grantee objects, and  
that ORR would then either provide the services itself or transfer the young person to a grantee  
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 40. 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 41. 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 42. 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 43. 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>

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26 <sup>3</sup> Pursuant to a Freedom of Information Act request filed by the American Civil Liberties Union,  
27 Plaintiff has obtained a number of documents and emails describing the experiences young

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Rosa

44. 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.

45. 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.

46. 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.

47. 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.”

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

Maria

49. 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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women who have requested access to abortion while in ORR custody. Working from those 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           50. 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           51. 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           52. 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           53. 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           54. 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           55.     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           56.     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           57.     Congress passed the Trafficking Victims Protection Act (TVPA), and  
14 subsequently the TVPRA, to combat human trafficking and expand benefits and services for  
15 those who are trafficked into the United States from other countries. Under the TVPA,  
16 Defendants are charged with providing an array of services to these individuals once they escape  
17 their traffickers, including medical services, to help them become self-sufficient. The TVPA  
18 further specifies that trafficking victims must receive the same level of benefits and services as  
19 refugees, which includes contraception, and in limited circumstances abortion.

20           58.     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  
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1 the scope of medical care they are entitled to; and if case managers do not provide referrals and  
2 access to medical care, many trafficking survivors will not be able to access that care.

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

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

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

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

23 63. In 2015, ORR issued a Funding Opportunity Announcement, HHS-2015-ACF-  
24 ORR-ZV-0976, stating that "it will accept competing applications for cooperative agreements to  
25 administer the Trafficking Victim Assistance Program (TVAP)."  
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1           64.     The FOA sought to fund organizations to provide “comprehensive case  
2 management” to trafficking survivors, including providing access to “medical care, including  
3 treatment for sexually transmitted infections, family planning services and the full range of  
4 legally permissible gynecological and obstetric care, including but not limited to exams, tests,  
5 pre-natal services and non-directive health-related counselling.”

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

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

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

3 68. Upon information and belief, in the process of negotiating its contract with  
4 Defendants, USCCB sent an email to ACF staff stating: “we concur that we would not impose  
5 our religious objections on sub-recipients but rather would enter into agreements with sub-  
6 recipients that share our religious objections and that would elect to refrain from facilitating or  
7 referring for those specific services.” Another email confirms that USCCB made clear to all of  
8 its subrecipients its “intention to administer” the program “in alignment with Catholic teaching.”  
9 USCCB would not subcontract with an entity that did not share its religious opposition to  
10 providing access to certain forms of reproductive health care. If a subcontractor were unable to  
11 meet a client’s needs due to a religious objection, USCCB would possibly transfer the client to  
12 another grantee.

13 69. Upon information and belief, USCCB’s subrecipients provide a brochure to  
14 trafficking survivors that says: “This grantee is affiliated with a program of the Catholic Church,  
15 which has moral and religious objections to direct sterilization, contraception, and abortion. You  
16 are free to discuss all health matters with your medical provider.”

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

18 70. Congress is aware that ORR is providing HSA and TVPRA funds to religiously  
19 affiliated entities. For example, on June 25, 2014, Bishop Mark Seitz testified before the House  
20 Judiciary Committee regarding USCCB’s participation in ORR’s program for the care of  
21 unaccompanied children. In his testimony, Bishop Seitz recommended on behalf of USCCB that  
22 “Congress appropriate \$2.28 billion in Fiscal Year 2015 for care of unaccompanied children,  
23 consistent with the Administration’s request.” Bishop Seitz also stated that “[a]ny funding should  
24 be administered in a manner that respects the religious liberty and conscience rights of  
25 organizations providing this care.” *Hearing on Unaccompanied Children: H. Comm. on the*  
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1 *Judiciary*, 113th Cong. 40 (2014) (statement of Rev. Mark Seitz, USCCB).<sup>4</sup> Similarly, on  
2 February 4, 2016, USCCB’s Associate Director of Children’s Services submitted testimony to  
3 the House Judiciary Subcommittee on Immigration and Border Security explaining that USCCB  
4 provides “short-term and long-term foster care to unaccompanied children in HHS/ORR  
5 custody,” including “medical and mental health screening and care,” though “cooperative  
6 agreements with HHS/ORR.” Kristyn Peck, Associate Director of Children’s Services (USCCB),  
7 *Testimony for the Record Before the H. Subcomm. on Immigration and Border Security of the H.*  
8 *Judiciary Comm.*, 114 Cong. 117 (Feb. 4, 2016).<sup>5</sup>

9 71. A recent report by the Senate’s Permanent Subcommittee on Investigations on  
10 ORR’s role in protecting unaccompanied immigrant minors states: “HHS’s [UC] program  
11 functions through grants and contracts with a number of private care providers and other third  
12 parties who perform daily tasks associated with [UC] placement. Those functions include  
13 running shelters for children who have not yet been placed with sponsors, identifying and  
14 screening potential sponsors, evaluating homes in which children will be placed, making release  
15 recommendations to HHS, and providing post-release services to children. HHS awarded 56  
16 grants to over 30 care providers for the [UC] program in FY 2016, including . . . the U.S.  
17 Conference of Catholic Bishops.” Staff of S. Permanent Subcomm. on Investigations of the S.  
18 Comm. on Homeland Security & Governmental Affairs, *Protecting Unaccompanied Alien*  
19 *Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement*  
20 (2016).<sup>6</sup>

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

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-the-department-of-health-and-human-services-efforts-to-protect-unaccompanied-alien-children-from-human-trafficking>.

1           72.     In 2011, Congress held hearings on Defendants’ trafficking program, and whether  
 2 USCCB should have been awarded a contract to provide care to trafficking victims even though  
 3 it refuses to allow subrecipients to refer for abortion and contraceptives. *See, e.g.,* Verbatim  
 4 Transcript, *Rep. Darrell Issa Holds a Hearing on HHS Grant Denial for U.S. Conference of*  
 5 *Catholic Bishops*, Roll Call, Inc., Dec. 14, 2011, 2011 WL 6254061; *HHS and the Catholic*  
 6 *Church: Examining the Politicization of Grants Hearing Before the Comm. on Oversight and*  
 7 *Gov’t Reform*, H.R., 112th Cong. 112-124 (2011).<sup>7</sup>

8           73.     The Attorney General’s Annual Report to Congress and Assessment of U.S.  
 9 Government Activities to Combat Trafficking in Persons for Fiscal Year 2015 includes a  
 10 description of the trafficking grant provided to USCCB on September 30, 2015, including the  
 11 fact that “USCCB expressed its plan to have subcontracts with certain services providers.”<sup>8</sup>

12           74.     In the Consolidated Appropriations Act, 2016, Pub. L No. 114-113, Congress  
 13 appropriated nearly \$1.6 billion for ORR’s Refugee and Entrant Assistance Programs in FY2016,  
 14 including “for carrying out” the government’s obligations under the TVPA, Section 462 of the  
 15 HSA, and Section 235 of the TVPRA.

### **CAUSE OF ACTION**

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 17           75.     Plaintiff realleges and incorporates by reference, as if fully set forth herein, the  
 18 allegations of paragraphs 1 through 74.

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

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 26 <sup>7</sup> Available at <https://www.gpo.gov/fdsys/pkg/CHRG-112hhrg73939/pdf/CHRG-112hhrg73939.pdf>.

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

1 77. Defendants’ actions alleged herein disburse taxpayer funds in a manner that is not  
2 neutral with respect to religion.

3 78. Defendants’ actions alleged herein have the predominant effect of advancing a  
4 particular set of religious beliefs.

5 79. Defendants’ actions alleged herein endorse a particular set of religious beliefs.

6 80. Defendants’ actions alleged herein coerce Plaintiff and its members into  
7 supporting and subsidizing a particular set of religious beliefs.

8 81. Defendants’ actions alleged herein have the predominant purpose of advancing a  
9 particular set of religious beliefs.

10 **RELIEF REQUESTED**

11 WHEREFORE, Plaintiff, on behalf of its members, respectfully requests that the Court  
12 enter judgment in its favor and:

13 1. Declare, pursuant to 28 U.S.C. § 2201, that Defendants’ actions, as set forth  
14 above, violate the Establishment Clause of the First Amendment to the United States  
15 Constitution;

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

18 3. Award costs and fees for this action, including attorneys’ fees;

19 4. Award such further relief as this Court deems appropriate.

20 DATED: February 1, 2017  
21 ACLU FOUNDATION OF NORTHERN  
22 CALIFORNIA, INC.

23 By: /s/ Brigitte Amiri  
24 Brigitte Amiri  
25 Attorneys for Plaintiff  
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