UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MELISSA BUCK; CHAD BUCK; SHAMBER FLORE; ST. VINCENT CATHOLIC CHARITIES, Plaintiffs, v. ROBERT GORDON, in his official capacity as the Director of the Michigan Department of Health and Human Services; HERMAN MCCALL, in his official capacity as the Executive Director of the Michigan Children's Services Agency; DANA NESSEL, in her official capacity as Attorney General of Michigan; ALEX AZAR, in his official capacity as the Secretary of the United States Department of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, Defendants.	No. 1:19-cv-00286-RJJ-PJG HON. ROBERT J. JONKER **[PROPOSED] INTERVENOR DEFENDANTS' [PROPOSED] MEMORANDUM OF LAW IN SUPPORT OF MOTION TO TRANSFER** **ORAL ARGUMENT REQUESTED**

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

CONCISE STATEMENT OF REASONS
SUPPORTING [PROPOSED] INTERVENOR DEFENDANTS' POSITION

This case is at base a collateral attack on *Dumont et al.* v. *Gordon et al*., 2:17-cv-13080-PDF-EAS (E.D. Mich. 2019) that should be transferred to the Eastern District of Michigan in the interests of justice, judicial efficiency and convenience of the parties. The Eastern District presided for eighteen months over *Dumont*, a matter involving the same nucleus of facts among the same parties who raised the same issues plaintiffs would raise here. That case was dismissed with prejudice pursuant to terms that the Honorable Judge Paul D. Borman found proper. Although Plaintiffs had recourse to challenge the settlement in *Dumont*, they took no action in the Eastern District and instead filed a purportedly new case here.

Plaintiffs should not be permitted to dodge the earlier action, waste judicial resources and collaterally attack a settlement reviewed by the Eastern District, all in an apparent effort to obtain what the Plaintiffs apparently think will be a more favorable forum.

PRELIMINARY STATEMENT

This case is at base a collateral attack on *Dumont et al.* v. *Gordon et al*., 2:17-cv-13080-PDF-EAS (E.D. Mich. 2019) and should be transferred to the Eastern District of Michigan. In *Dumont*, the Honorable Judge Paul D. Borman presided for eighteen months over a matter among the same parties who raised the same issues Plaintiffs would raise here. Both cases share the same nucleus of facts, and Plaintiffs' requested relief here would eviscerate the terms of the settlement between the State Defendants and the Dumont Plaintiffs[1] found proper by Judge Borman. While Plaintiffs St. Vincent Catholic Charities ("STVCC"), Melissa Buck, Chad Buck, and Shamber Flore (the "*Buck* Plaintiffs") may be unhappy with the results of the litigation in the Eastern District—in his Opinion and Order Denying in Large Part Defendants' Motions to Dismiss, Judge Borman indicated that he was "unconvinced that [the *Buck* Plaintiffs] can prevail on a claim that prohibiting the State from allowing the use of religious criteria by those private agencies hired to do the State's work would violate St. Vincent's Free Exercise or Free Speech rights" (precisely the arguments they seek to raise here), *Dumont*, ECF No. 49, PageID.1151–61, at 1152—the interests of justice and judicial efficiency, as well as the convenience of the parties, require that this litigation be transferred to the Eastern District of Michigan.

The *Buck* Plaintiffs told Judge Borman that a reason they needed to intervene was that the State Defendants "may eventually want to settle this case with Plaintiffs," and "[w]ere

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[1] On September 20, 2017, the Dumonts, Erin Busk-Sutton, Rebecca Busk-Sutton and Jennifer Ludolph filed a complaint against Nick Lyon, in his official capacity as the Director of the Michigan Department of Health and Human Services, and Herman McCall, in his official capacity as the Executive Director of the Michigan Children's Services Agency, in the Eastern District of Michigan. *Dumont*, ECF No. 1 at 16–19. None of the other *Dumont* Plaintiffs are currently seeking to intervene alongside the Dumonts.

[the *Buck* Plaintiffs] unable to immediately appeal and protect their interest, the right to litigate their interest separately would be cold comfort . . . ." *Dumont*, ECF No. 18, PageID.452. The State Defendants ultimately did reach a settlement with the *Dumont* Plaintiffs on March 22, 2019, *Dumont*, ECF No. 82, and Judge Borman dismissed the case with prejudice pursuant to the terms of that Settlement Agreement. *Dumont*, ECF No. 83.

Apparently not liking the prospects for further proceedings in the Eastern District, the *Buck* Plaintiffs repackaged their motion briefs and filed this purportedly new action in this court. Plaintiffs should not be permitted to dodge the earlier action, waste judicial resources and collaterally attack a settlement reviewed by Judge Borman, all in an apparent effort to obtain what the Plaintiffs apparently think will be a more favorable forum.

BACKGROUND

In 2016 and 2017 the Dumonts contacted two state-contracted taxpayer-funded child placing agencies, STVCC and Bethany Christian Services, to inquire about adopting a child from foster care and were turned away because the agencies stated that they "do[] not work with same-sex couples." *Dumont*, ECF No. 1, PageID.16. After their counsel were unable to obtain corrective action from the State, the Dumonts, together with Erin Busk-Sutton, Rebecca Busk-Sutton and Jennifer Ludolph (the "*Dumont* Plaintiffs"), filed a complaint in the Eastern District of Michigan seeking declaratory and injunctive relief directing officials of the Michigan Department of Health and Human Services ("MDHHS") and its sub-agency, the Children's Services Agency ("CSA") (collectively, the "*Dumont* State Defendants"), to ensure that state-contracted taxpayer-funded child placing agencies do not turn away same-sex couples or other potentially qualified families based on religious criteria. *Id.* at PageID.21–22. The *Dumont* Plaintiffs alleged that the State's practice of permitting such agencies to use religious criteria to exclude same-sex couples harms children by reducing their placement options and violates the

Establishment and Equal Protection Clauses of the United States Constitution. *Id.* at PageID.1–4.

The *Buck* Plaintiffs, represented by the same counsel as in this Action, intervened in *Dumont*, *Dumont*, ECF Nos. 33 & 34, and the *Dumont* State Defendants and the *Buck* Plaintiffs both moved to dismiss the Complaint. *Dumont* ECF Nos. 16 & 19. The *Dumont* court denied the motions to dismiss in relevant part, holding that the *Dumont* Plaintiffs adequately alleged that the State's practice violates the Establishment and Equal Protection Clauses. *Dumont* v. *Lyon*, 341 F. Supp. 3d 706, 753 (E.D. Mich. 2018). The court further said it was "unconvinced that [the *Buck* Plaintiffs] can prevail on a claim that prohibiting the State from allowing the use of religious criteria by those private agencies hired to do the State's work would violate St. Vincent's Free Exercise or Free Speech Rights." *Dumont*, ECF No. 49, PageID.1152.

The parties then engaged in substantial discovery, including the exchange of written discovery (including 37 interrogatories and 28 requests for admission were propounded by the *Buck* Plaintiffs), document production (over 66,600 pages were produced by the parties), and expert reports. Before depositions and the briefing of dispositive motions, the *Dumont* Plaintiffs and the *Dumont* State Defendants began preliminary settlement discussions, jointly moving on January 23, 2019 to stay proceedings to discuss settlement. *Dumont*, ECF No. 74. On March 22, 2019, the *Dumont* Plaintiffs and *Dumont* State Defendants entered into a settlement agreement (the "Settlement Agreement") to resolve the *Dumont* Plaintiffs' claims. *Dumont*, ECF No. 82.

Pursuant to the Settlement Agreement, the *Dumont* State Defendants agreed, among other things, to continue including a non-discrimination provision in contracts with child placing agencies that prohibits discrimination "against any individual or group because of race,

sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs, or disability." *Dumont* ECF No. 82, PageID.1444. "[T]urning away or referring to another contracted CPA an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for services under a [state contract]" violates the contractual non-discrimination provision. *Id.* The *Dumont* State Defendants also agreed to take action against child placing agencies that the State determines are in violation of or are unwilling to comply with the contractual non-discrimination provision, up to and including termination of such contracts. *Id.*

The *Dumont* Plaintiffs and the *Dumont* State Defendants filed a stipulation of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2). *Dumont*, ECF No. 82. On March 22, 2019, the court dismissed the *Dumont* case "with prejudice pursuant to the terms of the Settlement Agreement" but expressly retained jurisdiction over the settlement agreement. *Dumont*, ECF No. 83, PageID.1469. The *Buck* Plaintiffs took no action whatsoever to protect their interests with respect to the Settlement Agreement before the Eastern District, either during the two months during which they were aware that the State Defendants and the Dumont Plaintiffs were engaged in settlement discussions, or after. They did not move to file crossclaims; they did not seek to be heard by the Court; they did not even object to the dismissal or the terms of the Settlement Agreement. Rather, the *Buck* Plaintiffs filed their complaint in this Action seeking to undo the settlement reached in *Dumont*. (ECF No. 1.)

LEGAL STANDARD

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought . . . ." 28 U.S.C. § 1404(a). "[I]n ruling on a motion to transfer under § 1404(a), a

district court should consider the private interests of the parties, including their convenience and the convenience of potential witnesses, as well as other public-interest concerns, such as systemic integrity and fairness, which come under the rubric of 'interests of justice.'" *Moses* v. *Bus. Card Express, Inc.*, 929 F.2d 1131, 1137 (6th Cir. 1991) (citing *Stewart Org., Inc.* v. *Ricoh Corp.*, 487 U.S. 22, 30 (1988)).

ARGUMENT

I. TRANSFER TO THE EASTERN DISTRICT OF MICHIGAN IS IN THE INTEREST OF JUSTICE.

A. This Action Is a Collateral Attack on *Dumont* and Should Be Transferred to the Eastern District.

The *Dumont* Plaintiffs argued that Michigan was required by the Constitution to stop allowing state-contracted, taxpayer-funded child placing agencies to use religious criteria to turn away qualified same-sex couples based solely on sexual orientation; the *Buck* Plaintiffs claimed as intervenors in *Dumont*—and argue again here—that the Constitution *compels* Michigan to permit these agencies to use religious criteria to turn away same-same couples. The *Buck* Plaintiffs' claims here are a repackaging of their "affirmative defenses" in *Dumont*.[2]

The *Dumont* case was litigated for eighteen months before the Eastern District of Michigan. The parties in *Dumont*, including the parties here, submitted multiple rounds of briefing and appeared before Judge Borman for multiple hearings. Further, Judge Borman's 93-page decision, denying the *Dumont* Defendants' motions to dismiss, specifically addressed in the

[2] If further support connecting the two cases were needed, it can be found in the fact that all seven of the exhibits attached to Plaintiffs' Complaint, and twelve of the seventeen exhibits attached to Plaintiffs' Motion for a Preliminary Injunction, are discovery materials produced in *Dumont*. In addition, all three of the affidavits attached to the Motion for a Preliminary Injunction in this case are nearly identical to affidavits attached to the Motion to Intervene in *Dumont*. *Compare* ECF No. 6-1 with *Dumont*, ECF No. 18-2, ECF No. 6-2 with *Dumont*, ECF No. 18-3 and ECF No. 6-3 with *Dumont*, ECF No. 18-4.

context of that motion the substance of the legal claims raised here in *Buck*. *See* Opinion and Order Denying in Large Part Defendants' Motions to Dismiss, *Dumont*, ECF 49, PageID.1151-52.

This case is analogous to *Butcher* v. *Lawyers Title Insurance Corp.*, 2005 WL 8154943 (E.D. Mich. Feb. 4, 2005). In *Butcher*, the parties had litigated title to a piece of property in a prior case in the Western District. After that court determined that the property belonged to defendants, plaintiffs filed a new action in a new forum, asking the court to determine title in favor of plaintiffs. *Id.* The court recognized the new action as "a collateral attack on a judgment of the Western District" and granted defendants' motion to transfer to the Western District, reasoning that "transferring this case . . . will promote the interests of justice because the transferee district has supervised related cases involving the same facts, transactions and parties" and because "allowing the instant case to remain in the Eastern District of Michigan would be wasteful and unnecessarily duplicative." *Id.* at *3. As with *Butcher*, there is only one way to view this action—as a collateral attack on *Dumont*. Given Judge Borman's familiarity with the facts, transactions and parties, it would be wasteful and duplicative for this case to remain in this forum. "[J]ustice requires venue for this case lie in . . . [transferee district] where related discovery and litigation has already begun to unfold." *D.C. Micro Dev., Inc.* v. *Lange*, 246 F. Supp. 2d 705, 713 (W.D. Ky. 2003). Given the near identity of the factual and legal issues in this case and *Dumont*, justice requires that it be transferred to the Eastern District.

Transfer is also required based on general principles of comity among federal district courts and in light of the possibility that two courts addressing identical issues involving the same parties could reach opposite conclusions, thereby leaving the State of Michigan with the impossible mandate of complying with contradictory federal court orders. The *Dumont*

Plaintiffs' and the State of Michigan's stipulation of dismissal with prejudice, *Dumont*, ECF No. 82, was filed pursuant to Federal Rule of Civil Procedure 41(a)(2), which provides that "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). When Judge Borman entered the order of dismissal, *Dumont*, ECF No. 83, he therefore made a determination that the terms were proper. Because Plaintiffs' requested relief would undo the terms of the Settlement Agreement, the Eastern District is the most appropriate venue for *Buck*. *See Blue Diamond Coal Co.* v. *Michigan Sugar Co.*, 463 F. Supp. 14, 16 (E.D. Tenn. 1978) (transferring to the Eastern District of Michigan where that court handled "prior litigation . . . involving substantially the same issues . . . [because] the settlement agreement ought to be interpreted, if possible, by the Court which oversaw and accepted the settlement."); *Fed. Hous. Fin. Agency* v. *First Tenn. Bank Nat'l Ass'n*, 856 F. Supp. 2d 186, 196 (D. D.C. 2012) ("[T]he interests of justice weigh strongly in favor of transferring this case . . . in order to avoid duplicative and potentially inconsistent rulings . . . .").

The interests of justice also require transfer to the Eastern District to discourage forum shopping. Once the *Buck* Plaintiffs knew that the State Defendants and *Dumont* Plaintiffs were in settlement discussions that could affect their interests, and even after the Settlement Agreement was executed, they had ample legal recourse to protect their interests in the Eastern District, *see* pp. 4, *supra*, or appeal the dismissal of the case. Indeed, the *Buck* Plaintiffs contemplated a settlement between the State Defendants and the *Dumont* Plaintiffs that could affect their interests and cited the need to be able to appeal in the event of a settlement as a basis for their motion to intervene. *Dumont*, ECF No. 18, PageID.452. But the *Buck* Plaintiffs did nothing to address the settlement that resolved *Dumont*. Instead, they filed a *new* action in a *new* court, apparently hoping that a different judge and a different forum would yield better results for

them. Giving weight to the *Buck* Plaintiffs' efforts to avoid the Eastern District "would abet a form of forum shopping that should not be encouraged." *Johnson* v. *New York Life Ins. Co.*, 2013 WL 1003432, at *3 (D. Mass. Mar. 14, 2013).

Finally, the Eastern District is the appropriate venue because it expressly retained jurisdiction over the Settlement Agreement. (*Dumont*, ECF No. 83, PageID.1469.) *See RE/MAX Int'l, Inc.* v. *Realty One, Inc.*, 271 F.3d 633, 641 (6th Cir. 2001) ("[A] district court [has] the authority to dismiss pending claims while retaining jurisdiction over the future enforcement of a settlement agreement.").

B. The Dumonts' Choice of Forum Should Control.

The *Dumont* Plaintiffs chose the Eastern District and the *Buck* plaintiffs voluntarily opted in to that action and litigated that case in the Eastern District. Because this case is a collateral attack on *Dumont*, preference should be given to *Dumont* Plaintiffs' choice of forum. As the Sixth Circuit has stated in an analogous context, plaintiffs' choice of forum is not entitled to deference where, as here, there is evidence of one or more of "extraordinary circumstances, inequitable conduct, bad faith, anticipatory suits, and forum shopping." *Zide Sport Shop of Ohio, Inc.* v. *Ed Tobergte Assoc., Inc.*, 16 Fed. Appx. 433, 437 (6th Cir. 2001).

II. THE EASTERN DISTRICT OF MICHIGAN IS A CONVENIENT AND EFFICIENT FORUM.

A. The Eastern District Could More Efficiently Preside Over This Action.

Because Judge Borman is already familiar with the parties, the underlying facts, and the relevant legal issues, as well as the positions taken by the same parties in the *Dumont* matter, the Eastern District of Michigan would more efficiently oversee this Action. In *Central States, Southeast and Southwest Areas Health and Welfare Fund* v. *First Agency, Inc.*, 2013 WL 4094345 (W.D. Mich. Aug. 13, 2013), the Western District of Michigan had presided over a

prior case between the same parties and rendered a decision unfavorable to defendants. When plaintiffs brought a second related action in the same court, defendants moved to transfer to a different forum. *Id.* at *1. This court described defendants as "simply trying to escape the unfavorable decisions applicable in the Western District of Michigan," *id.*, and rejected the motion, explaining that "this Court is extremely familiar with the governing law, having decided the same issues and claims in the related case involving these same parties, which clearly mandates that efficiency and the interests of justice are best served by resolving this litigation in this Court." *Id.* at *3.

The same reasons that counseled against transfer in *First Agency* support transfer here. Just as the Western District in *First Agency* was more efficient because it was "extremely familiar with the governing law" on account of having resolved "the same issues and claims in the related case involving these same parties," *id.*, the Eastern District would be more efficient for this Action due to its presiding over *Dumont*.

B. The Eastern District Is Convenient to All Parties.

Plaintiffs can hardly object to the convenience of litigating in the Eastern District of Michigan because they chose to intervene in *Dumont* in that District. In addition, insofar as this court will sit in Grand Rapids, that city is nearly equidistant from Lansing (where STVCC is located and the Michigan State Defendants are headquartered) and Detroit, the seat of the Eastern District.

III. THIS ACTION COULD HAVE BEEN BROUGHT IN THE EASTERN DISTRICT OF MICHIGAN.

Under 28 U.S.C. § 1404(a), an action could have been brought in the transferee district if "1) the transferee court has subject matter jurisdiction over the action; 2) venue is

proper there; and 3) service of process can be made on the defendants." *Roth* v. *Bank of the Commonwealth*, 1978 WL 1133, at *2 (E.D. Mich. Dec. 11, 1978).

A. The Eastern District of Michigan Has Subject Matter Jurisdiction.

The Eastern District of Michigan has subject matter jurisdiction over this action because this is a "civil action[] arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Plaintiffs bring claims pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 2000bb. (ECF No. 1, PageID.42-51.) These are all federal questions conferring subject matter jurisdiction on the Eastern District.

B. Venue Is Proper Because Each Defendant Is a Resident in the Eastern District of Michigan and a Substantial Part of the Events Giving Rise to the Complaint Arose in the Eastern District of Michigan.

"A civil action may be brought in (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; [or] (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; . . ." 28 U.S.C. § 1391(b).

(1) Each Defendant is a Resident in the Eastern District of Michigan.

Venue is proper in the Eastern District of Michigan pursuant to 28 U.S.C. § 1391(b), which provides in relevant part that "[a] civil action may be brought in . . . a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located." For Michigan state officials, "[w]here a public official is a party to an action in his official capacity, he resides in the judicial district where he . . . performs his official duties." *O'Neill* v. *Battisti*, 472 F.2d 789, 791 (6th Cir. 1972) (citation omitted).

Robert Gordon, Herman McCall and Dana Nessel, each in their official capacity, are residents in the Eastern District for purposes of venue because they are state officials whose official duties are state-wide. *See Jones* v. *Caruso*, 2012 WL 3779017, at *3 (E.D. Mich. Aug. 9, 2012) ("Although [MDOC Director's] office sits in the Western District of Michigan, venue in this District was proper under § 1391(b)(1) because 'the duties of the MDOC Director run state-wide.'") (citing *Lynch–Bey* v. *Caruso*, 2006 WL 5431390, at *2 (E.D. Mich. 2006)). MDHHS is a statewide department. Mich. E.R.O. No. 2015-1 ("[MDHHS] . . . is created . . . [to] develop, administer, and coordinate health and family security initiatives and programs in this state."). Over half of MDHHS's 111 offices across Michigan are located in the Eastern District. *See* MDHHS, County Composite Directory, https://mdhhs.michigan.gov/CompositeDirPub/CountyCompositeDirectory.aspx (last visited May 7, 2019). Similarly, the CSA exists "within [MDHHS]" and has the responsibility over "all programs within [MDHHS] related to services and programs for children." Mich. E.R.O. No. 2015-1. The duties of the Michigan Attorney General include "appear[ing] for the people of this state in any . . . court or tribunal . . . in which the people of this state may be a party or interested." MCL 14.28. *See also Bay Cty. Democratic Party* v. *Land*, 340 F. Supp. 2d 802, 808 (E.D. Mich. 2004) ("The Michigan attorney general . . . regularly litigates in this Court.").

Alex Azar, in his official capacity, and the United States Department of Health and Human Services ("HHS") are deemed to reside in the Eastern District of Michigan because they are "subject to the court's personal jurisdiction with respect to the civil action in question . . . " 28 U.S.C. § 1391(c)(2). To determine if personal jurisdiction is proper, Michigan courts apply a three part test: "First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of

action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable." *Air Prods. and Controls* v. *Safetech Int'l, Inc.*, 503 F.3d 544 (6th Cir. 2007) (citing *S. Mach. Co.* v. *Mohasco Indus., Inc.*, 401 F.2d 374, 381 (6th Cir. 1968)). Because both Azar and HHS allegedly regulate Michigan's provision of funds to child placing agencies and require such funds be used on a nondiscriminatory basis, which allegedly gave rise to the injury in this case, personal jurisdiction over Azar and HHS is reasonable and consistent with due process.

(2) A Substantial Part of the Events Giving Rise to the Complaint Arose in the Eastern District of Michigan.

Venue is also proper in the Eastern District of Michigan because "a substantial part of the events or omissions giving rise to the claim occurred" in that District. 28 U.S.C. § 1391(b)(2). Plaintiffs challenge the enforcement of the Settlement Agreement, which became effective only "upon entry of the Proposed Order on Stipulation of Dismissal by the district court," which occurred in the Eastern District of Michigan. *Dumont*, ECF No. 82, PageID.1449. Furthermore, the Settlement Agreement was filed in connection with *Dumont*, an Eastern District case that included two oral arguments in Detroit. These contacts create a nexus for venue in the Eastern District of Michigan. *See McCuiston* v. *Hoffa*, 313 F. Supp. 2d 710, 718 (E.D. Mich. 2004) (venue proper in Eastern District of Michigan where, *inter alia*, defendants attended negotiations in Detroit).

Finally, "[i]n cases involving state officials, a substantial connection to the claim occurs not only where the 'triggering event' takes place, but also where the effects of the decision are felt." *See Bay Cty. Democratic Party*, 340 F. Supp. 2d at 809. Here, venue is proper in the

Eastern District because the effects of the Settlement Agreement will be felt statewide since child placing agencies and the children and families those agencies serve are located across Michigan.

C. Service of Process May Be Made on Defendants in the Eastern District of Michigan.

Service of process may be made on all Defendants in the Eastern District of Michigan. Federal Rule of Civil Procedure 4(e)(1) provides that "an individual . . . may be served in a judicial district of the United States by . . . following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located . . . ." With respect to the Michigan government defendants, Michigan Court Rule 2.105(A)(2) provides that an individual may be served by "sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee." For the federal government defendants, "a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency [or] officer . . . ." Fed. R. Civ. P. 4(i)(2). Because the summons and a copy of the complaint may be sent by registered or certified mail to each Defendant and to the persons specified by Fed. R. Civ. P. 4(i)(2) from the Eastern District, service of process can be made on all Defendants.

CONCLUSION

For the reasons set forth above, Intervenors respectfully request that the Court grant Intervenor-Defendants' motion to transfer this Action to the Eastern District of Michigan.

Dated: May 21, 2019

Respectfully submitted,

s/ Daniel S. Korobkin

Jay Kaplan (P38197)
Daniel S. Korobkin (P72842)
American Civil Liberties Union Fund of Michigan
2966 Woodward Avenue
Detroit, MI 48201
Telephone: (313) 578-6823
jkaplan@aclumich.org
dkorobkin@aclumich.org

Daniel Mach
American Civil Liberties Union Foundation
915 15th Street NW
Washington, DC 20005
Telephone: (202) 675-2330
dmach@aclu.org

Leslie Cooper*
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: (212) 549-2633
lcooper@aclu.org

Garrard R. Beeney
Ann-Elizabeth Ostrager*
Leila R. Siddiky*
Jason W. Schnier*
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004-2498
Telephone: (212) 558-4000
beeneyg@sullcrom.com
ostragerae@sullcrom.com
siddikyl@sullcrom.com
schnierj@sullcrom.com

Counsel for Proposed Intervenor Defendants
**Application for admission forthcoming*

CERTIFICATE OF COMPLIANCE

This memorandum complies with the word limit of LCivR 7.3(b)(i) because, excluding the parts exempted by LCivR 7.3(b)(i), it contains 4,289 words. The word count was generated using Microsoft Word 2019.

/s/ *Daniel S. Korobkin*

Jay Kaplan (P38197)
Daniel S. Korobkin (P72842)
American Civil Liberties Union
Fund of Michigan
2966 Woodward Avenue
Detroit, MI 48201
Telephone: (313) 578-6823
jkaplan@aclumich.org
dkorobkin@aclumich.org

Leslie Cooper*
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: (212) 549-2633
lcooper@aclu.org

Daniel Mach
American Civil Liberties Union Foundation
915 15th Street NW
Washington, DC 20005
Telephone: (202) 675-2330
dmach@aclu.org

Garrard R. Beeney
Ann-Elizabeth Ostrager*
Leila R. Siddiky*
Jason W. Schnier*
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004-2498
Telephone: (212) 558-4000
beeneyg@sullcrom.com
ostragerae@sullcrom.com
siddikyl@sullcrom.com
schnierj@sullcrom.com

Counsel for Proposed Intervenor Defendants
**Application for admission forthcoming*