

Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CALIFORNIA TRIBAL FAMILIES COALITION,
YUOK TRIBE, CHEROKEE NATION, FACING
FOSTER CARE IN ALASKA, ARK OF
FREEDOM ALLIANCE, RUTH ELLIS CENTER,
and TRUE COLORS, INC.,

Case No. 3:20-cv-6018-MMC

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as
Secretary of Health and Human Services,
JOOYEUN CHANG, in her official capacity as
Assistant Secretary for the Administration for
Children and Families, U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES, and
ADMINISTRATION FOR CHILDREN AND
FAMILIES,

Defendants.

**DECLARATION OF JOSEPH KRACKE-BOCK, M.S.S.W., DEPUTY ASSOCIATE
COMMISSIONER,
CHILDREN’S BUREAU, ADMINISTRATION FOR CHILDREN AND FAMILIES,
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES**

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

1. I am the Deputy Associate Commissioner of the Children’s Bureau (“CB”) within the Administration for Children and Families (“ACF”), in the United States Department of Health and Human Services (“HHS”). I have held this position since 2002. The Children’s Bureau administers the federal child welfare programs authorized under titles IV-B and IV-E of the Social Security Act and the Child Abuse Prevention and Treatment Act. The agency engages in partnerships with federal, state, tribal, and local agencies to provide support and guidance for the well-being of children and families across the nation. As Deputy Associate Commissioner, I oversee the day-to-day operations of the

1 Children’s Bureau, including direction over the development and interpretation of federal child welfare
2 legislation, regulation, policy, and standards. I also have oversight of federal monitoring protocols that
3 assess state practices against federal requirements to ensure those practices comport with Federal law,
4 regulation and policy. My oversight includes engaging state and tribal child welfare agencies in
5 corrective action to bring them into compliance with federal law and improving the child welfare policies
6 and procedures of such Title-IV agencies to comport with best practices.
7

8 2. I received a Masters of Science in Social Work degree from the University of Texas at
9 Austin in 1989.

10 3. In addition to my personal knowledge regarding AFCARS, this declaration is based upon
11 other knowledge and information I obtained in the regular course of business throughout my career in child
12 welfare, which spans more than thirty years. I provide this declaration based on the best of my knowledge,
13 information, belief, and reasonable inquiry for the above-captioned case.
14

15 4. I am submitting this declaration in order to describe the effects of a decision by this Court
16 vacating the 2020 AFCARS rule.

17 5. The Adoption and Foster Care Analysis and Reporting System (“AFCARS”) collects case-
18 level information from state and tribal title IV-E agencies on all children in foster care and those who have
19 been adopted with title IV-E agency involvement. AFCARS is a nationwide system that requires title IV-
20 E agencies from all 50 states and numerous tribes to collect and submit data to HHS. Examples of data
21 reported in AFCARS include demographic information on the foster child as well as the foster and adoptive
22 parents, the number of removal episodes a child has experienced, the number of placements in the current
23 removal episode, and the current placement setting. Title IV-E agencies are required to submit the
24 AFCARS data twice a year based on two 6-month reporting periods. The Secretary first promulgated
25 AFCARS regulations in 1993.
26

27 6. In 2016, HHS published a revision of the AFCARS provisions in the Federal Register, but
28 these provisions never were implemented (“2016 Final Rule”). The 2016 Final Rule updated AFCARS to

1 add 153 data elements to the original 119 data elements, bringing to 272 the total number of data elements
2 that state and tribal child welfare agencies would have been required to report to HHS. The 2016 Final
3 Rule initially provided two fiscal years for title IV–E agencies to comply.

4 7. In May 2020, HHS issued a final AFCARS rule (“2020 Final Rule”) that retained, revised,
5 and omitted elements included in the 2016 AFCARS Final Rule. Some of the omitted elements related to
6 compliance with the Indian Child Welfare Act (ICWA) and sexual orientation data of foster children and
7 foster/adoptive parents and legal guardians. The 2020 Final Rule, however, did include the data element
8 added by the 2016 Final Rule that asked whether conflict related to a child’s sexual orientation or gender
9 identity contributed to the child’s removal from home. The 2020 Final Rule also included some data
10 elements focused on the needs of ICWA applicable children. This information includes whether the child,
11 child’s parents, and providers are members of an Indian Tribe, name of the child’s Indian Tribe, whether
12 ICWA applies, whether the state agency made inquiries to determine if the child is an Indian child as
13 defined in ICWA, and whether the child's Indian tribe was sent legal notice.

14 8. States are required to comply with the 2020 Final Rule by October 1, 2022. They currently
15 continue to report data as required by the pre-2016 AFCARS regulations (the 1993 regulations). These
16 regulations do not include ICWA or sexual orientation data elements.

17 9. Vacating the 2020 Final Rule would delay HHS from receiving updated data and
18 comprehensive historical information on key data elements included in the 2020 Final Rule. The 2020
19 Final Rule substantially altered the data collection specified in the initial 1993 AFCARS rule to permit
20 more complete reporting on all foster care entries and exits, child placements, case plans, caseworker
21 visits, as well as reporting on prior guardianships, and whether a child has siblings also in foster care.
22 While the 2020 final rule removed approximately one-third of the data elements from the 2016 Final
23 Rule -- from 272 to 183, including those at issue in this litigation, the 2020 Final Rule still includes an
24 increase of 64 data elements over the 1993 regulations.

25 10. If the 2020 Final Rule remains in place while the HHS considers the collection of the
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1 ICWA and sexual orientation data elements at issue in this litigation, updated AFCARS data reporting
2 based on the 2020 Final Rule will begin in 2023. The ICWA elements retained in the 2020 Final Rule
3 will be available for use in descriptive reports and analyses that will provide important information about
4 outcomes for ICWA applicable children and youth placed in foster care. Vacating the 2020 Final Rule
5 would delay the ability of the agency to conduct and report such analyses and would likely affect the
6 types of analyses that the agency could provide.
7

8 11. HHS and Title IV-E agencies have been working on implementing the 2020 Final Rule for
9 the last one-and-a-half years, which includes developing policies, training tools, and technology systems.
10 HHS has procured a contract worth about \$24.4 million to develop an enterprise system to receive new
11 AFCARS data based on the 2020 final rule. Modifications to the enterprise system to implement the
12 ICWA and sexual orientation elements included in the 2016 Final Rule but omitted from the 2020 Final
13 Rule would require significant analysis, additional funding, potential contract acquisition or modification
14 and project plan or schedule changes, as well as additional meetings with various stakeholders, including
15 states and Tribes.
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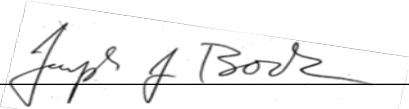
17 12. If this Court were to vacate the 2020 Final Rule and reinstate the 2016 ICWA and sexual
18 orientation data elements at issue in this case, state and tribal Title IV-E agencies will likewise need to
19 modify or develop new local policies, training guides and tools, and revise implementation plans in
20 collaboration with impacted stakeholders. Reinstatement of additional data elements will also affect local
21 agencies' plans to modify existing and/or new technology systems. These technology system changes
22 may require new contract solicitations, amendments to existing technology contracts, and funding
23 approvals. Changes would likely have an impact upon the other obligations title IV-E agencies must meet
24 through regular work, such as mandated federal reporting for other title IV-B/IV-E programs.
25

26 13. Reinstating the 2016 ICWA and sexual orientation data elements at issue in this case in
27 AFCARS would require states to engage tribal and youth partners to ensure data are collected accurately
28 and can be used or made available to staff and decision makers. Title IV-E agencies would need to

1 ensure that they have staffing capacity in multiple areas (program, policy, technology) to support that
2 effort. Many agencies are currently struggling to meet the 2020 AFCARS requirements and reinstating
3 the additional 2016 data elements may derail that work, as existing new technology system projects
4 already have contractual development and implementation schedules.

5
6 14. Finally, while there is overlap in the 2016 and 2020 AFCARS data collection, some
7 elements carried over from 2016 to 2020 were modified and thus are different. In some cases, vacating
8 the 2020 final rule and reinstating the ICWA and sexual orientation data elements from the 2016 Final
9 Rule that are at issue in this litigation will result in double work for Title IV-E agencies to comply with a
10 final AFCARS data collection. This is because system modifications that states and Tribes already made
11 to collect 2020 Final Rule data will not always line up to collect the 2016 Final Rule data. Therefore,
12 Title IV-E agencies would need to implement additional system modifications in order to revert even
13 partially to the 2016 Final Rule and collect the ICWA and sexual orientation data elements removed from
14 the 2020 Final Rule. Additionally, reverting to the 2016 Final Rule would entail HHS and Title IV-E
15 agencies collecting the additional data elements that are not the subject of Plaintiffs' challenge.
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17 I, Joseph Kracke-Bock, declare under penalty of perjury that the foregoing is true and correct.
18 Executed on October 14, 2021.

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22 Joseph Kracke-Bock