

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

STATE OF TEXAS,

Plaintiff,

v.

MERRICK GARLAND, in his official capacity as
Attorney General, *et al.*,

Defendants.

Case No. 5:23-cv-00034-H

**DEFENDANTS' MOTION *IN LIMINE* TO EXCLUDE CERTAIN DECLARATIONS
OR, IN THE ALTERNATIVE, EVIDENTIARY OBJECTIONS**

On November 1, 2023, Plaintiff served four declarations on Defendants. To date, these are the only declarations that Plaintiff has prepared in connection with this suit, which Plaintiff filed nearly nine months ago. Three of the declarations provide generalized figures on the purported costs to Texas of illegal immigration. The fourth purports to estimate future costs for the Texas Office of the Attorney General related to the Pregnant Workers Fairness Act (PWFA). Pursuant to the Court's Order on the parties' joint motion for continuance, ECF No. 75, Defendants file these objections to the admissibility of Plaintiff's declarations.¹

All four declarations should be excluded for lack of relevance or lack of proper foundation. The three declarations related to immigration answer none of the eleven questions posed by the Court's Notice of Consolidation with Trial on the Merits, *see* ECF No. 73 at 2–3, and Plaintiff offers no relevant nexus between purported costs arising from illegal immigration generally and the Case Management Pilot Program (CMPP) funds at issue in this case. As to the fourth declaration, Plaintiff fails to provide adequate foundation for its declarant's conclusory assertions about future costs that may be incurred in connection with the PWFA. Accordingly, this motion should be granted, and

¹ The parties have agreed not to object to admissibility on the basis that the declarations themselves are hearsay.

these declarations should be excluded.

I. The Court Should Exclude the Declarations of Rebecca Waltz, Susan Bricker, and Mike Meyer as Irrelevant.

Plaintiff offers three declarations that purport to estimate costs to state and local governments associated with illegal immigration, but without any asserted connection to the CMPP funds challenged in this case. Declarant Michael Meyer of the Texas Education Agency, for example, estimates per-student “funding entitlement from state and local sources” and the total annual cost of educating non-citizen unaccompanied children released to adult sponsors in Texas. Ex. 1, Declaration of Michael Meyer (“Meyer Decl.”) ¶¶ 2–4. Declarant Rebecca Waltz of the Texas Department of Criminal Justice estimates the unreimbursed costs of incarcerating undocumented prisoners meeting certain offense criteria. Ex. 2, Declaration of Rebecca Waltz (“Waltz Decl.”) at ¶¶ 3–9. And Susan Bricker of the Texas Health and Human Services Commission asserts certain costs related to the provision of healthcare for non-citizens while acknowledging various methodological challenges. Ex. 3, Declaration of Susan Bricker (“Bricker Decl.”) at ¶¶ 8, 10, 11. Meyer and Waltz also offer some version of the tautological argument that more people in schools and in jail lead to higher costs relating to schools and jails. Meyer Decl. ¶ 7; Waltz Decl. ¶ 10.

To be relevant and admissible, evidence of Plaintiff’s asserted Article III injuries must be tied to the legislation challenged. *See* Fed. R. Evid. 401(a); *see also California v. Texas*, 141 S. Ct. 2104, 2120 (2021) (holding states lacked standing absent injury “fairly traceable to the defendants’ conduct in enforcing the specific statutory provision they attack as unconstitutional”). But these declarations do not establish any causal connection between the Consolidated Appropriations Act of 2023 and immigration costs of any kind, and Plaintiff has offered nothing else to fill that gap. None of the declarations go to any of the eleven questions posed by the Court’s Notice of Consolidation with Trial on the Merits. ECF No. 73 at 2–3. Indeed, none of the declarations even mentions the CMPP, much

less estimates its alleged impact. Nor do they attempt to explain what connection, if any, exists between those enrolled in the CMPP and the specific costs the declarations address. Allegations and legal argument are not enough to supply the predicate facts necessary to draw a connection between the purported expenditures described in these declarations and the CMPP; Plaintiff, which bears the burden of proving its claims at trial, must produce evidence. Fed. R. Evid. 104(b) (“When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist.”); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (while “general factual allegations” “may suffice” at pleading stage, facts must be “supported adequately by the evidence” at trial); see also *In re Davol, Inc./C.R. Bard, Inc., Polypropylene Hernia Mesh Prod. Liab. Litig.*, 511 F. Supp. 3d 804, 807–8 (S.D. Ohio 2021) (excluding as irrelevant evidence that certain diseases cause harm absent evidence plaintiff “was ever diagnosed” with those diseases). Absent sufficient evidence demonstrating a link between the CMPP and the costs described in their declarations, the Meyer, Waltz, and Brinker declarations should be excluded.

The timing of the purported expenditures described in these declarations demonstrates an independent basis for exclusion. The Waltz declaration purports to describe the state’s costs—before any federal reimbursement, see Waltz Decl. ¶ 4—of incarcerating certain unauthorized immigrants for two time periods: July 1, 2020 to June 30, 2021, and July 1, 2021 to June 30, 2022. *Id.* ¶¶ 6, 8. But, at that time, the first tranche of CMPP funds—let alone the third as-yet undisbursed tranche that is at issue in this case—had not yet been distributed to the nonprofit subrecipients. Rather, Texas-based BakerRipley received CMPP funding no earlier than November 30, 2022, when the entity was selected as a subgrant recipient. Declaration of Peter Mina (Mina Decl.) ¶ 10 (May 3, 2023), ECF No. 53. The same temporal mismatch plagues the other two declarations. See Meyer Decl. ¶ 3 (listing the number of unaccompanied children released to sponsors in Texas during various 12-month periods, beginning in October 2014 and ending in September 2022); Bricker Decl. ¶¶ 8, 10 (attempting to apportion

various health care costs to unauthorized immigrants from January 2019 to May 2022). These declarations are thus irrelevant to the issues before the Court and should be excluded.

II. The Court Should Exclude the Declaration of Henry De La Garza as Opinion Testimony Lacking Foundation.

The declaration of Henry De La Garza, Human Resources Director for the Texas Office of the Attorney General (“OAG”), should be excluded as opinion testimony without a sufficient foundation. *See* Ex. 4, Declaration of Henry De La Garza (“De La Garza Decl.”). De La Garza provides future projections attempting to estimate the time and expense that OAG will take on “as a government employer” in connection with the PWFA. *Id.* ¶ 6.

Specifically, De La Garza speculates the number of hours required of various employees, and he multiplies by the hourly wages of each employee to reach each projected cost. For example, De La Garza estimates the OAG will “spend roughly . . . \$574.76 to have the Human Resources (‘HR’) Director, HR Deputy Director, and a law clerk engage in adequate legal research of the Act’s new requirements.” *Id.* ¶ 7. That estimate rests on an unsupported assertion that these employees will spend nine hours performing this research. *Id.* at Ex. to De La Garza Decl.

De La Garza also predicts—without providing any estimate of the number of expected accommodation requests or EEOC charges—that OAG will spend \$539.13 to “review, assess, and otherwise process any pregnancy accommodations requests” and “\$4,685.92 . . . to answer any charges of discrimination filed with the EEOC.” *Id.* ¶ 7. These estimates, too, are based simply on unsupported speculation as to the number of hours that certain employees will work multiplied by their hourly wages. *Id.* at Ex. to De La Garza Decl. Overall, De La Garza estimates OAG “will initially spend around \$6,674.01 and more than . . . 100 hours of time to comply with the Act’s new requirements for the first year.” *Id.* ¶ 8. While the declaration provides the hourly wages of the relevant OAG employees, it is bereft of explanation as to how De La Garza arrived at the number of hours he claims certain tasks will take, how that estimated number of hours takes into account the

similarities between the PWFA and existing civil rights laws with which Texas already must comply, and how these numbers comport with Texas's statement in its complaint that it already provides accommodations to pregnant workers as a matter of course. *Id.* at Ex. to De La Garza Decl.

De La Garza's declaration lacks proper foundation whether it is characterized as an expert opinion or a lay opinion.² If it is an expert opinion—as suggested by De La Garza's assertion that the declaration was based on his “knowledge and expertise,” De La Garza Decl. ¶ 10—it should be excluded for a total lack of disclosure as required by Fed. R. Civ. P. 26(b), and because the declaration includes no valid methodology that would support admissibility under Fed. R. Evid. 702. *See Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 593 (1993). And if the declaration is considered as lay opinion testimony, it includes no facts sufficient to determine whether De La Garza's estimates were “rationally based on [his] perception” as required by Fed. R. Evid. 701(a).³ Without this foundation, De La Garza's opinion stands only on impermissible speculation. *See United States v. Lloyd*, 807 F.3d 1128, 1154 (9th Cir. 2015) (“[A] lay opinion witness ‘may not testify based on speculation.’” (internal citations omitted)). This lack of foundation is especially glaring given Plaintiff's repeated assertions in its pleadings that it already grants—and granted prior to the PWFA taking effect—reasonable accommodations to pregnant employees as would otherwise be required by the PFWA. Am. Compl. ¶ 28, ECF No. 4 (“The State of Texas accommodates the reasonable needs of its pregnant employees as a matter of course.”); Br. Supp. Mot. for Prelim. Inj. at 13, ECF No. 38 (similar). De La Garza offers no explanation for why Texas would have to expend the time he claims to ensure compliance

² Even if these estimates are admissible, they are insufficient to establish standing. Defendants will be prepared, if necessary, to further address standing during argument at trial and in any post-trial briefing.

³ In determining whether a lay opinion making future projections is “rationally based on the witness's perception,” other courts have looked to whether the opinion is “based in the business's past performance.” *Spectre Corp. v. United States*, 160 Fed. Cl. 486, 500 (2022) (collecting cases). There are no facts provided to conduct such an analysis here.

when, by Texas's own account, it already voluntarily did what it now says the PFWA requires. Because it is Plaintiff's burden to demonstrate admissibility, *Bourjaily v. United States*, 483 U.S. 171, 175 (1987), the declaration should be excluded.

CONCLUSION

For the foregoing reasons, the Court should exclude the Declarations of Michael Meyer, Rebecca Waltz, Susan Bricker, and Henry De La Garza.

Dated: November 7, 2023

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

JOHN GRIFFITHS
Director, Federal Programs Branch

LESLEY FARBY
Assistant Branch Director

/s/ Clayton L. Bailey
CLAYTON L. BAILEY (D.C. Bar No. 1644867)
MICHAEL J. GAFFNEY (D.C. Bar No.
1048531)
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20005
Tel: (202) 598-1226
Fax: (202) 616-8470
Email: clayton.l.bailey@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2023, I electronically filed the foregoing paper with the Clerk of Court using this Court's CM/ECF system, which will notify all counsel of record of such filing.

/s/ Clayton L. Bailey
CLAYTON L. BAILEY (D.C. Bar No. 1644867)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20005
Tel: (202) 598-1226
Fax: (202) 616-8470
Email: clayton.l.bailey@usdoj.gov

Exhibit 1

United States District Court
Northern District of Texas
Lubbock Division

State of Texas,

Plaintiff,

v.

Merrick Garland, *et al.*,

Defendants.

No. 5:23-cv-34-H

DECLARATION OF MICHAEL MEYER

My name is Michael Meyer, and I am over the age of 18 and fully competent in all respects to make this declaration. I have personal knowledge and expertise of the matters herein stated.

1. I am the Deputy Commissioner of Finance at the Texas Education Agency (“TEA”). I have worked for TEA in this capacity since June 2018. As a part of my role, I oversee TEA’s school finance operations, including the administration of the Foundation School Program and analysis and processing of financial data. My responsibilities also include representing TEA in legislative hearings and school finance-related litigation.

2. TEA estimates that the average funding entitlement from state and local sources for fiscal year 2023 will be \$9,564 per student in attendance for an entire school year. If a student qualified for additional Bilingual and Compensatory Education weighted funding, it would cost the State \$11,781 to educate each student in attendance for the entire school year. Most, if not all non-citizen (*i.e.*, “alien”) children would likely qualify for both Bilingual and Compensatory Education weighted funding.

3. TEA has not received any information directly from the federal government

regarding the precise number of non-citizen children in Texas. However, I am aware that the U.S. Health and Human Services (“HHS”) Office of Refugee Resettlement provides data for a subset of that population: unaccompanied children (“UAC”) (available at <https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state>, accessed on October 17, 2023 at 2:20 p.m. CST). It indicates that in Texas, 3,272 UAC were released to sponsors during the 12-month period covering October 2014 through September 2015; 6,550 UAC were released to sponsors during the 12-month period covering October 2015 through September 2016; 5,391 UAC were released to sponsors during the 12-month period covering October 2016 through September 2017; 4,136 UAC were released to sponsors during the 12-month period covering October 2017 through September 2018; 9,900 UAC were released to sponsors during the 12-month period covering October 2018 through September 2019; 2,336 UAC were released to sponsors during the 12-month period covering October 2019 through September 2020; 15,341 UAC were released during the 12-month period covering October 2020 through September 2021; and 19,071 UAC were released during the 12-month period covering October 2021 through September 2022.

4. If each of the children described above enrolls in and achieves full attendance at a Texas public school during the school year following the period during which they are released to a sponsor, and qualifies for Bilingual and Compensatory Education weighted funding (such that the annual cost to educate each student from state and local sources for fiscal years 2016, 2017, 2018, 2019, 2020, 2021, 2022, and 2023 would be approximately \$9,573, \$9,639, \$9,841, \$10,330, \$11,323, \$11,536, \$11,719, and \$11,781, respectively), the annual costs to educate these groups of children for fiscal years 2016, 2017, 2018, 2019, 2020, 2021, 2022, and 2023

would be approximately \$31.32 million, \$63.13 million, \$53.05 million, \$42.73 million, \$112.10 million, \$26.95 million, \$179.78 million, and \$224.67 million, respectively. These estimates do not include any potential costs associated with UAC continuing in Texas public schools beyond one year.

5. Texas public school formula funding is comprised of state and local funds. Funding entitlements are initially based on projections of student counts, attendance patterns, and other factors, and adjusted as actual data become available. Districts often experience changes in their student enrollment from year to year resulting from births and deaths, movement in and out of the district, and other factors. The State plans for a net increase of approximately 15,000-25,000 students in average daily attendance across Texas each year, based on available data.

6. The Foundation School Program serves as the primary funding mechanism for providing state aid to public schools in Texas. Any additional UAC enrolled in and attending Texas public schools would increase the State's cost of the Foundation School Program over what it otherwise would have been.

7. Based on my knowledge and expertise regarding school finance issues impacting the State of Texas, I anticipate that the total costs to the State of providing public education to UAC will rise in the future to the extent that the number of UAC enrolled in the State's public school system increases.

8. All of the facts and information contained within this declaration are within my personal knowledge and are true and correct to the best of my knowledge.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 17th day of October 2023.

Handwritten signature of Michael Meyer in black ink, consisting of stylized initials and a horizontal line.

MICHAEL MEYER

Exhibit 2

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

STATE OF TEXAS
Plaintiff,

v.

ALEJANDRO MAYORKAS, in his official
capacity as Secretary of the United States
Department of Homeland Security, et al.

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CIVIL ACTION NO. 5:23-CV-34-H

DECLARATION OF REBECCA WALTZ

My name is Rebecca Waltz, and I am over the age of 18 and fully competent in all respects to make this declaration. I have personal knowledge and expertise of the matters herein stated.

1. I am the Budget Director for the Texas Department of Criminal Justice. The Texas Department of Criminal Justice (TDCJ) is the state agency responsible for the care, custody, and rehabilitation of persons convicted of a criminal offense in the state of Texas.

2. I have been employed with TDCJ since June 2004, and I have served in my current position since January 2020. Prior to that, I served as TDCJ's Deputy Budget Director from December 2017 to December 2019, a Senior Budget Analyst from October 2007 to November 2017, and a Junior Budget Analyst from September 2004 to September 2007.

3. The Bureau of Justice Assistance (BJA) administers the State Criminal Alien Assistance Program (SCAAP) in conjunction with the U.S. Immigration and Customs Enforcement (ICE), Department of Homeland Security (OHS). SCAAP provides federal payments to states and localities that incurred correctional officer salary costs for incarcerating undocumented criminal aliens with at least one felony or two misdemeanor convictions for violations of state or local law, and incarcerated for at least 4 consecutive days during the reporting period.

4. As a part of my employment with TDCJ, I am responsible for compiling the data to be included in TDCJ's application for federal reimbursement to the State Criminal Alien Assistance Program. These data sets include the number of correctional officers and their salary expenditures (correctional officer is defined as a person whose primary employment responsibility is to maintain custody of individuals held in custody in a correctional facility) for the reporting period, information regarding maximum bed counts and inmate days, and information about the eligible inmates – (1) whom the agency incarcerated for at least four consecutive days during the reporting period; and (2) who the agency knows were undocumented criminal aliens, or reasonably and in good faith believes were undocumented criminal aliens.

5. TDCJ has sought reimbursement from the federal government through SCAAP since 1998.

6. For the most recently completed SCAAP application (reporting period of July 1, 2021, through June 30, 2022), TDCJ reported data for 6,914 eligible inmates and total of 2,019,635 days. An estimate of the cost of incarceration for these inmates can be calculated by multiplying the systemwide cost per day per inmate for Fiscal Year 2022 (\$77.49) as reported by the Texas Legislative Budget Board by the number of days. For example ($\$77.49 \times 2,019,635 \text{ days} = \$156,501,516$).

7. A SCAAP award for this application period has not been received.

8. TDCJ also submitted a SCAAP application for the reporting period of July 1, 2020, through June 30, 2021. TDCJ reported data for 7,058 eligible inmates and a total of 1,984,597 days. An estimate of the cost of incarceration for these inmates can be calculated by multiplying the systemwide cost per day per inmate for Fiscal Year 2022 (\$77.49) as reported by the Texas

Legislative Budget Board by the number of days. For example ($\$77.49 \times 1,984,597 \text{ days} = \$153,786,422$).

9. Of this estimated amount, TDCJ was reimbursed \$14,883,040.

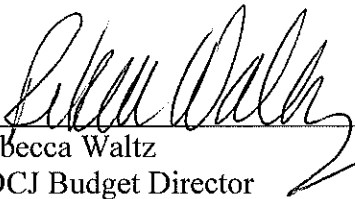
10. It is my belief that to the extent the number of aliens in TDCJ custody increases, TDCJ's unreimbursed expenses will increase as well.

11. Whether incarcerating criminal aliens or having them on parole or mandatory supervision, TDCJ incurs costs. Keeping detainees in TDCJ custody, or adding them to parole or mandatory supervision, imposes costs on TDCJ for housing, supervising, and providing health care. An estimate of the cost of parole or mandatory supervision for these inmates can be calculated by multiplying the average cost per inmate for active parole supervision for Fiscal Year 2022 (\$4.69) as reported by the Texas Legislative Budget Board by the number of days. For example ($\$4.69 \times 2,019,635 \text{ days} = \$9,472,088$; or $\$4.69 \times 1,984,597 \text{ days} = \$9,307,760$).

12. All of the facts and information contained within this declaration are within my personal knowledge and are true and correct.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 20th day of October 2023.



Rebecca Waltz
TDCJ Budget Director

Exhibit 3

United States District Court
Northern District of Texas
Lubbock Division

State of Texas,

Plaintiff,

v.

Merrick Garland, *et al.*,

Defendants.

No. 5:23-cv-34-H

DECLARATION OF SUSAN BRICKER

1. My name is Susan Bricker. I am an adult and competent to testify. The information and opinions contained in this declaration are based upon my personal knowledge, my review of the relevant documents, and my knowledge, skills, training, and experience.

2. I am currently the manager (Manager V) of the Health Program Outcomes and Epidemiology Team (“HPOE”) within the Office of Data, Analytics and Performance (“DAP”) (the office formerly known as the Center for Analytics and Decision Support--CADS) at the Texas Health and Human Services Commission (“HHSC”).

3. Except for a brief eight-month period in 2014 when I worked in the private sector, I’ve been employed at HHSC since 2007. In that time, I have worked as an Epidemiologist II (2007-2012), Research Specialist V (2012-Jan. 2014), a Research Specialist V (Sept. 2014-Apr. 2018), a Program Specialist VII (May 2018-May 2021), and Manager V (June 2021-current). The HPOE Team conducts and/or coordinates legislative and HHS-directed research on health care utilization, demographic trends, and enrollment patterns for the state’s health care and human service programs.

4. In 2007, as part of the 2008-2009 General Appropriations Act, the Texas Legislature required HHSC to report the cost of services and benefits provided by HHSC to undocumented immigrants in the State of Texas. This report, also known as the Rider 59 Report, was first completed by HHSC in 2008. Due to numerous requests for more recent information following the issuance of the 2008 report, the Rider 59 Report was updated in 2010, 2013, 2014, 2017, and 2021. The Rider 59 Report completed in 2021 covered state fiscal year (SFY) 2019.

5. HHSC provided three principal categories of services and benefits to undocumented immigrants in Texas: (i) Texas Emergency Medicaid; (ii) the Texas Family Violence Program (FVP); and (iii) Texas Children's Health Insurance Program (CHIP) Perinatal Coverage (a/k/a "CHIP Perinate") for Rider 59 and subsequent versions. Undocumented immigrants also receive uncompensated medical care from public hospitals in the State. In the 2008 and 2010 versions of the Rider 59 Report, HHSC provided estimates of the amount of uncompensated medical care provided by state public hospital district facilities to undocumented immigrants. HHSC has not provided any estimates of uncompensated care for undocumented immigrants in more recent versions of the Rider 59 Report.

6. In September 2022, HHSC updated the methodology for calculating the fraction of the Texas' Medicaid Type Program 30 (Emergency Medicaid) clients and CHIP Perinate clients that are likely to be undocumented immigrants. The newer methodology is described in paragraphs 8 and 10. These estimates are calculated for calendar years (CY) 2019 through 2022. Due to the change in methodology and the shift from state fiscal year to calendar year, the current estimates do not match the estimates provided in previous testimony.

7. Emergency Medicaid is a federally required program jointly funded by the federal government and the states. The program provides Medicaid coverage, limited to emergency medical conditions including childbirth and labor, to undocumented immigrants living in the United States. To produce Rider 59 cost estimates for the portion of Emergency Medicaid payments attributable to undocumented immigrants in Texas, HHSC relied on population estimates from the U.S. Census Bureau to estimate the percentage of non-U.S. citizen reproductive-age females in Texas who have not attained some form of legal permanent resident status. The method based on Census data was used because HHSC Medicaid claims data do not conclusively identify an individual's residency status. Attached as Exhibit 1 is a document that explains the original methodology HHSC utilized to obtain estimates derived from the Census.

8. In September of 2022, HHSC analysts identified a secondary data source that could be used in combination with claims data to better estimate the fraction of Emergency Medicaid services provided to undocumented immigrants. The updated method relies on enrollment data collected by the Texas Integrated Eligibility Redesign System (TIERS), which contains a variable related to documentation status. Using the percentage of Emergency Medicaid clients with 'UN' (for "undocumented") alien status among individuals that did not have a null/blank value for their Alien Type Code in TIERS, HHSC estimated the portion of Emergency Medicaid payments attributable to undocumented immigrants in Texas. The total estimated cost to the State for the provision of Emergency Medicaid services to undocumented immigrants residing in Texas was \$116 million in CY 2019; \$88.3 million in CY 2020; \$95.6 million in CY 2021; and \$72.2 million in

CY 2022.¹ Attached as Exhibit 2 is a report providing detailed information and data sources for these calculations.

9. Texas CHIP Perinatal Coverage provides prenatal care to certain low-income women who do not otherwise qualify for Medicaid. To produce Rider 59 cost estimates for the portion of CHIP Perinate expenditures attributable to undocumented immigrants in Texas, HHSC relied on population estimates from the U.S. Census Bureau to estimate the percentage of non-U.S. citizen reproductive age females in Texas who have not attained some form of legal permanent resident status. The method based on Census data was used because there is no way to definitively report the number of undocumented immigrants served by CHIP Perinate as the program does not require citizenship documentation. Attached as Exhibit 1 is a document that explains the original methodology HHSC utilized to obtain estimates derived from the Census.

10. The September 2022 estimate for the cost of CHIP Perinate benefits provided to undocumented immigrants used TIERS data in combination with capitation payments to better estimate the fraction of CHIP Perinate expenditures attributable to undocumented immigrants. The updated method uses the percentage of CHIP Perinate clients with 'UN' alien status among individuals that did not have a null/blank value for their Alien Type Code in TIERS to estimate the portion of CHIP Perinate capitation payments attributable to undocumented immigrants in Texas. The total estimated cost to the State for CHIP Perinatal Coverage to undocumented immigrants residing in Texas was \$11.1 million in CY 2019; \$16.9 million in CY2020; \$25.8 million

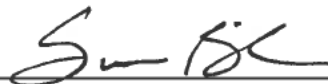
¹ Administrative claims and MCO encounter data for CY 2022 were downloaded on January 11, 2023. Claims and encounter data are subject to an 8-month time lag for claims adjudication. Therefore, expenditures shown for client services in CY 2022 do not reflect complete expenditure data for the year.

in CY 2021; and \$30.9 million in CY2022. Attached as Exhibit 2 is a report providing detailed information and data sources for these calculations.

11. For Emergency Medicaid and CHIP Perinate, the total estimated cost to the State each year is affected by both the volume and cost of services provided and annual changes in the percentage of expenditures matched by the federal government (i.e., Federal Medical Assistance Percentage (FMAP) and Enhanced Federal Medical Assistance Percentage (E-FMAP)), which determines the state share of overall Medicaid and CHIP expenditures. It is important to note that documentation status is missing or unknown for some individuals enrolled in these programs. Additionally, an Alien Type Code of 'UN' (undocumented) may result from a failure to provide proper documentation at the time an application is submitted. Although all of these cost estimates include some margin of uncertainty, it is clear that both of these programs have some positive cost to the State of Texas due to utilization by non-citizens, including undocumented immigrants.

12. All of the facts and information contained within this declaration are within my personal knowledge and are true and correct.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on this 20th day of October 2023.



SUSAN BRICKER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

STATE OF TEXAS,

Plaintiff,

v.

MERRICK GARLAND, *et al.*,

Defendants.

No. 5:23-cv-34-H

DECLARATION OF SUSAN BRICKER

EXHIBIT 1

Population-based Method for Estimating the Percentage of Undocumented Clients in Texas

Original Rider 59 Estimates

Previously, HHSC relied on different methods to estimate the percentage of non-U.S. citizens in Texas who are undocumented. The first method consisted of assuming that one-half of the estimated non-U.S. citizen population in the state was undocumented. Under this method, HHSC would obtain the estimate for total number of non-U.S. citizens in the state, as reported from the U.S. Census Bureau's American Community Survey (ACS)¹, and would divide that number by two in order to obtain an estimate of the undocumented population in the state.

HHSC relied on a method that used two different sources of official federal government data to develop its own in-house estimates of the percent of Texas residents that are undocumented immigrants:

- The Texas-specific sample of the U.S. Census Bureau's American Community Survey (ACS), and
- The Office of Immigration Statistics of the U.S. Department of Homeland Security (DHS).

The ACS was the source for estimates of the total non-U.S. citizen population in the state while DHS was the source for the estimated number of persons in the state who are undocumented.

Using these two sources, HHSC estimated the percent of non-U.S. citizens who are undocumented by taking DHS' estimate of the number of undocumented immigrants in Texas (the numerator) and dividing it by the ACS estimate for the number of non-U.S. citizens in the state (the denominator). This calculation resulted in HHSC's estimate of the proportion/percent of non-U.S. citizens in the state who are undocumented.

¹ The ACS is a large-scale demographic survey that provides annual estimates of the total population in Texas according to U.S. citizen status (citizen versus non-citizen). However, the estimate for the non-U.S. citizen population is not broken down any further according to documented/undocumented status because that type of information is not collected by the survey.

According to this method, during 2008-2014, an estimated two-thirds (62 to 66%) of non-citizens were considered undocumented on any given year within that period.

DHS temporarily suspended the publication of its estimates for the unauthorized/undocumented population after March 2013, when it published estimates for this population as of January 2012. It resumed publication of the estimates on April 19, 2021, when it released previously unpublished estimates for the years 2013-2018. The new updates may be used to develop future versions of this report.

With the temporary suspension of DHS's estimates after March 2013, HHSC lost the official information source relied upon for data on the number of non-citizens who are undocumented, as none of the other Federal and Texas state agencies collected and published information about the legal status of non-U.S. citizens' residing in the state of Texas.

This situation resulted in the need to develop an alternative method for estimating the number and percent of non-U.S. citizens using HHSC services who are undocumented. The goal was to develop a method that does not rely on the simple assumptions previously used (that one-half of non-citizens are undocumented). The alternative method is explained below.

Subsequent Estimates (2014 – 2022)

Benchmark Program: Texas' Medicaid Type Program 30

Texas' Medicaid Type Program 30 (TP 30) plays an important role in paying for emergency medical services provided to non-U.S. citizens who do not meet the eligibility criteria for Medicaid. Given the high-profile role the program plays in compensating health care providers for services provided to non-eligible non-citizens, it was chosen as the benchmark program for developing an estimate of the percent of non-citizens provided HHSC services who are undocumented.

To a very significant degree, uninsured non-citizen reproductive-age (ages 15-44) females are the main caseload driver within TP 30. In SFY 2017, reproductive-age females accounted for 81% of the clients served. Given the highly disproportionate impact this group has on the program, it is by far the most important one to analyze to obtain the best and most accurate estimate possible of the percent of clients served under this program that are likely to be undocumented non-citizens.

Data Analysis and Estimate

According to the U.S. Census Bureau's American Community Survey (ACS), in 2016 there were approximately 446,000 uninsured non-U.S. citizen reproductive-age females in Texas. Of those, 39 percent (176,000) had resided in the U.S. for 10 years or less and 61 percent (270,000) for more than 10 years.

It is reasonable to expect that the longer a non-citizen has resided in the U.S., the more likely he/she would have been able to attain some form of U.S. legal permanent resident status.

Assuming that the fraction of non-citizen reproductive-age females (ages 15-44) who have not attained some form of legal permanent resident status is 7 of every 10 (70%) among those who have lived in the U.S. 10 years or less, and 4 of every 10 (40%) among those in the U.S. for more than 10 years, the estimated potential percentage for undocumented females of reproductive age in Texas is 52%.

Calculation for Estimated Percent Undocumented

$$((0.7*176,000 + 0.4*270,000) / (446,000)) * 100 = 51.8\% \sim 52\%$$

Extending these assumptions derived from the ACS data to non-citizen reproductive-age females that received assistance under TP 30 – for whom year of entry into the U.S. information is not known -- it is then estimated that 52% of them are likely to be undocumented.

Taking into consideration that uninsured, non-citizen reproductive-age females represent a highly disproportionate share of the program's caseload, the estimated potential percentage for undocumented clients applicable to them, slightly adjusted downwards to 50%, is also applied to the entire TP 30 program. Due to the lack of sufficient demographic data on populations at-risk for other programs of interest, the same percentage was also applied to the Family Violence and CHIP-P programs in reports prior to 2023.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

STATE OF TEXAS,

Plaintiff,

v.

MERRICK GARLAND, *et al.*,

Defendants.

No. 5:23-cv-34-H

DECLARATION OF SUSAN BRICKER

EXHIBIT 2

Health and Human Services Commission Services and Benefits Provided to Undocumented Immigrants, Medicaid and CHIP-Perinate Programs, CY 2019 - 2022

	CY 2019	CY 2020	CY 2021	CY 2022
Texas Emergency Medicaid	\$116,000,000	\$88,300,000	\$95,600,000	\$72,200,000*
Texas Children's Health Insurance Program (CHIP) Perinatal Coverage	\$11,100,000	\$16,900,000	\$25,800,000	\$30,900,000
TOTAL TEXAS HEALTH AND HUMAN SERVICES COMMISSION	\$127,100,000	\$105,200,000	\$121,400,000	\$103,100,000

Notes:

*Administrative claims and MCO encounter data were downloaded on January 11, 2023. Claims and encounter data are subject to an 8 month time lag for claims adjudication. Therefore, expenditures shown for client services in CY 2022 do not reflect complete expenditure data for the year.

Estimated cost to the State for the provision of Emergency Medicaid services to undocumented immigrants, CY 2019 - 2022

Texas Emergency Medicaid Expenditures¹	CY 2019	CY 2020	CY 2021	CY 2022[*]
Total	\$379,408,384	\$357,752,477	\$379,965,247	\$257,913,172

Texas' Share of TP 30 Expenditures	CY 2019	CY 2020	CY 2021	CY 2022[*]
Texas' Share of Federal Medical Assistance Percentage (FMAP) ²	41.14%	32.68%	32.24%	34.78%
Texas' Share of TP 30 Expenditures	\$156,088,609	\$116,913,510	\$122,500,796	\$89,702,201

Estimated Percentage of TP30 Services Provided to Undocumented Immigrants	CY 2019	CY 2020	CY 2021	CY 2022[*]
TIERS estimate ³	74.3%	75.5%	78.0%	80.5%

Estimated Cost of Services Provided to Undocumented Immigrants	CY 2019	CY 2020	CY 2021	CY 2022
Total	\$115,973,837	\$88,269,700	\$95,550,621	\$72,210,272

Data Sources:¹ TMHP, AHQP Medicaid Claims² FFY 2019 rates are final as stated in Federal Register Vol. 82, No. 223, November 21, 2017.

FFY 2020 rates are final as stated in Federal Register Vol. 83, No. 229, November 28, 2018.

FFY 2021 rates are final as stated in Federal Register Vol. 84, No. 232, December 3, 2019.

FFY 2022 rates are final as stated in Federal Register Vol. 85, No. 230, November 30, 2020.

³ Texas Integrated Eligibility Redesign System (TIERS)Notes:

Because HHSC Medicaid claims data do not conclusively identify the legal residency status of immigrants, the portion of Emergency Medicaid payments attributable to undocumented immigrants is estimated based on TIERS eligibility data. The TIERS estimate is the percentage of Emergency Medicaid clients with 'UN' alien status, among individuals that did not have a null/blank value for their Alien Type Code in TIERS.

*Administrative claims and MCO encounter data were downloaded on January 11, 2023. Claims and encounter data are subject to an 8 month time lag for claims adjudication. Therefore, expenditures shown for client services in CY 2022 do not reflect complete expenditure data for the year.

Estimated cost to the State for CHIP Perinatal Coverage to undocumented immigrants residing in Texas, CY 2019 - 2022

Texas CHIP Perinatal Coverage expenditures¹	CY 2019	CY 2020	CY 2021	CY 2022
Total	\$175,103,677	\$154,717,301	\$150,341,871	\$161,628,934

Texas' Share of CHIP Expenditures	CY 2019	CY 2020	CY 2021	CY 2022
Texas' Share of Enhanced Federal Medical Assistance Percentage (EFMAP) ²	8.67%	14.25%	22.57%	24.35%
Texas' Share of CHIP-Perinate Expenditures	\$15,181,489	\$22,047,215	\$33,932,160	\$39,356,645

Estimated Percentage of CHIP-Perinate Services Provided to Undocumented Immigrants	CY 2019	CY 2020	CY 2021	CY 2022
TIERS estimate ³	73.3%	76.6%	76.1%	78.4%

Estimated Cost of Services Provided to Undocumented Immigrants	CY 2019	CY 2020	CY 2021	CY 2022
Total	\$11,128,031	\$16,888,167	\$25,822,374	\$30,855,610

Data Sources:¹ HHSC, DAP SQL Server, CHIP_hx ile² FFY 2019 rates are final as stated in Federal Register Vol. 82, No. 223, November 21, 2017.

FFY 2020 rates are final as stated in Federal Register Vol. 83, No. 229, November 28, 2018.

FFY 2021 rates are final as stated in Federal Register Vol. 84, No. 232, December 3, 2019.

FFY 2022 rates are final as stated in Federal Register Vol. 85, No. 230, November 30, 2020.

³ Texas Integrated Eligibility Redesign System (TIERS)Notes:

Because HHSC Medicaid claims data do not conclusively identify the legal residency status of immigrants, the portion of Emergency Medicaid payments attributable to undocumented immigrants must be estimated using TIERS eligibility data. The TIERS method is based on the percentage of CHIP-Perinate clients with 'UN' alien status, among individuals that did not have a null/blank value for their Alien Type Code in TIERS.

Exhibit 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

STATE OF TEXAS,

Plaintiff,

v.

MERRICK GARLAND, *et al.*,

Defendants.

No. 5:23-cv-34-H

DECLARATION OF HENRY DE LA GARZA

My name is Henry De La Garza, and I am over the age of 18 and fully competent in all respects to make this declaration. I have personal knowledge and expertise of the matters herein stated.

1. I am the Human Resources Director for the Office of the Attorney General (“OAG”) and Chief of the Human Resources Division. I have held this title since November 2020. As a part of my role, I oversee many human resource functions for this state agency, including employment & compensation, benefits, recruiting, leave, training & development, accommodations, charges of discrimination, and human resources policies.

2. From a broad perspective, the OAG is a dynamic state agency with over 4,000 employees throughout the State of Texas. As the State’s law firm, the OAG provides exemplary legal representation in diverse areas of law. Employees at OAG enjoy a family-friendly work environment and tremendous opportunities to do important work at a large, dynamic state agency that makes a positive difference in the lives of Texans.

3. As part of the Consolidated Appropriations Act of 2023, Congress enacted, among other things, the “Pregnant Workers Fairness Act.” *See* Pub. L. 117-328, Div. II, § 101, 136 Stat.



4459, 6084 (2022).

4. This Act amends Title VII of the Civil Rights Act of 1964 by now requiring covered employers to provide accommodations to pregnant employees that were not previously mandated by federal or state law. Specifically, the Act now requires covered employers to “make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless” doing so would “impose an undue hardship on the operation of the business.” *Id.* § 103(1). The Act also prohibits covered employers from “deny[ing] employment opportunities,” “requiring a qualified employee to take leave,” and “tak[ing] adverse action” based on the employee’s need for an accommodation. *Id.* § 103(3)–(5). And the Act now imposes the same definitions of “reasonable accommodation” and “undue hardship” as are used in the Americans with Disabilities Act. *Id.* § 102(7).

5. Notably, the State of Texas is composed of numerous state agencies, one of which is OAG. Like all state agencies, OAG is a government employer with government employees. As a government employer, OAG falls within the Act’s definition of a “covered entity.” *Id.* § 102(2)(B)(iii) (citing 42 U.S.C. § 2000e-16c(a)). Thus, OAG and all other Texas’s agencies are subject to the Act’s new requirements.

6. Because the Act imposes new requirements on OAG as a government employer, OAG must now (1) engage in legal research to understand and prepare for the Act’s new requirements; (2) review and update OAG’s policies as needed to comply with the Act’s new requirements; (3) review and update any OAG training regarding the new requirements as needed to comply with the Act’s new requirements; (4) review, assess, and otherwise process any requested pregnancy accommodations under the Act’s new requirements; and (5) answer,

respond, litigate, or otherwise defend against charges of discrimination filed with the U.S. Equal Employment Opportunity Commission (“EEOC”), investigations by the EEOC, lawsuits by the U.S. Department of Justice (“DOJ”), and private actions by allegedly aggrieved individuals.

7. All these additional compliance measures caused by the Act’s new requirements will impose costs on OAG. For instance, OAG estimates that it will spend roughly (1) \$574.76 to have the Human Resources (“HR”) Director, HR Deputy Director, and a law clerk engage in adequate legal research of the Act’s new requirements; (2) \$637.58 to have the HR Director, HR Deputy Director, Director of Employee Development, and Administrative Operations Manager review and update OAG’s policies in order to comply with the Act’s new requirements; (3) \$263.63 to have the HR Director, Director of Employee Development, and Senior Training Coordinator review and update any OAG training as needed to comply with the Act’s new requirements; (4) \$539.13 to have the HR Director and the Administrative Operations manager review, assess, and otherwise process any pregnancy accommodations requests under the Act’s new requirements; and (5) \$4,685.92 to have the HR Director, HR Deputy Director, law clerk, and Administrative Operations Manager to answer any charges of discrimination filed with the EEOC. *See Ex. A.*

8. Overall, in response to the Act’s new requirements regarding accommodations for pregnant employees, OAG estimates that it will initially spend around \$6,674.01 and more than over 100 hours of time to comply with the Act’s new requirements for the first year. *See Ex. A.*

9. In addition, unless the Act’s new requirements are enjoined and declared unlawful, the estimated costs related to processing pregnancy accommodation requests and answering EEOC charges may be incurred on an annual basis at an estimated \$539.13 and \$4,685.92,

respectively.

10. Therefore, based on my knowledge and expertise regarding the compliance costs and measures implemented by OAG, the total costs to OAG of complying the Act's new amendments may increase in the future.

11. All of the facts and information contained within this declaration are within my personal knowledge and are true and correct to the best of my knowledge.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 1st day of November 2023.


HENRY DE LA GARZA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

STATE OF TEXAS,

Plaintiff,

v.

MERRICK GARLAND, *et al.*,

Defendants.

No. 5:23-cv-34-H

DECLARATION OF HENRY DE LA GARZA

EXHIBIT 1

Estimated OAG Compliance Costs Related to the Pregnant Workers Fairness Act (PWFA) [Consolidated Appropriations Act of 2023]

Employee Working Title	Hourly Wage	Approximate Hours to Research Law	Potential Cost of Law Research	Approximate Hours to Review/Update Policies	Potential Cost of Policy Review/Update	Approximate Hours to Review/Update Training	Potential Cost of Training Review/Update	Approximate Hours Spent Annually to Process Pregnancy Accommodations	Potential Cost to Process Pregnancy Accommodations	Approximate Hours Spent Annually on Potential EEOC Charges	Potential Cost to Answer EEOC Charges	Total Projected Costs
HR Director	\$ 90.87	3 00	\$ 272.60	3.00	\$ 272.60	1.00	\$ 90.87	4.00	\$ 363.46	24.00	\$ 2,180.77	\$ 3,180.29
HR Deputy Director	\$ 75.72	3 00	\$ 227.16	1.00	\$ 75.72		\$ -		\$ -	24.00	\$ 1,817.31	\$ 2,120.19
Director of Employee Development	\$ 59.82		\$ -	3.00	\$ 179.46	1.50	\$ 89.73		\$ -		\$ -	\$ 269.19
Sr. Training Coordinator	\$ 37.36		\$ -		\$ -	1.50	\$ 56.03		\$ -		\$ -	\$ 56.03
Law Clerk	\$ 25.00	3 00	\$ 75.00		\$ -		\$ -		\$ -	24.00	\$ 600.00	\$ 675.00
Administrative Operations Manager	\$ 43.92		\$ -	2.50	\$ 109.80		\$ -	4.00	\$ 175.67	2.00	\$ 87.84	\$ 373.31
												\$ 6,674.01

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

STATE OF TEXAS,

Plaintiff,

v.

MERRICK GARLAND, in his official capacity as
Attorney General, *et al.*,

Defendants.

Case No. 5:23-cv-00034-H

**[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION *IN LIMINE* TO
EXCLUDE CERTAIN DECLARATIONS**

Upon consideration of Defendants' Motion *in Limine* to Exclude Certain Declarations, it is
ORDERED that:

- Defendants' Motion is GRANTED; and
- The November 1, 2023, Declarations of Michael Meyer, Rebecca Waltz, Susan Bricker, and
Hendry De La Garza are excluded from trial in this matter.

IT IS SO ORDERED.

Dated: _____

Honorable James Wesley Hendrix
UNITED STATES DISTRICT JUDGE