

NO. 03-22-00126-CV

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**In the Court of Appeals  
for the Third District of Texas at Austin**

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GREG ABBOTT, in his official capacity as Governor of the State of Texas;  
JAIME MASTERS, in her official capacity as Commissioner of the Texas  
Department of Family and Protective Services; and TEXAS DEPARTMENT OF  
FAMILY AND PROTECTIVE SERVICES,

Appellants,

v.

JANE DOE, individually and as parent and next friend of MARY DOE, a minor;  
JOHN DOE, individually and as parent and next friend of MARY DOE, a minor;  
and DR. MEGAN MOONEY MEDICAL, LLC,

Appellees,

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On Appeal from the 201st Judicial District of Travis County, Texas  
Cause No. D-1-GN-22-000977, Hon. Amy Clark Meachum

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**AMICUS BRIEF OF CURRENT AND FORMER CHIEF PROSECUTORS,  
ATTORNEYS GENERAL, AND LAW ENFORCEMENT LEADERS, AND  
FORMER STATE AND FEDERAL JUDGES, U.S. ATTORNEYS, AND U.S.  
DEPARTMENT OF JUSTICE OFFICIALS IN SUPPORT OF APPELLEES**

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## **INTRODUCTION**

*Amici* — current and former state and local chief prosecutors, Attorneys General, and law enforcement leaders, and former state and federal judges, U.S. Attorneys, and U.S. Department of Justice Officials<sup>1</sup> — file this brief in support of Appellees, who ask this Court to affirm the lower court’s entry of a temporary injunction to suspend enforcement of the invalid and unlawful agency rule that targets for investigation and potentially even prosecution parents of transgender children, as well as medical and other professionals, based on efforts to seek, provide, or consent to recognized and approved gender-affirming medical care for children with gender dysphoria.

## **INTEREST OF AMICI CURIAE**

*Amici curiae* are current and former chief prosecutors, Attorneys General and law enforcement leaders, and former state and federal court judges, U.S. Attorneys, and U.S. Department of Justice officials, all of whom are committed to protecting the integrity of the justice system, upholding the Constitution and rule of law, and promoting safer and healthier communities.<sup>2</sup>

*Amici* have decades of experience safeguarding public safety as well as the integrity of the American criminal justice and legal systems. They are united in the

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<sup>1</sup> A list of *amici* is attached as Appendix A.

<sup>2</sup> No person was paid a fee for preparation of this brief, and no party to the case participated in drafting it.

conviction that a core tenet of the pursuit of justice is the furtherance of fair and equitable policies and practices that comport with constitutional law and protect the well-being of members of their community.

Drawing on their collective experiences, *amici* recognize that trust in the rule of law and the justice system is the foundation for keeping communities safe. When anyone — let alone an already vulnerable group of individuals — is excluded from the law’s protections, all members of our communities lose trust that the law is being applied uniformly and fairly. This loss of trust inhibits the ability of law enforcement and stakeholders in the justice system to promote public safety.

Appellants’ adoption of new policies and rules which potentially criminalize medically necessary gender-affirming healthcare and label this medical treatment as “child abuse” are of deep concern to *amici*. By singling out families with transgender children for government interference and opening the door to intrusions into the privacy of deeply personal medical care, while also triggering potential family separation and even prosecution based on clinically recommended treatment, Appellants have profoundly threatened both public trust and the well-being of these children and their loved ones. Policies such as these create troubling and destructive barriers between members of vulnerable communities and law enforcement and will only increase the risk of victimization, abuse, and violence these individuals face.

## **SUMMARY OF ARGUMENT**

Appellants have interjected the government into the personal healthcare decisions of some of the state's most vulnerable youth, punishing parents who follow the medical guidance of qualified professionals in seeking care for their children. Appellants' policies and the resulting investigations have no basis in public health and will inevitably lead to children not getting life-sustaining medical care. And if these policies are ultimately allowed to stand, the public will lose confidence that the law exists to safeguard society, and trust in legal authorities and government agencies will necessarily suffer.

The ripple effects of such a result will be enormous. Prosecutors and law enforcement leaders rely on the trust of their communities to promote public safety. When individuals lack confidence in legal authorities and view government agencies and officials, the lawyers who represent them, police, the courts, and the law as illegitimate, they are less likely to report crimes, cooperate as witnesses, and accept police and judicial authority. By using the law to selectively persecute transgender children and their families, Appellants create untold damage to the bonds of trust between our community and our entire governmental and law enforcement system that are fundamental to its operation.

The Appellants' targeting of transgender children and their families also isolates these particularly vulnerable individuals from the protection of the criminal



legal system. Transgender children are already more likely than their cisgender peers to be victims of violence and harassment. If transgender children and their families know that the police, teachers, and school officials can seek to file abuse reports against them simply for utilizing critical *medical* care, they will be significantly less likely to seek help or redress when they become the victims of crime. Their effective lack of access to law enforcement will only exacerbate the potential for violence and abuse.

### **BACKGROUND**

At issue in this case are the Texas Department of Family and Protective Services' ("DFPS") policies and investigations, first initiated following a letter from the Texas Governor, urging the DFPS Commissioner to conduct a "prompt and thorough investigation" of any reported instances of gender-affirming care as potential child abuse. The letter asked the DFPS to mandate reporting of minors who have or are receiving this treatment, as well as their parents, by "all licensed professionals who have direct contact with children" as well as "all members of the public." Governor Greg Abbott, *Letter to Commissioner Jaime Masters* (Feb. 22, 2022).<sup>3</sup> The Governor's letter referenced an earlier opinion by the Texas Attorney General concluding that medically approved treatment for minors with gender dysphoria could constitute child abuse under state law. Attorney General Opinion

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<sup>3</sup> <https://gov.texas.gov/uploads/files/press/O-MastersJaime202202221358.pdf>.

No. KP-0401 (Feb. 18, 2022).<sup>4</sup> The same day the Governor’s letter was released, Texas DFPS announced that it would initiate investigations of potential child abuse consistent with the Attorney General’s opinion.

DFPS immediately began investigating one of its own — Jane Doe, a caseworker who, following receipt of the Governor’s letter, alerted her supervisor that she is the mother of a transgender child. This unjustified government intrusion into her family’s most private affairs not only unfairly singled this family out for humiliation and harassment, but it also put at risk the parents’ continued custody of their child, their right to pursue treatment for her diagnosed condition, and the employment of Jane Doe herself. Another appellee in this litigation, Dr. Megan Mooney, risks losing her practice and license based on her efforts to treat and care for transgender patients. All now live under the threat of criminal prosecution.

After a hearing on a motion for temporary injunction, the lower court enjoined Appellants from investigating any abuse reports founded only on the provision of gender-affirming care to transgender children, including the investigation of Jane

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<sup>4</sup> Despite this sweeping pronouncement, the memorandum primarily focused on surgical procedures that could cause sterilization, such as forced castration and female genital mutilation, as the basis for its conclusion. *See id.* at 1, 9, *available at* <https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2022/kp-0401.pdf>. However, surgical procedures are not recommended and are generally not allowed for transgender minors. *See Br. of Amici Curiae Am. Academy of Pediatrics, et al. Supp. App. Emerg. Mot. for TRO at 13, Doe v. Abbott*, No. 03-22-00126-CV (Tex. App. Mar. 18, 2022).

and John Doe, prosecuting or referring for prosecution this conduct as child abuse, or imposing reporting requirements on any person in relation to gender-affirming care. At issue in this case is the validity and enforcement of these policies and investigations statewide and, as the trial court noted in its order imposing the temporary injunction, the potential for “prosecuting or referring for prosecution” these reports of purported abuse.

### **ARGUMENT**

#### **I. By Specifically Targeting Transgender Children, their Families, and Medical Professionals — and Intruding on their Right to Seek and Provide Approved Medical Care — the Appellants’ Actions Undermine Community Trust and Threaten Public Safety**

The policies and investigations at issue in this case target one of the most vulnerable populations in America — transgender youth. These practices interject the government into personal healthcare decisions and punish parents who follow the medical guidance of qualified professionals in seeking care for their children, threatening them with investigation and even prosecution as child abusers. This intrusion also ensnares the doctors, social workers, counselors, and other individuals who are entrusted with providing critical foundational support for these children, forcing them to become mandatory reporters and subjecting them to their own adverse consequences. It also traps prosecutors and police officers, individuals charged with protecting the most vulnerable, by entangling them in potential criminal action triggered by child abuse reports from DFPS. All of these devastating

actions occur under the auspices of the rule of law and turn what is often life-saving treatment for children into “child abuse.” See Dawn Ennis, *Gender-Affirming Care Linked To Less Depression, Lower Suicide Risk For Trans Youth*, Forbes (Dec. 14, 2021) (citing Amy E. Green, Ph. D. et al., *Association of Gender-Affirming Hormone Therapy with Depression, Thoughts of Suicide, and Attempted Suicide Among Transgender and Nonbinary Youth*, 70 J. of Adolescent Health 643 (2022)).<sup>5</sup>

Appellants’ policies and investigations target transgender children and their families by subjecting them to intrusive questioning, invasion of their homes and private spaces, and interference with the confidentiality ordinarily shared between individuals and medical professionals. If these policies are allowed to stand, many will legitimately question whether the law exists not to protect members of our community, but to harm them — and this inevitable conclusion will be felt most deeply by children who are already marginalized, along with their loving parents and professionals who have devoted their careers to serving those in need of care and support. These mandates will erode trust and faith in government, and it will diminish our ability to keep people safe.

Prosecutors and law enforcement officials rely on community trust and faith in the integrity of our legal system to perform their jobs. When the integrity of the

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<sup>5</sup> <https://www.forbes.com/sites/dawnstaceyennis/2021/12/14/gender-affirming-care-linked-to-less-depression-lower-suicide-risk-for-trans-youth/?sh=122ec0375d25>.

rule of law — and people’s belief in its even-handed application and enforcement — is undermined, it becomes more difficult for law enforcement officials and criminal justice leaders to maintain community trust and protect public safety. *See e.g., Tom R. Tyler & Jonathan Jackson, Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation and Engagement*, 20 *Psych., Pub. Pol’y & L.* 78, 78–79 (2013); *Building Community Trust: Key Principles and Promising Practices in Community Prosecution and Engagement*, Fair and Just Prosecution, Mar. 2018, at 1 (“Trust between the community and the prosecutor’s office is essential to maintain the office’s legitimacy and credibility.”).<sup>6</sup> When individuals lack confidence in legal authorities and view protective government agencies and officials, the lawyers who represent them, the police, the courts, and the law as illegitimate, they are less likely to report crimes, cooperate as witnesses, and accept police and judicial system authority. *See Tom R. Tyler & Jeffrey Fagan, Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 *Ohio St. J. Crim. L.* 231, 263 (2008). Unfair, discriminatory, and arbitrary practices by government officials erode essential community confidence and trust in law enforcement and our justice system. *See Andrew Goldsmith, Police Reform and the Problem of Trust*, 9 *Theoretical Criminology* 443, 452–57 (2005);

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<sup>6</sup> [https://www.fairandjustprosecution.org/staging/wp-content/uploads/2018/03/FJP\\_Brief\\_CommunityProsecution.pdf](https://www.fairandjustprosecution.org/staging/wp-content/uploads/2018/03/FJP_Brief_CommunityProsecution.pdf).

Thomas C. O'Brien & Tom R. Tyler, *Rebuilding Trust Between Police & Communities Through Procedural Justice & Reconciliation*, 5 *Behav. Sci. & Pol'y* 35 (2019).

By singling out transgender children and their families, seeking to monitor their private decisions, and characterizing their private medical treatment and care as abuse, the Appellants create untold damage to the critical bonds of trust between our community and our entire governmental and law enforcement system. Through these investigations, DFPS has made clear that, despite the fact that gender-affirming care is medically approved and often lifesaving, it will ignore medical advice and target parents of some of the most vulnerable children in our community. These policies have effectively expanded the definition of child abuse to include seeking gender-affirming treatment, which is recognized by the American Academy of Pediatrics and others as critical for transgender youth.<sup>7</sup> They have turned laws

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<sup>7</sup> While some have, sadly, chosen to stigmatize and dismiss care for transgender children, gender-affirming treatment is well-established and medically necessary for youth diagnosed with gender dysphoria to prevent depression, anxiety, self-harm, and suicide. *See* Br. of *Amici Curiae* Am. Academy of Pediatrics, et al. as *Amici Curiae* Supp. Supp. App. Emerg. Mot. for TRO, *supra*, at 5; Br. of *Amici Curiae* Am. Prof. Soc. on the Abuse of Children, et al. Supp. App. Emerg. Mot. for TRO at 16, *Doe v. Abbott*, No. 03-22-00126-CV (Tex. App. Mar. 18, 2022). Gender-affirming medical care has been approved by several medical professional organizations, including the American Academy of Pediatrics, American Psychological Association, Endocrine Society, and the Texas Pediatric Society. American Academy of Pediatrics Policy Statement, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142(4) *Pediatrics* (Oct. 2018), <https://bit.ly/3HGMTwF>;

designed to protect vulnerable children into tools to attack them. And to make matters worse, doctors, service providers for children, and the public at large are all now entangled in this dystopian landscape as mandated reporters of this distorted conception of “abuse.” Rather than focus on investigating parents who truly neglect and harm their children through physical or emotional violence, these Texas officials seek to use the law to prevent life-saving measures for vulnerable children.

When we allow elected officials to subvert the law’s protection and instead use it in oppressive ways — as is occurring here — we destroy any faith that the community may have in the government and its leaders. A community that believes the government is targeting loving families who are merely seeking medically approved healthcare for their children can have little faith that their government will

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American Psychological Association, *Resolution on Supporting Sexual/Gender Diverse Children and Adolescents in Schools* (2020), <https://bit.ly/3IPQb1Z>; Endocrine Society, *Gender Dysphoria/Gender Incongruence Guideline Resources* (Sept. 2017), <https://bit.ly/3vJtysq>; Texas Pediatric Society, *AAP, Texas Pediatric Society Oppose Actions in Texas Threatening Health of Transgender Youth* (Feb. 24, 2022), <https://bit.ly/3vI7tdy>. Just as it is inconceivable that parents seeking chemotherapy for a child diagnosed with cancer could face “child abuse” allegations and potential criminal prosecution, it should be equally unimaginable that parents and medical professionals seeking to treat a child with medically recognized gender-affirming care should be subject to the parade of horrors triggered by DFPS policies. Parents could realistically face the Hobson’s choice of providing their transgender children with medically necessary care and risking adverse consequences for doing so, or not seeking needed care and being accused of medical neglect under Texas law. *See* TEX. FAM. CODE § 261.001(1)(A–D). Such fundamental contradictions in the law necessarily erode trust in the legal system.

protect them, any more than it would believe that a government targeting certain religions or races would protect them. And once members of our community believe that the government is working to oppress and harm people through the rule of law, they lose all faith in the integrity of enforcement of a system of laws. When our laws — and the government we entrust to enforce them — lack credibility, people will start ignoring the law and instead act without regard to the guideposts of our justice system. Some might act as individual vigilante enforcers rather than call the police, and others may simply conclude that legal protections do not exist and feel free to prey on vulnerable individuals who look, think, or behave differently — just as the Texas government is doing here. No one benefits when this lawlessness threatens to replace the norms of our criminal legal system.

It is not only those implementing the policies and investigations at issue — the Commissioner or DFPS — who will lose legitimacy with the public. Prosecutors and law enforcement leaders sworn to promote community safety and well-being will also lose moral authority. The public will likely infer that, when the highest elected officials in the State have identified certain actions as abusive, and triggered investigations as a result, police investigation and criminal prosecution will follow. If the public believes that the criminal legal system could use the law as a sword against the vulnerable, it will have little respect for the authority of prosecutors and law enforcement leaders. Members of the public will reasonably decline to cooperate



in police investigations, because they will be unsure that the criminal legal system has their best interests at heart. They will also be unwilling to report crimes. All of these consequences will erode public safety and trust in the rule of law.

The public's trust in the democratic and judicial systems is further diminished by the Appellants' attempt to circumvent the legislative process in contravention of the will of the Legislature and Texas citizens. Specifically, the Texas Legislature tried, and failed, to pass laws that would ban gender-affirming medical care.<sup>8</sup> As the district court correctly found, the policies at issue here violate numerous constitutional and statutory limits on the Appellants' power, and thus, weaken the public's trust in essential government institutions.

Simply put, these policies and investigations by DFPS have the potential to undermine trust in every level of government and law enforcement both within and outside of Texas. They have diminished the moral weight of the rule of law and called into question the ability of government actors to act as protectors, instead casting them as persecutors. *Amici* have significant concerns as to the long-term impact this will have on our legal system and public safety — and the adverse ripple effects that will inevitably be felt not simply in the state of Texas.

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<sup>8</sup> See S.B. 1311, 87th Leg., Reg. Sess. (Tex. 2021); H.B. 1399, 87th Leg., Reg. Sess. (Tex. 2021); S.B. 1646, 87th Leg., Reg. Sess. (Tex. 2021).

## **II. The Appellants' Actions Will Increase the Risk of Violence and Abuse Against Transgender Children by Isolating Them from the Protection of the Criminal Legal System**

In addition to eroding community trust, the Appellants' targeting of transgender children and their families will isolate these already vulnerable individuals from the protection of the criminal legal system. Transgender people, including transgender teens, are already significantly more likely to be abused, harassed, and attacked than their cisgender peers. One study using data from the 2017-2018 National Crime Victimization Survey concluded that transgender people are over four times as likely to be subjected to personal violence than cisgender people, and households with transgender members are more than twice as likely to be the victims of property crimes. Andrew R. Flores, Ilan H. Meyer, Lynn Langton, and Jody L. Herman, *Gender Identity Disparities in Criminal Victimization*, 111 *American Journal of Public Health* 4 (2021).<sup>9</sup> Transgender high school students show similar vulnerability, and studies of the prevalence of violent victimization among them reveal substantially higher rates than found in cisgender students. Michelle M. Johns, et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts, 2017*, 68 *Morbidity*

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<sup>9</sup> <https://escholarship.org/uc/item/7c3704zg#main>.

and Mortality Weekly Report 67 (Jan. 25, 2019).<sup>10</sup> For example, 23.8 percent of transgender students interviewed had been forced to have sexual intercourse at some point, and 26.4 percent experienced physical dating violence. *Id.*

The Appellants’ actions make it significantly more difficult for law enforcement to protect transgender children and their families from this abuse. If transgender children and their families know that the police, teachers, and school officials are an integral part of abuse reports that are filed against them as they seek critical medical care, they will be significantly less likely to seek help or redress when they become the victims of crime.

This same phenomenon occurs in other communities who constantly live under the threat of investigation, family separation, or criminal charges. Fearing deportation, many undocumented persons do not seek help from the police when they are victimized. Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, Policy Link, (2013) at 3, 5–6 (study concluding that undocumented persons are significantly less likely to contact the police when victimized: “the increased involvement of police in immigration enforcement has significantly heightened the fears many Latinos have of the police . . . exacerbating their mistrust of law enforcement authorities”);<sup>11</sup> Min Xie & Eric

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<sup>10</sup> [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6348759/#\\_\\_ffn\\_sectitle](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6348759/#__ffn_sectitle).

<sup>11</sup> <https://perma.cc/XEE8-P42V>.

P. Baumer, *Neighborhood immigrant concentration and violent crime reporting to the police: A multilevel analysis of data from the National Crime Victimization Survey*, 57 *Criminology* 237, 249 (2019) (concluding that communities with a high concentration of recent immigrants are significantly less likely to report victimization to the police).<sup>12</sup> This understandable lack of cooperation has exacerbated the vulnerability of the undocumented, as they and their family members are increasingly selected as low-risk targets for criminal activity. See Elizabeth Fussell, *The Deportation Threat Dynamic and Victimization of Latino Migrants: Wage Theft and Robbery*, 52 *Soc. Q.* 593, 610 (2011).<sup>13</sup> If this court fails to intervene, transgender children and their families could suffer the same consequences.

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<sup>12</sup> <https://perma.cc/QS5R-K867>.

<sup>13</sup> Similarly, sex workers who are under threat of arrest and prosecution often decline to report abuse, thefts, or violent crimes to the police. Fabian Luis Fernandez, *Hands Up: A Systematized Review Of Policing Sex Workers In The U.S.*, Yale University School of Public Health Theses 1085 (2016), <https://elischolar.library.yale.edu/cgi/viewcontent.cgi?article=1084&context=ysphtdl>. Without the protection of law enforcement, sex workers are also substantially more likely to become victims of violence, including by clients and intimate partners. Lucy Platt, et al., *Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies*, *Plos Medicine* (2018), <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002680>.

## CONCLUSION

The policies and investigations at issue in this case threaten the very core of our system of justice and threaten to erode the foundational trust in government that is integral to promoting public safety. They subvert the moral weight of the rule of law and replace it with deeply troubling judgments and unfounded assumptions grounded in bias. In so doing, they destroy community trust in the integrity of our laws, government institutions, and the legitimacy of those entities charged with protecting the most vulnerable. Instead of safeguarding transgender children, it discourages them from seeking our protection and puts them at risk. *Amici* — individuals committed to public safety who have devoted decades to the service, protection, and well-being of others — cannot stand idly by as this occurs. We therefore ask this Court to affirm the lower court’s award of injunctive relief.

Dated: July 25, 2022

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This brief was prepared using Microsoft Word in Times New Roman font. The font size in the text is 14-point and the footnotes are 12-point. Based on a word count in Microsoft Word, this brief contains 3,652 words, excluding portions of the brief exempt from the word count under Texas Rule of Appellate Procedure 9.4(i)(1).

*/s/ R. Alan York*  
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## Certificate of Service

I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with the Texas Rules of Appellate Procedure on the 25<sup>th</sup> day of July, 2022 on each of the following persons listed below as indicated via the court's electronic filing system.

/s/ R. Alan York

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Former Lieutenant Governor, Hawaii  
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**Organizations**

**Law Enforcement Action Partnership (LEAP)**

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Envelope ID: 66617937

Status as of 7/25/2022 10:11 AM CST

Associated Case Party: Ronald Beal

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Ronald Beal		ron_beal@baylor.edu	7/25/2022 9:55:23 AM	SENT

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Status as of 7/25/2022 10:11 AM CST

Associated Case Party: American Professional Society on the Abuse of Children and Eight Child Advocacy Organizations

Name	BarNumber	Email	TimestampSubmitted	Status
Greg R.Wehrer		greg.wehrer@squirepb.com	7/25/2022 9:55:23 AM	SENT

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