

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
THIRD JUDICIAL DISTRICT
CIVIL DEPARTMENT**

NATIONAL IMMIGRATION LAW CENTER,)	Case No.
<i>Plaintiff,</i>)	
)	Division:
v.)	
)	PETITION FOR
KANSAS GOVERNOR SAM BROWNBACK,)	DECLARATORY AND
300 SW 10th Street)	INJUNCTIVE RELIEF
Topeka, KS 66612;)	
)	
KANSAS DEPARTMENT FOR)	
CHILDREN & FAMILIES,)	
555 S. Kansas Ave., 6th Floor)	
Topeka, KS 66603;)	
)	
and)	
)	
KANSAS DEPARTMENT OF HEALTH)	
& ENVIRONMENT,)	
1000 SW Jackson, Suite 560)	
Topeka, KS 66612,)	
<i>Defendants.</i>)	
)	

Pursuant to Chapter 60

NATURE OF THE ACTION

1. This action challenges the ongoing failure of Kansas officials to release public records that would reveal the manner and extent to which they are implementing Governor Sam Brownback’s unlawful instructions that state officials refuse to assist in the resettlement of certain individuals designated by the federal government as refugees.

2. In November of last year, Governor Brownback issued Executive Order 15-07, which directed all public agencies and officials not to cooperate in the resettlement of refugees from Syria—in other words, to discriminate on the basis of national origin, and to do so in a domain (immigration) that is entrusted by the Constitution solely to the federal government.

3. Approximately two months later, Governor Brownback rescinded Executive Order 15-07 and replaced it with Executive Order 16-01, which has similar ends—it, too, seeks to block the resettlement of certain refugees—but is far more ambiguous in scope: rather than singling out Syrians, Executive Order 16-01 directs Kansas officials not to resettle “refugees that present a safety and security risk to the State of Kansas.”

4. To date, neither Governor Brownback nor the agencies that provide services to refugees—which are principally the other Defendants, the Kansas Department for Children and Families (“DCF”) and the Kansas Department of Health and Environment (“KDHE”)—have explained publicly who they consider to be “a safety and security risk,” the criteria (if any) on which such a conclusion is based, the person or entity authorized to draw that conclusion, or even if someone, acting on the State’s behalf, has already concluded that some refugees pose such a risk. The extent and rationale for the State of Kansas unlawfully discriminating against federally designated refugees thus remains secret.

5. In an attempt to shed light on the matter, approximately two and a half months ago, Plaintiff National Immigration Law Center (“NILC”)—a non-profit organization that helps defend and advance the rights of low-income immigrants throughout the United States—sent requests under the Kansas Open Records Act (“KORA”), K.S.A. §§ 45-216 *et seq.*, to each of the Defendants, seeking public records related to Governor Brownback’s two executive orders regarding refugees.

6. As detailed below, Defendants, in responding to NILC’s requests, have routinely violated the KORA’s requirements in a variety of ways. Two of the Defendants—KDHE and DCF—have yet to produce a single public record. The Governor’s Office, for its part, has produced just 45 pages of responsive records—40 of which were already in the public domain—

and has withheld an unspecified number of additional records pursuant to vague claims that they are exempt from disclosure, although it has thus far refused to substantiate those exemption claims.

7. Plaintiff brings this suit to vindicate the promise of open government at the heart of the Kansas Open Records Act.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to K.S.A. §§ 20-301 (“There shall be in each county a district court, which shall be a court of record, and shall have general original jurisdiction of all matters, both civil and criminal, unless otherwise provided by law”) and 45-222(a) (“The district court of any county in which public records are located shall have jurisdiction to enforce the purposes of this act with respect to such records, by injunction, mandamus, declaratory judgment or other appropriate order, in an action brought by any person”).

9. Venue is appropriate in this District under K.S.A. § 45-222(a) because requested records are located herein. All Defendants are headquartered in this District.

PARTIES

10. Plaintiff National Immigration Law Center (“NILC”) is a nonprofit organization with its principal place in Los Angeles, California. Founded in 1979, NILC is dedicated to defending and advancing the rights of low-income immigrants throughout the United States.

11. Defendant Sam Brownback is the Governor of Kansas, an office he has held since January 10, 2011. Under the Kansas Constitution, “[t]he supreme executive power of this state shall be vested in a governor, who shall be responsible for the enforcement of the laws of this

state.” Kan. Const. art. 1, § 3. Defendant Brownback is a “public agency” within the meaning of the KORA. Defendant Brownback resides and works in Topeka.

12. Defendant Kansas Department for Children and Families (“DCF”) is an agency of the Executive Branch. DCF administers a variety of programs aimed at protecting children and promoting adult self-sufficiency, including the Kansas Refugee Program, which is administered by DCF’s Economic and Employment Services Division. The Kansas Refugee Program supervises the administration of the Refugee Resettlement Program and the Refugee Social Service Program, which provide support and services to federally designated refugees. DCF is headed by Secretary Phyllis Gilmore, who was appointed by Gov. Brownback in February 2012 and confirmed by the Senate the following month. Defendant DCF is a “public agency” within the meaning of the KORA. DCF is headquartered in Topeka.

13. Defendant Kansas Department of Health and Environment (“KDHE”) is an agency of the Executive Branch with the mission of protecting the health and environment of all Kansans. Among other responsibilities, KDHE administers the Kansas Refugee Preventive Health Program, through which newly arrived refugees receive health screenings and, if appropriate, follow-up treatment. KDHE is headed by Secretary Susan Mosier, M.D. Dr. Mosier was appointed by Gov. Brownback in December 2014 and confirmed by the Senate in March 2015. Defendant KDHE is a “public agency” within the meaning of the KORA. KDHE is headquartered in Topeka.

FACTUAL ALLEGATIONS

Background on the Kansas Open Records Act (KORA)

14. In enacting the KORA, the Kansas Legislature “declared [it] to be the public policy of the state that public records shall be open for inspection by any person unless otherwise

provided by this act, and this act shall be liberally construed and applied to promote such policy.” K.S.A. § 45-216(a).

15. The KORA provides that “[a]ll public records shall be open for inspection by any person, except as otherwise provided by this act, and suitable facilities shall be made available by each public agency for this purpose,” K.S.A. § 45-218(a), and requires every public agency of the State to adopt procedures that, *inter alia*, “provide full access to public records” and “insure efficient and timely action in response to applications for inspections of public records.” K.S.A. § 45-220(a).

16. With a few exceptions not relevant here, the KORA broadly defines “public record” to mean “any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency” K.S.A. § 45-217(g)(1).

17. Similarly broad is the definition of “public agency”; with a few exceptions not relevant to this case, the KORA defines “public agency” to mean “the state or any political or taxing subdivision of the state or any office, officer, agency or instrumentality thereof, or any other entity receiving or expending and supported in whole or in part by the public funds appropriated by the state or by public funds of any political or taxing subdivision of the state.” K.S.A. § 45-217(f)(1).

18. The KORA states that “[e]ach request for access to a public record shall be acted upon as soon as possible, but not later than the end of the third business day following the date that the request is received.” K.S.A. § 45-218(d). If the agency is unable to “immediately” grant access to the public record requested, the agency “shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection.” *Id.*

19. In sum, “[o]n request, K.S.A. 45-218(d) gives the custodian three options: (1) grant access to the public record within 3 business days; (2) inform the requestor that access cannot be granted within 3 business days but will be available at a later date; and (3) deny the request within 3 business days.’” *Telegram Pub. Co., Inc. v. Kansas Dep’t of Transp.*, 69 P.3d 578, 587 (Kan. 2003) (quoting *Telegram Pub. Co., Inc. v. Kansas Dep’t of Transp.*, 49 P.3d 554, 556 (Kan. App. 2002)).

Background on the Refugee Resettlement Program

20. The admission of refugees to the United States and their resettlement is authorized by the Immigration and Nationality Act (“INA”), 8 U.S.C. §§ 1101 *et seq.*, and the Refugee Act of 1980, Pub. L. No. 96-212.

21. Under federal law, refugee status may be granted to foreign nationals located outside of the United States who have been persecuted because of their race, religion, nationality, membership in a particular social group, or political opinion, or who have a well-founded fear of persecution on one or more of the same bases; who have not participated themselves in the persecution of others; and who are not inadmissible. *See* 8 U.S.C. § 1101(a)(42) (defining “refugee”); 8 U.S.C. § 1182(a) (bases of inadmissibility).

22. Foreign nationals who wish to be considered for refugee status typically apply to the United Nations High Commissioner for Refugees (UNHCR). The UNHCR reviews applications from those seeking refugee status and selects for resettlement to member nations the most vulnerable individuals who are unable to return home, such as female heads of household; children and adolescents at risk; victims of violence and torture; and those with acute medical needs. The UNHCR refers to member nations less than one percent of refugees for resettlement.

23. Once potential refugees are referred to the United States by the UNHCR, they undergo extensive legal, medical, and security screenings by the U.S. Department of State and the U.S. Department of Homeland Security, among other agencies. This screening process is the most rigorous screening of any group of non-citizen travelers to the United States, and takes, on average, 18 to 24 months to complete. During that entire period, the potential refugee remains outside of the United States.

24. Once an individual has been approved for admission to the United States as a refugee, the federal government coordinates the resettlement of the refugee to a specific city. The U.S. government contracts with nine national non-profit organizations, who then coordinate refugee resettlement through approximately 250 local affiliates or branch offices in 49 states and the District of Columbia.

25. Since the beginning of 2010, approximately 65,000 refugees, on average, have been resettled in the United States each year. During that same period, approximately 460 refugees, on average, have been resettled in Kansas each year.

26. From October 1 of last year through the end of February this year, 236 refugees have been resettled in Kansas; they have come from Bhutan (4), Burma (70), Democratic Republic of Congo (86), Eritrea (16), Iran (5), Iraq (27), Palestine (3), Republic of South Sudan (6), Somalia (11), Sudan (3), and Syria (5).

27. Since the beginning of 2010, refugees from Afghanistan, Central African Republic, China, Cuba, Ethiopia, Liberia, Nepal, Pakistan, Russia, and Vietnam have also been resettled in Kansas.

28. Refugees who have fled persecution and other dire circumstances often arrive in the United States with very few resources and initially require substantial material and logistical

support to adjust to their new surroundings, which Congress recognized. As such, federal law makes them eligible for critical services including short-term cash and medical assistance, employment and job training services, interpretation and translation services, English as a Second Language classes, citizenship and naturalization classes, and other forms of support.

29. These benefits are funded by the federal government. The federal government pays states to either provide the services directly or through contracts with the private sector.

30. Funded by federal dollars, Defendants DCF and KDHE administer a variety of programs that deliver services in Kansas to federally designated refugees.

Defendant Brownback's Executive Orders

31. On November 16, 2015, Defendant Brownback issued Executive Order 15-07 (hereinafter, "the November EO").

32. In the November EO—a copy of which is attached hereto as **Exhibit A**—Defendant Brownback stated that he "ha[s] concluded that the admission of Syrian refugees to the State of Kansas presents an unacceptable risk to the safety and security of the State of Kansas."

33. Gov. Brownback "order[ed] and direct[ed]" in the November EO that "[n]o department, commission, board, or agency of the government of the State of Kansas shall aid, cooperate with, or assist in any way the relocation of refugees from Syria to the State of Kansas."

34. The November EO stated that the order and direction not to assist in relocating Syrian refugees applied to—but was not limited to—"the Kansas Refugee Program, the Refugee Resettlement Program, and the Refugee Social Service Program administered within the Kansas Department for Children and Families, and the Kansas Refugee Preventive Health Program administered within the Kansas Department of Health and Environment."

35. The November EO was in effect for seven and a half weeks, after which it was rescinded and replaced by Executive Order 16-01 (hereinafter, “the January EO”) issued by Gov. Brownback on January 8, 2016.

36. Among other things, the January EO—a copy of which is attached hereto as **Exhibit B**—states that Defendant Brownback “ha[s] concluded that the admission of some refugees to the State of Kansas presents an unacceptable risk to the safety and security of the State of Kansas, and thus State government must take action to ensure that it does not assist in the relocation of such refugees to Kansas from anywhere in the world.”

37. The January EO “order[ed] and direct[ed]” that “[n]o department, commission, board, or agency of the government of the State of Kansas shall aid, cooperate with, or assist in any way the relocation of refugees that present a safety and security risk to the State of Kansas, until such time as an adequate vetting process is in place with adequate assurances to the State.”

38. Like the November EO, the January EO expressly stated that it applied to, but was not limited to, “the Kansas Refugee Program, the Refugee Resettlement Program, and the Refugee Social Service Program administered within the Kansas Department for Children and Families, and the Kansas Refugee Preventive Health Program administered within the Kansas Department of Health and Environment.”

39. The January EO remains in effect.

40. To date, neither Defendant Brownback nor anyone in his office has publicly explained which refugees he believes do or would “present a safety and security risk to the State of Kansas,” the criteria for such a conclusion (if any), who is or would make such a conclusion, or if it has already been made with regards to a particular refugee or a group of refugees.

41. Similarly, thus far neither DCF nor KDHE has stated publicly how it is interpreting and/or implementing Defendant Brownback's instructions.

42. Given that refugees are continually resettled in Kansas—including refugees from Syria—there is a very real threat that DCF and KDHE have already refused to participate in the resettlement of some refugees, or that they will do so in the near future.

Plaintiff's KORA Request to Defendant Brownback

43. On January 19, 2016, Plaintiff NILC sent via U.S. Mail to Defendant Brownback's office a request under the KORA for "all records, regardless of form, related to" the November EO and the January EO. A copy of Plaintiff's KORA request to Defendant Brownback is attached hereto as **Exhibit C**.

44. Defendant Brownback's office first acknowledged receipt of the KORA request by a letter dated February 2, 2016, a copy of which is attached hereto as **Exhibit D**. That letter—which was signed by Brant M. Laue, Chief Counsel, and was sent via U.S. Mail—appeared to be a form letter. It stated that Defendant Brownback's office had received the KORA request on January 28, that it had "commenced the process of determining" whether it had records responsive to Plaintiffs' request, and that at some unspecified time in the future, it would provide Plaintiffs with one or more of the following: the requested records; a "statement" that no responsive records were located; a "request for clarification"; an estimate of the fees that would be required to be pre-paid; and/or a statement that the records sought "are closed by law."

45. When, on March 8, 2016, NILC had not heard further from Defendant Brownback's office, counsel for NILC emailed a letter to Mr. Laue, in which NILC "respectfully request[ed] that the Governor's Office comply with its obligations under the KORA vis-à-vis NILC's request" within an additional three business days, which was the close of business on

March 11. A copy of NILC's March 8, 2016 letter to Defendant Brownback's office is attached hereto as **Exhibit E**.

46. Defendant Brownback's office next responded via letter dated March 14, 2016, which NILC received in the mail one week later. In that letter, which is signed by Mr. Laue and a copy of which is attached hereto as **Exhibit F**, Mr. Laue stated that enclosed documents had "been identified as responsive to your request." The enclosed documents totaled 45 pages, all or nearly all of which were already in the public domain.

47. Mr. Laue also stated in his March 14 letter that an unspecified number of additional documents responsive to NILC's KORA request had been identified, but were being withheld in their entirety under one or more exemptions codified in K.S.A. § 45-221(a)(14), (a)(20), (a)(25), and (a)(30). Mr. Laue concluded his letter by stating that NILC should "contact this office if you have any further questions."

48. Via a letter dated March 21, 2016 and emailed to Mr. Laue that same day, NILC expressed concern regarding the paucity of documents produced by the Governor's Office. In that letter, a copy of which is attached hereto as **Exhibit G**, NILC requested that the Governor's Office describe the documents withheld and why it believed them to be exempt from production, and why they could not be produced with the exempt information redacted. NILC requested that the information be provided within three business days, which would have been by the end of the day on March 24. NILC also requested that the information be emailed.

49. On March 28, 2016, NILC received via U.S. Mail a letter dated March 24, 2016 and signed by Mr. Laue. That letter, a copy of which is attached hereto as **Exhibit H**, was identical to the February 2 form letter Mr. Laue sent to NILC acknowledging receipt of NILC's original KORA request. In other words, and without reason or justification, the Governor's

Office chose to treat NILC's March 21, 2016 letter asking for information about the Governor's plainly inadequate response to NILC's first KORA request as a new KORA request.

50. As of the date of this filing, the KORA request to Defendant Brownback has been pending for 63 days, and thus far the Governor's Office has produced perhaps 5 pages of documents that were not already in the public domain.

51. None of the documents the Governor's Office has produced shed any light on how Defendant Brownback's executive orders regarding refugees have been applied, are being applied, or will be applied.

52. Defendant Brownback's handling of and response to NILC's KORA request have violated the KORA's requirements in numerous ways.

Plaintiff's KORA Request to Defendant DCF

53. On January 19, 2016, Plaintiff NILC faxed to Defendant DCF a request under the KORA for "all records, regardless of form, related to" the November EO and the January EO. A copy of Plaintiff's KORA request to Defendant DCF is attached hereto as **Exhibit I**.

54. Defendant DCF first acknowledged receipt of the KORA request by a letter dated January 27, 2016, a copy of which is attached hereto as **Exhibit J**. That letter—which was signed by Theresa Freed, DCF's Director of Communications, and was emailed by Todd Fertig, DCF Public Information Officer—appears to be a form letter. It stated that DCF had received the KORA request on January 19, that it had "begun the process of determining" whether it had records responsive to Plaintiffs' request, and that at some unspecified time in the future, it would provide Plaintiffs with one or more of the following: the requested records; a "statement" that no responsive records were located; a "request for clarification"; an estimate of the fees that would be required to be pre-paid; and/or a statement that the records sought "are closed by law."

55. When, on February 10, 2016, NILC had not heard further from Defendant DCF, counsel for NILC emailed Mr. Fertig, “to request an update on the status of NILC’s request, including the date by which we will receive the records.” A copy of NILC’s February 10, 2016 email is attached hereto as **Exhibit K**.

56. NILC never received a response to its February 10, 2016 email to Defendant DCF.

57. When, on March 8, 2016, NILC still had not heard further from Defendant DCF, counsel for NILC emailed a letter to Ms. Freed and Mr. Fertig, in which NILC “respectfully request[ed] that DCF comply with its obligations under the KORA vis-à-vis NILC’s request” with three additional business days, which would have been by the close of business on March 11. A copy of NILC’s March 8, 2016 letter is attached hereto as **Exhibit L**.

58. Defendant DCF responded via a letter dated March 16, 2016 and signed by Ms. Freed. In that letter, a copy of which is attached hereto as **Exhibit M**, Ms. Freed stated: “To collect and review the information you requested will cost \$3,175. This amount includes IT and legal staff hours to review the requested records. This review will be conducted to determine which if any, documents are responsive to your request and if any, exceptions may apply to those documents, which would make them not open to disclosure.”

59. Ms. Freed did not explain why it took Defendant DCF two months to inform NILC that it would purportedly cost \$3,175 to process its KORA request; nor, to date, has anyone else at Defendant DCF so informed NILC.

60. NILC believed the costs quoted in Defendant DCF’s March 16, 2016 letter to be astronomical, and therefore sent DCF a letter the next day to request that itemize the estimated expenses. A copy of that letter is attached hereto as **Exhibit N**. NILC requested that Defendant

DCF provide the itemization within the following three business days, which would have been by March 21.

61. Defendant DCF provided the requested itemization via a letter dated March 23, 2016. A copy of that letter is attached hereto as **Exhibit O**. In it, Ms. Freed states on behalf of Defendant DCF that its previously provided estimate was for eight (8) hours of labor to transfer data; eighty (80) hours “for searching of emails”; sixty (60) hours “of legal review”; and \$100 in “IT costs.”

62. NILC responded via letter the next day, March 24, 2016; a copy of that letter is attached hereto as **Exhibit P**. In that letter, NILC pointed out the various reasons why it believed DCF’s cost estimate to be unreasonable, including the narrow scope and short time frame of KORA request and the excessive time estimates for searching emails. NILC additionally pointed out that the KORA does not permit public agencies to charge requestors for the legal review of public records.

63. NILC concluded its March 24, 2016 letter to Defendant DCF by requesting that the agency provide “a reasonable, itemized, detailed, and lawful estimate of the time and costs required to fulfill NILC’s KORA request; and (2) a date certain, in the very near future, by which DCF will produce all records responsive to NILC’s KORA request.” NILC requested that Defendant DCF provide the requested information within three additional business days—i.e., by the close of business on March 29, 2016.

64. To date, NILC has not received a response to its March 24, 2016 letter.

65. As of the date of this filing, NILC’s KORA request to Defendant DCF has been pending for 72 days, and Defendant DCF has yet to produce a single public record.

66. Defendant DCF's handling of and response to NILC's KORA request have violated the KORA's requirements in numerous ways.

Plaintiff's KORA Request to Defendant KDHE

67. On January 19, 2016, Plaintiff NILC emailed to Defendant KDHE a request under the KORA for "all records, regardless of form, related to" the November EO and the January EO. A copy of Plaintiff's KORA request to Defendant KDHE is attached hereto as **Exhibit Q**.

68. Defendant KDHE first acknowledged receipt of the KORA request by an email sent on January 26, 2016, a copy of which is attached hereto as **Exhibit R**. That email—which was signed by Michael G. Smith, Defendant KDHE's Associate Chief Counsel and KORA Officer—stated that "KDHE does not maintain records regarding the Governor's Executive Orders, and therefore KDHE does not have any documents to send to you in response to your request."

69. Later that same day, counsel for NILC emailed Mr. Smith, explaining that "the Governor's Executive Orders specifically name and affect [KDHE]," and that NILC therefore "expect[s] KDHE to possessive responsive records." NILC requested that "[i]f KDHE maintains that it has not responsive records," that it provide "a description of the search for responsive records that [KDHE] has performed so that we can evaluate its adequacy under the KORA." A copy of NILC's January 26, 2016 email to Defendant KDHE is attached hereto as **Exhibit S**.

70. NILC never received a response to its January 26, 2016 email to Defendant KDHE.

71. When, on March 8, 2016, NILC still had not heard further from Defendant KDHE, counsel for NILC emailed a letter to Mr. Smith "to request again that KDHE explain either the search it conducted for responsive records or how it can have no records related to two

executive orders that specifically name and apply to it, and undoubtedly have affected its operation.” Counsel for NILC explained that “[w]ithout such an explanation, we do not believe that KDHE has fulfilled its obligations under the KORA.” As with the other Defendants, NILC requested that Defendant KDHE provide the requested information within the following three business days, which would have been by the close of business on March 11, 2016. A copy of NILC’s March 8, 2016 letter is attached hereto as **Exhibit T**.

72. Defendant KDHE responded to NILC’s letter on March 15, 2016 in a letter signed by Mr. Smith, a copy of which is attached hereto as **Exhibit U**. In that letter, Defendant KDHE stated that it “will recheck its files for any responsive documents that the agency can provide to you under Kansas law.” Mr. Smith concluded the letter by stating that NILC should get back in touch with him if it had not received a response by March 23, 2016.

73. When, on March 24, 2016, NILC had not heard further from Defendant KDHE, it sent the agency a letter, a copy of which is attached hereto as **Exhibit V**. In that letter, NILC requested once again that Defendant KDHE simply produce the records responsive to the January 19 KORA request, and that Defendant KDHE do so within the following three business days—i.e., by the close of business on March 29, 2016.

74. As of the date of this filing, NILC has not received a response from Defendant KDHE.

75. As of the date of this filing, the KORA request to Defendant KDHE has been pending for 72 days. Defendant KDHE has yet to produce a single public record.

76. Defendant KDHE’s handling of and response to NILC’s KORA request have violated the KORA’s requirements in numerous ways.

CLAIMS FOR RELIEF

COUNT ONE

Defendants Denial of Access to Public Records Against All Defendants

77. The foregoing allegations are repeated and incorporated as though fully set forth herein.

78. Plaintiff NILC requested from each Defendant access to “public record[s]” within the meaning of the KORA. K.S.A. § 45-217(g)(1).

79. Each Defendant constitutes a “public agency” within the meaning of the KORA. K.S.A. § 45-217(f)(1).

80. Each Defendant has failed to make its public records open for inspection, in violation of the KORA. K.S.A. § 45-218(a).

81. Each Defendant’s delay in responding to NILC’s repeated requests for access constitutes a denial of access to public records, in violation of the KORA. K.S.A. § 45-218(d).

82. Each denial of access to public records by each of the Defendants was not in good faith and was without a reasonable basis in fact or law. K.S.A. § 45-222(d).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Assume jurisdiction over this matter and determine it *de novo*, as provided by K.S.A. § 45-222(a)-(b);

(2) Provide for expeditious proceedings in this action, as provided by K.S.A. § 45-222(g);

(3) Order Defendants to produce to Plaintiff the requested public records in their entireties;

(4) Enter a declaratory judgment that Defendants violated the KORA with respect to Plaintiffs' requests for access to public records;

(5) Enter a declaratory judgment that Defendants are not permitted to charge KORA requestors for the legal review of public records;

(6) Award Plaintiffs' costs and reasonable attorneys' fees, as provided by K.S.A. § 45-222(d); and

(7) Order such other relief as this Court deems just and equitable.

Respectfully submitted,

DATED: March 30, 2016

By:



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ATTORNEYS FOR PLAINTIFFS

** motion to appear pro hac vice forthcoming*

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
THIRD JUDICIAL DISTRICT
CIVIL DEPARTMENT**

NATIONAL IMMIGRATION LAW CENTER, <div style="text-align: center;"><i>Plaintiff,</i></div>)	Case No.
)	
v.)	Division:
)	
KANSAS GOVERNOR SAM BROWNBACK, et al.,)	
)	
<i>Defendants.</i>)	
)	

LIST OF EXHIBITS

A	Executive Order 15-07 (Nov. 16, 2015)
B	Executive Order 16-01 (Jan. 8, 2016)
C	Request under the Kansas Open Records Act (“KORA”) to Defendant Governor Brownback from the National Immigration Law Center (“NILC”) (dated Jan. 19, 2016)
D	Letter to NILC from Defendant Governor Brownback’s office (dated Feb. 2, 2016)
E	Letter to Defendant Governor Brownback’s office from NILC (dated Mar. 8, 2016)
F	Letter to NILC from Defendant Governor Brownback’s office (dated Mar. 14, 2016)
G	Letter to Defendant Governor Brownback’s office from NILC (dated Mar. 21, 2016)
H	Letter to NILC from Defendant Governor Brownback’s office (dated Mar, 24, 2016)
I	NILC’s KORA request to Defendant Kansas Department for Children and Families (“DCF”) (dated Jan. 19, 2016)
J	Letter to NILC from Defendant DCF (dated Jan. 27, 2016)
K	Email to Defendant DCF from NILC (dated Feb. 10, 2016)
L	Letter to Defendant DCF from NILC (dated Mar. 8, 2016)
M	Letter to NILC from Defendant DCF (dated Mar. 16, 2016)
N	Letter to Defendant DCF from NILC (dated Mar. 17, 2016)
O	Letter to NILC from Defendant DCF (dated Mar. 23, 2016)
P	Letter to Defendant DCF from NILC (dated Mar. 24, 2016)

Q	NILC's KORA request to Defendant Kansas Department of Health and Environment ("KDHE") (dated Jan. 19, 2016)
R	Email to NILC from Defendant KDHE (dated Jan. 26, 2016)
S	Email to Defendant KDHE from NILC (dated Jan. 26, 2016)
T	Letter to Defendant KDHE from NILC (dated Mar. 8, 2016)
U	Letter to NILC from Defendant KDHE (dated Mar. 15, 2016)
V	Letter to Defendant KDHE from NILC (dated Mar. 24, 2016)

EXECUTIVE ORDER 15-07

Protecting Kansas From Terrorism

WHEREAS, the well-being of the State of Kansas and its citizens is threatened by the scourge of international terrorism; and

WHEREAS, Kansas locations previously have been targeted for terrorist acts of violence, and the perpetrators have been apprehended and prosecuted; and

WHEREAS, the recent terror attacks in Paris have heightened concerns about protecting Kansas and ensuring the safety and security of our citizens; and

WHEREAS, the terrorist perpetrators of the Paris attacks appear to have ties to the Syrian refugee population; and

WHEREAS, I have concluded that the admission of Syrian refugees to the State of Kansas presents an unacceptable risk to the safety and security of the State of Kansas.

NOW, THEREFORE, pursuant to the authority vested in me as Governor of the State of Kansas, I hereby order and direct as follows:

No department, commission, board, or agency of the government of the State of Kansas shall aid, cooperate with, or assist in any way the relocation of refugees from Syria to the State of Kansas. This Order includes, but is not limited to, the Kansas Refugee Program, the Refugee Resettlement Program, and the Refugee Social Service Program administered within the Kansas Department for Children and Families, and the Kansas Refugee Preventive Health Program administered within the Kansas Department of Health and Environment. Furthermore, this Order also includes the funding or administration of any grant program under the authority of the State of Kansas.

This document shall be filed with the Secretary of State as Executive Order No. 15-07 and shall become effective immediately.

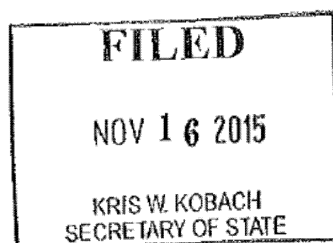
THE GOVERNOR'S OFFICE

BY THE GOVERNOR




DATED

Nov 16, 2015




Secretary of State


Asst. Secretary of State

Capitol Building
Room 241-South
300 SW 10th Street
Topeka, KS 66612



EXHIBIT

B

Phone: (785) 296-3232
Fax: (785) 368-8788
governor@ks.gov

Sam Brownback, Governor

EXECUTIVE ORDER 16-01

Protecting Kansas From Terrorism

WHEREAS, the well-being of the State of Kansas and its citizens continues to be threatened by the scourge of international terrorism; and

WHEREAS, Kansas locations previously have been targeted for terrorist acts of violence, and the perpetrators have been apprehended and prosecuted; and

WHEREAS, recent terror attacks in Paris and San Bernardino have heightened concerns about protecting Kansas and ensuring the safety and security of our citizens; and

WHEREAS, the terrorist perpetrators of the Paris attacks had ties to refugee populations; and

WHEREAS, we have learned just this week of federal charges filed in Texas and California against terrorist operatives that entered the United States as refugees; and

WHEREAS, I have concluded that the admission of some refugees to the State of Kansas presents an unacceptable risk to the safety and security of the State of Kansas, and thus State government must take action to ensure that it does not assist in the relocation of such refugees to Kansas from anywhere in the world; and

WHEREAS, Kansas should and will remain welcoming to refugees as to which we can be assured there is no risk to the safety and security of our citizens.

NOW, THEREFORE, pursuant to the authority vested in me as Governor of the State of Kansas, I hereby order and direct as follows:

No department, commission, board, or agency of the government of the State of Kansas shall aid, cooperate with, or assist in any way the relocation of refugees that present a safety and security risk to the State of Kansas, until such time as an adequate vetting process is in place with adequate assurances to the State. This Order includes, but is not limited to, the Kansas Refugee Program, the Refugee Resettlement Program, and the Refugee Social Service Program administered within the Kansas Department for Children and Families, and the Kansas Refugee Preventive Health Program administered within the Kansas Department of Health and Environment. Furthermore, this Order also includes the funding or administration of any grant program under the authority of the State of Kansas.

Executive Order 15-07 dated November 16, 2015, is hereby rescinded and replaced with this Executive Order 16-01. This document shall be filed with the Secretary of State as Executive Order No. 16-01 and shall become effective immediately.

THE GOVERNOR'S OFFICE

BY THE GOVERNOR

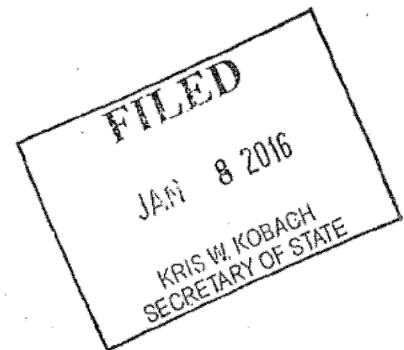
Sam Sunback

DATED

January 8, 2016

Kris W. Kobach
Secretary of State

Devine Talafeno
Asst. Secretary of State





NATIONAL
IMMIGRATION
LAW CENTER

January 19, 2016

Sent via U.S. Certified Mail/Return Receipt

The Office of Governor Sam Brownback
Custodian of Records
300 SW 10th Street
Topeka, Kansas 66612

Re: Kansas Open Records Act Request

Dear Custodian of Records:

This letter constitutes a request under the Kansas Open Records Act (KORA), K.S.A. § 45-215 *et seq.*, on behalf of the National Immigration Law Center (NILC).

NILC hereby requests all records, regardless of form, related to:

- Executive Order No. 15-07, signed by Governor Brownback on Nov. 16, 2015 (a copy of which is attached as Exhibit A); and
- Executive Order No. 16-01, signed by Governor Brownback on Jan. 8, 2016 (a copy of which is attached as Exhibit B).

Please send copies of the responsive records via email to huerta@nilc.org. If emailing the records is not possible, please send copies of the records to 3435 Wilshire Boulevard, Suite 2850, Los Angeles, CA 90010.

As a non-profit organization representing low-income individuals, NILC requests a waiver of or reduction in fees associated with gathering and reproducing this information. If a full waiver or reduction of fees is not granted, please inform me if the cost for search or production of the records requested will exceed \$50 before incurring such costs.

We appreciate your response as soon as possible, or within three business days, whichever is later. *See* K.S.A. § 45-218(d). If you deny all or part of this request, please state the legal basis for exempting those records from disclosure. *See id.*

Letter to The Office of Governor Sam Brownback
January 19, 2016
Page 2 of 2

If you have any questions or would like to discuss this request, please contact me at (213) 674-2829. Thank you in advance for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Huerta', with a long horizontal flourish extending to the right.

Alvaro M. Huerta
Staff Attorney
NATIONAL IMMIGRATION LAW CENTER
3435 Wilshire Boulevard, Suite 2850
Los Angeles, CA 90010
huerta@nilc.org

AMH:bar

EXHIBIT

D

February 2, 2016

Alvaro M. Huerta
Staff Attorney
National Immigration Law Center
3435 Wilshire Blvd., Suite 2850
Los Angeles, CA 90010

Re: Open Records Act Request

Dear Mr. Huerta:

I am writing to let you know that the Governor's Office received your written record request on January 28, 2016. In accordance with K.S.A. 45-218(d), we have commenced the process of determining if we possess any public records meeting the terms of your request and, as soon as possible hereafter, we will provide you with one or more of the following:

1. Copies of the requested public records;
2. A statement concerning our inability to locate any public records meeting the terms of your request;
3. A request for clarification concerning the types of records or information you are seeking;
4. Record requests that can be provided with less than one hour of staff time or less than 25 pages will be provided at no charge. If we determine that our office possesses the public records you request, but that they are voluminous, difficult to locate, and/or contain information that may include both open and closed information, we will provide you with a written estimate of the fees that we will require be pre-paid to pay for the actual costs associated with (a) locating and/or retrieving the public records from storage, (b) staff time spent in assisting with making copies of the records, including attorney time spent examining the records for possible closure and/or redaction, and (c) copying and mailing the requested public records;

For requests that exceed one hour of staff time or more than 25 pages amount, the following rates shall apply.

- Copies, 25¢ per page; Mailing, 50¢ for first 5 pages, 25¢ for additional 5 page increments; FAX, 65¢ per 10 page fax.

- Regarding staff time, this will be charged at the rate of pay for each person(s) whose time is used in order to assist and/or respond to a specific request. This may include the time spent to access records maintained on computer facilities, review records to determine whether closure exceptions apply and/or to redact closed information. Attorney time will be charged at \$60 per hour. Clerical time will be charged at \$18 per hour. Information Technology (IT) services will be charged at \$38 per hour.
- Additional fees may be assessed if any other costs are incurred by the Governor's Office in connection with complying with a record request. We will provide an estimate of the fees which shall be paid prior to gathering the records. The actual final cost of providing access to or furnishing copies must be paid before the records are provided. If the final cost is less than the estimate, the requestor will be reimbursed for the difference.

5. If we determine that we do possess the records, but that the records are closed by law, we will provide you with that information together with a written citation to the laws allowing or requiring that type of public record to be closed.

We will contact you again, as soon as possible, concerning this record request.

Sincerely,

A handwritten signature in black ink, appearing to read "Brant M. Laue", written in a cursive style.

Brant M. Laue
Chief Counsel
Office of the Governor



NATIONAL
IMMIGRATION
LAW CENTER

March 8, 2016

Sent via email

Brant Laue
Chief Counsel, Office of the Governor
300 S.W. 10th Ave., Suite 241S
Topeka, KS 66612
Brant.Laue@ks.gov

Re: Open Records Act request regarding refugee resettlement

Dear Mr. Laue:

I write regarding a request made by the National Immigration Law Center (NILC) under the Kansas Open Records Act ("KORA") to the Office of Governor Brownback for records relating to two executive orders that he issued relating to the resettlement of refugees in Kansas. NILC's KORA request dated January 19, 2016 is attached hereto.

By letter dated February 2, 2016 and signed by you, the Governor's Office acknowledged that it had received the KORA request on January 28, 2016. To date, however, the Governor's Office has failed to fulfill its obligations under the KORA, *see* K.S.A. § 45-218(d), notwithstanding that it received NILC's request nearly six weeks ago.

In light of the foregoing, as well as our concerns regarding the substance of Gov. Brownback's executive orders, we respectfully request that the Governor's Office comply with its obligations under the KORA vis-à-vis NILC's request no later than the close of business on **Friday, March 11, 2016**. If the Governor's Office has not done so by that date, NILC will understand that litigation may be required to compel Governor Brownback's compliance with the KORA.

If you wish to discuss the request, you may contact me at the email address or phone number below.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin Cox". The signature is fluid and cursive, with the first name "Justin" written in a larger, more prominent script than the last name "Cox".

Justin Cox
NILC Cooperating Attorney
1989 College Ave. NE
Atlanta, GA 30317
(678) 404-9119
cox@cox.legal

Capitol Building
Room 241-South
300 SW 10th Street
Topeka, KS 66612



Phone: (785) 296-3232
Fax: (785) 368-8788
governor.ks.gov

Brant Laue, Chief Counsel

Office of the Chief Counsel

Sam Brownback, Governor



March 14, 2016

Alvaro M. Huerta
Staff Attorney
National Immigration Law Center
3435 Wilshire Blvd., Suite 2850
Los Angeles, CA 90010

Re: Open Records Act Request

Dear Mr. Huerta:

This responds to your open records request received on January 28, 2016, and previously acknowledged on February 2, 2016. The enclosed documents have been identified as responsive to your request. In addition, pursuant to paragraph 5 of my February 2, 2016 correspondence to you, please be advised that documents within the following statutory exemptions are not included with the enclosed documents: K.S.A. 45-221(a)(14), (20), (25), (30).

Please contact this office if you have any further questions.

Sincerely,

Brant M. Laue
Chief Counsel
Office of the Governor



NATIONAL
IMMIGRATION
LAW CENTER

March 21, 2016

Brant Laue
Chief Counsel, Office of the Governor
300 S.W. 10th Ave., Suite 241S
Topeka, KS 66612
Brant.Laue@ks.gov

Sent via email

Re: Open Records Act request regarding refugee resettlement

Dear Mr. Laue:

I am in possession of your letter dated March 14, 2016, to my colleague, Alvaro Huerta, regarding NILC's KORA request to the Governor's Office. Accompanying that letter were 45 pages of documents that were mostly, if not entirely, already publicly available. Your letter states that documents were withheld in their entirety under four statutory exemptions: K.S.A. § 45-221(a)(14), (a)(20), (a)(25), and (a)(30).

We are concerned that the paucity of the records produced reflects an overly aggressive invocation of the statutory exemptions, a lack of diligence in searching for responsive records, or both. That concern is exacerbated by the considerable delay in responding to NILC's KORA request and the ambiguous nature of Executive Order No. 16-01, which undoubtedly prompted numerous inquiries from affected individuals and agencies, as well as responses thereto—little to none of which would be encompassed by the statutory exemptions cited. Finally, we note that even if you are entitled to withhold some information under one or more statutory exemptions, redacting the relevant information would make the balance subject to disclosure under the KORA.

In light of the foregoing, we ask the Governor's Office to reconsider its response to NILC's KORA request. If the Governor's Office continues to withhold records, we ask for the following information: the number of documents and pages withheld in total; the number of documents and pages withheld under each exemption; a description of each withheld document; an explanation as to why the document could not be released with the exempted information redacted; and a description of the search conducted for records responsive to NILC's KORA request. Consistent with the KORA, we ask that the foregoing information be provided via email no later than the close of business on **Thursday, March 24, 2016**.

If you wish to discuss the request, you may contact me at the email address or phone number below. Please direct future correspondence regarding this request to me.

Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin Cox". The signature is fluid and cursive, with the first name "Justin" written in a larger, more prominent script than the last name "Cox".

Justin Cox
NILC Cooperating Attorney
1989 College Ave. NE
Atlanta, GA 30317
(678) 404-9119
cox@cox.legal

March 24, 2016



Justin Cox, Esq.
National Immigration Law Center
1989 College Ave. NE
Atlanta, GA 30317

Re: Open Records Act Request

Dear Mr. Cox:

I am writing to let you know that the Governor's Office received your written record request on March 21, 2016. In accordance with K.S.A. 45-218(d), we have commenced the process of determining if we possess any public records meeting the terms of your request and, as soon as possible hereafter, we will provide you with one or more of the following:

1. Copies of the requested public records;
2. A statement concerning our inability to locate any public records meeting the terms of your request;
3. A request for clarification concerning the types of records or information you are seeking;
4. Record requests that can be provided with less than one hour of staff time or less than 25 pages will be provided at no charge. If we determine that our office possesses the public records you request, but that they are voluminous, difficult to locate, and/or contain information that may include both open and closed information, we will provide you with a written estimate of the fees that we will require be pre-paid to pay for the actual costs associated with (a) locating and/or retrieving the public records from storage, (b) staff time spent in assisting with making copies of the records, including attorney time spent examining the records for possible closure and/or redaction, and (c) copying and mailing the requested public records;

For requests that exceed one hour of staff time or more than 25 pages amount, the following rates shall apply.

- Copies, 25¢ per page; Mailing, 50¢ for first 5 pages, 25¢ for additional 5 page increments; FAX, 65¢ per 10 page fax.

- Regarding staff time, this will be charged at the rate of pay for each person(s) whose time is used in order to assist and/or respond to a specific request. This may include the time spent to access records maintained on computer facilities, review records to determine whether closure exceptions apply and/or to redact closed information. Attorney time will be charged at \$60 per hour. Clerical time will be charged at \$18 per hour. Information Technology (IT) services will be charged at \$38 per hour.
 - Additional fees may be assessed if any other costs are incurred by the Governor's Office in connection with complying with a record request. We will provide an estimate of the fees which shall be paid prior to gathering the records. The actual final cost of providing access to or furnishing copies must be paid before the records are provided. If the final cost is less than the estimate, the requestor will be reimbursed for the difference.
5. If we determine that we do possess the records, but that the records are closed by law, we will provide you with that information together with a written citation to the laws allowing or requiring that type of public record to be closed.

We will contact you again, as soon as possible, concerning this record request.

Sincerely,

A handwritten signature in black ink, appearing to read "Brant M. Laue". The signature is fluid and cursive, with the first name "Brant" being more prominent.

Brant M. Laue
Chief Counsel
Office of the Governor



NATIONAL
IMMIGRATION
LAW CENTER

January 19, 2016

Sent via Fax

DCF Public Information Officer
Kansas Department for Children and Families
Office of the Secretary
915 SW Harrison St, 6th floor,
Topeka, KS 66612-1354
Fax Number: (785) 296-4685

Re: Kansas Open Records Act Request

Dear Custodian of Records:

This letter constitutes a request under the Kansas Open Records Act (KORA), K.S.A. § 45-215 *et seq.*, on behalf of the National Immigration Law Center (NILC).

NILC hereby requests all records, regardless of form, related to:

- Executive Order No. 15-07, signed by Governor Brownback on Nov. 16, 2015 (a copy of which is attached as Exhibit A); and
- Executive Order No. 16-01, signed by Governor Brownback on Jan. 8, 2016 (a copy of which is attached as Exhibit B).

Please send copies of the responsive records via email to huerta@nilc.org. If emailing the records is not possible, please send copies of the records to 3435 Wilshire Boulevard, Suite 2850, Los Angeles, CA 90010.

As a non-profit organization representing low-income individuals, NILC requests a waiver of or reduction in fees associated with gathering and reproducing this information. If a full waiver or reduction of fees is not granted, please inform me if the cost for search or production of the records requested will exceed \$50 before incurring such costs.

Letter to Kansas Department for Children and Families

January 19, 2016

Page 2 of 2

We appreciate your response as soon as possible, or within three business days, whichever is later. *See* K.S.A. § 45-218(d). If you deny all or part of this request, please state the legal basis for exempting those records from disclosure. *See id.*

If you have any questions or would like to discuss this request, please contact me at (213) 674-2829. Thank you in advance for your prompt attention to this matter.

Sincerely,

s/ Alvaro M. Huerta

Alvaro M. Huerta

Staff Attorney

National Immigration Law Center

3435 Wilshire Boulevard, Suite 2850

Los Angeles, CA 90010

huerta@nilc.org

AMH:bar

Office of the Secretary
DCF Administration Building
555 S. Kansas Ave., 6th Floor
Topeka, KS 66603



Phone: (785) 296-3271
Fax: (785) 296-4685
www.dcf.ks.gov

Phyllis Gilmore, Secretary

Sam Brownback, Governor

January 27, 2016

Bianca C. Alcala-Ruiz
National Immigration Law Center
3435 Wilshire Boulevard, Suite 2850
Los Angeles, CA 90010
alcala@nilc.org

Ms. Alcala-Ruiz,

I am writing to advise you that the Kansas Department for Children and Families (DCF) received your written request on Jan. 19, 2016, for records pertaining to Executive Order N. 15-07 and No. 16-01, as signed by Kansas Governor Sam Brownback.

In accordance with K.S.A. 45-218 (d), we have begun the process of determining if we possess any public records meeting the terms of your request and how best to proceed. Soon we will provide you with one or more of the following:

1. Copies of the requested public records.
2. A statement concerning our inability to locate any public records meeting the terms of your request.
3. A request for clarification concerning the types of records or information you are seeking.
4. Record requests that can be provided with less than one hour of staff time or less than 25 pages will be provided at no charge. If we determine that our office possesses the public records you request, but are voluminous, difficult to locate, and/or contain information that may include open and closed information, we will provide you with a written estimate of the fees that we will require be pre-paid in order to pay for the actual costs associated with (a) locating and/or retrieving the public records from storage, (b) staff time spent in assisting with making copies of the records, including staff time spent examining the records for possible closure and/or redaction, and (c) copying and mailing the requested public records.
 - For requests that exceed one hour of staff time or more than 25 pages, the following rates shall apply:
 - Copies, 25 cents per page; mailing, 50 cents for the first five pages, 25 cents for additional five-page increments; fax, 65 cents per 10 pages

Strong Families Make A Strong Kansas

- Staff time will be charged at the rate of pay for each person whose time is used in order to assist and/or respond to a specific request. This may include the time spent to access records maintained on computer facilities, review records to determine whether closure exceptions apply and /or to redact open from closed information. For the purpose of transparency, our rates are as follows: general staff time will be charged at \$20 per hour, information technology (IT) services will be charged at \$38 per hour.
 - Additional fees may be assessed if any other costs are incurred by DCF in connection with complying with a record request. DCF will provide an estimate of the fees which shall be paid prior to the department gathering the records. In order to ensure payment, the final cost of providing access to or furnishing copies must be paid before the records are provided. If the final cost is less than the estimate, the requestor will be reimbursed for the difference.
5. If we determine that we do possess the records, but that the records are closed by law, we will provide you with that information with a written citation to the laws allowing or requiring that type of public record to be closed.

We will respond as soon as possible to your Kansas Open Records Act Request. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in cursive script, reading "Theresa Freed".

Theresa Freed
Director of Communications
Kansas Department for Children and Families
785-296-0537
Theresa.freed@dcf.ks.gov

FW: Your request for information from Kansas DCF

Alvaro Huerta <huerta@nilc.org>

Wed, Feb 10, 2016 at 7:24 PM

To: "Todd.Fertig@dcf.ks.gov" <Todd.Fertig@dcf.ks.gov>

Cc: Bianca Alcala-Ruiz <alcala@nilc.org>

Dear Ms. Freed:

We are in receipt of your letter dated January 27, 2016 regarding NILC's Open Records Act received by your office on January 19, 2016. In that letter, you stated that DCF had "begun the process of determining if we possess any public records meeting the terms of your request and how best to proceed."

I am writing to request an update on the status of NILC's request, including the date by which we will receive the records. We appreciate your attention to this matter at your earliest convenience.

Sincerely,

Alvaro M. Huerta



Alvaro M. Huerta | Staff Attorney

NATIONAL IMMIGRATION LAW CENTER

3435 Wilshire Blvd, Suite 2850

Los Angeles, CA 90010

t: 213.639.3900 ext. 1006 | f: 213.639.3911 | e: huerta@nilc.org





NATIONAL
IMMIGRATION
LAW CENTER

March 8, 2016

Sent via email

Theresa Freed
Director of Communications
Kansas Department for Children and Families
555 S. Kansas Ave., 6th Floor
Topeka, KS 66603
Theresa.freed@dcf.ks.gov

Re: Open Records Act request regarding refugee resettlement

Dear Ms. Freed:

I write regarding a request made by the National Immigration Law Center (NILC) under the Kansas Open Records Act ("KORA") to the Kansas Department for Children and Families ("DCF") for records relating to two executive orders Governor Brownback recently issued relating to the resettlement of refugees in Kansas. A copy of NILC's KORA request dated January 19, 2016 is attached hereto.

By letter dated January 27, 2016 and signed by you and emailed by Todd Fertig, DCF acknowledged that it had received the KORA request on January 19, 2016. That letter, however, did not fulfill any of DCF's obligations under the KORA. See K.S.A. § 45-218(d). Accordingly, on February 10, 2016, my colleague Alvaro Huerta emailed Mr. Fertig, asking for an update on the status of NILC's request. We have yet to receive a response to that inquiry, and to date, DCF has yet fulfill its obligations under the KORA, notwithstanding that it received NILC's request more than seven weeks ago.

In light of the foregoing, as well as our concerns regarding the substance of Gov. Brownback's executive orders, we respectfully request that DCF comply with its obligations under the KORA vis-à-vis NILC's request no later than the close of business on **Friday, March 11, 2016**. If DCF has not done so by that date, NILC will understand that litigation may be required to compel DCF's compliance with the KORA.

If you wish to discuss the request, you may contact me at the email address or phone number below.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin Cox". The signature is fluid and cursive, with a large initial "J" and a stylized "C" at the end.

Justin Cox
NILC Cooperating Attorney
1989 College Ave. NE
Atlanta, GA 30317
(678) 404-9119
cox@cox.legal



Office of the Secretary
915 SW Harrison St., 6th Floor
Topeka, KS 66612-1354

Phone: (785) 296-3271
Fax: (785) 296-4685
www.dcf.ks.gov

Phyllis Gilmore, Secretary

Sam Brownback, Governor

March 16, 2016

Bianca C. Alcala-Ruiz
National Immigration Law Center
3435 Wilshire Boulevard, Suite 2850
Los Angeles, CA 90010
alcala@nilc.org

Ms. Alcala-Ruiz,

I am writing in response to your written request on Jan. 19, 2016, for records pertaining to Executive Order N. 15-07 and No. 16-01, as signed by Kansas Governor Sam Brownback.

To collect and review the information you requested will cost \$3,175. This amount includes IT and legal staff hours to review the requested records. This review will be conducted to determine which if any, documents are responsive to your request and if any, exceptions may apply to those documents, which would make them not open to disclosure.

If you agree to these terms, please respond to Todd.Fertig@dcf.ks.gov by email. At that time we will coordinate with you about payment. Our staff will not begin working on this request until we receive further direction.

Sincerely,

A handwritten signature in cursive script that reads "Theresa Freed".

Theresa Freed
Director of Communications
Kansas Department for Children and Families
785-296-0537
Theresa.freed@dcf.ks.gov



NATIONAL
IMMIGRATION
LAW CENTER

March 17, 2016

Sent via email

Theresa Freed
Director of Communications
Kansas Department for Children and Families
555 S. Kansas Ave., 6th Floor
Topeka, KS 66603
Theresa.freed@dcf.ks.gov

Re: Open Records Act request regarding refugee resettlement

Dear Ms. Freed:

I am in receipt of your letter dated March 16, 2016 to my colleague, Bianca Alcala-Ruiz, regarding NILC's KORA request to DCF. In that letter, you state that: "To collect and review the information you requested will cost \$3,175. This amount includes IT and legal staff hours to review the requested records." A copy of the letter is attached hereto as Exhibit A.

I am writing to request that DCF provide an itemization of the estimated cost of fulfilling NILC's KORA request, including (but not limited to) the estimated number of hours and the hourly rate(s) used to calculate the quoted sum. We additionally request that DCF provide this itemization as soon as possible, but no later than the close of business on Monday, March 21, 2016. As you know, DCF received NILC's KORA request approximately two months ago.

Sincerely,

Justin Cox
NILC Cooperating Attorney
1989 College Ave. NE
Atlanta, GA 30317
(678) 404-9119
cox@cox.legal

Office of the Secretary
915 SW Harrison St., 6th Floor
Topeka, KS 66612-1354



Phone: (785) 296-3271
Fax: (785) 296-4685
www.dcf.ks.gov

Phyllis Gilmore, Secretary

Sam Brownback, Governor

March 23, 2016

Bianca C. Alcala-Ruiz
National Immigration Law Center
3435 Wilshire Boulevard, Suite 2850
Los Angeles, CA 90010
alcala@nilc.org

Ms. Alcala-Ruiz:

I am writing on behalf of the Kansas Department for Children and Families (DCF) in response to your request for itemization of the estimate we provided. This estimate pertains to your original request for records made on Jan. 19, regarding Executive Order N. 15-07 and No. 16-01, as signed by Kansas Governor Sam Brownback.

The process of transferring this data will require eight hours of labor (\$35/hour) plus \$100 for IT costs, resulting in a \$375 charge to your organization.

DCF would require 80 hours for searching of emails, and 60 hours of legal review (at a rate of \$20/hour), resulting in a charge of \$2,800 to your organization.

The total expense for DCF to fulfill this request would be \$3,175.

If you agree to these terms, please respond to Todd.Fertig@dcf.ks.gov by email. At that time, we will coordinate with you about payment. Our staff will not begin working on this request until we receive further direction.

Sincerely,

A handwritten signature in cursive script that reads "Theresa Freed".

Theresa Freed
Director of Communications
Kansas Department for Children and Families

785-296-0537

Theresa.freed@dcf.ks.gov



March 24, 2016

Sent via email

Theresa Freed
Director of Communications
Kansas Department for Children and Families
555 S. Kansas Ave., 6th Floor
Topeka, KS 66603
Theresa.freed@dcf.ks.gov

Re: Open Records Act request regarding refugee resettlement

Dear Ms. Freed:

I am in receipt of your letter dated March 23, 2016 and sent on March 24, 2016 to my colleague, Bianca Alcala-Ruiz, regarding the request of the National Immigration Law Center ("NILC") under the Kansas Open Records Act ("KORA") of records in the possession of the Kansas Department for Children and Families ("DCF"). In that letter, you state that NILC would have to pay the following amounts for DCF to begin working to fulfill NILC's KORA request made on January 19, 2016:

"IT costs"	\$100
8 hours to transfer data at \$35/hour	\$280
80 hours to search emails at \$20/hour	\$1,600
60 hours of legal review at \$20/hour	\$1,200
Total	\$3,180

With the possible exception of the \$100 in "IT costs"—which is simply too vague a description to evaluate—these costs are patently unreasonable.

As you know, NILC's KORA request seeks records related to two executive orders, the first of which was issued on November 16 of last year. The relevant time period to search for records responsive to NILC's request is thus less than five months long. NILC's KORA request, moreover, is quite narrow, seeking records related to refugee resettlement, which is an exceedingly small part of DCF's portfolio.

In light of the narrow scope of NILC's request and the search functionalities of even the most basic IT setup, the time estimates provided are clearly unreasonable. There is simply no reason to believe, for example, that it would take a full-time employee working on nothing else two entire weeks (80 hours) to find records related to the two executive orders at issue; indeed, in our experience, it is much more likely that such a search can be performed in less than a day of diligent work. Similarly, even assuming it would take 8 hours for the data to transfer (which seems excessive), we find it very hard to believe that it would take 8 hours of an individual's labor; more likely, once the data is set to transfer, no further employee time would be required until it is completed.

Finally, even assuming the KORA permits DCF to charge requesters for legal review—which it does not, and therefore NILC will not be paying for it—60 hours is an outrageous estimate of how long it would take for any attorney to review the number of responsive documents DCF is likely to have. Regardless, and as mentioned, although the KORA *permits* (but does not require) DCF to impose fees, it also states that “the fees shall not exceed the actual cost of furnishing copies, including the cost of staff time required to make the information available.” K.S.A. § 45-219(c)(1). An attorney is not required to make the information available, and therefore imposing the cost of a legal review is not authorized by the KORA. *See also, e.g.,* K.S.A. § 45-219(c)(2) (“In the case of fees for providing access to records maintained on computer facilities, the fees shall include *only* the cost of any computer services, including staff time required.” (emphasis added)).

In sum, we reject DCF's estimated costs for fulfilling NILC's KORA request as unreasonable and unauthorized by the KORA. Moreover, in light of DCF's significant delay in processing NILC's request, we have no choice but to conclude that DCF is trying to charge excessive fees as a way to effectively deny access to what are unquestionably public records. We prefer to avoid litigation, but it appears that our attempts to avoid it are unlikely to bear fruit.

Nonetheless, I am writing to give DCF one final chance to comply with the KORA and to avoid litigation. NILC will consider forestalling litigation if, by **the close of business on Tuesday, March 29, 2016**, DCF provides the following: (1) a reasonable, itemized, detailed, and lawful estimate of the time and costs required to fulfill NILC's KORA request; and (2) a date certain, in the very near future, by which DCF will produce all records responsive to NILC's KORA request.

If DCF does not provide this information by the close of business on Tuesday, March 29, 2016, NILC will feel it has no choice but to file suit to compel DCF to comply with state law. As part of that suit, moreover, NILC will seek its attorneys' fees and costs. *See* K.S.A. § 45-222(d); *Telegram Pub. Co., Inc. v. Kansas Dept. of Transp.*, 69 P.3d 578, 588 (Kan. 2003) (holding “that KDOT's inadequate oral response—which it admits was after July 8—to the July 3 KORA request, its admitted tardy written response on August 12 to the August 3 KORA request, and

its hollow oral response to legal counsel's October 6 KORA request, all violated K.S.A. 45-218(d)," and awarding attorneys' fees under K.S.A. § 45-222(d) on that basis).

Sincerely,

A handwritten signature in black ink, appearing to read "Justin Cox". The signature is fluid and cursive, with a large, stylized "J" and "C".

Justin Cox
NILC Cooperating Attorney
1989 College Ave. NE
Atlanta, GA 30317
(678) 404-9119
cox@cox.legal



NATIONAL
IMMIGRATION
LAW CENTER

January 19, 2016

Sent via Email

Kansas Department of Health & Environment
Office of Legal Services
1000 SW Jackson, Suite 560
Topeka, KS 66612-1371
KORA_Officer@kdheks.gov

Re: Kansas Open Records Act Request

Dear Custodian of Records:

This letter constitutes a request under the Kansas Open Records Act (KORA), K.S.A. § 45-215 *et seq.*, on behalf of the National Immigration Law Center (NILC).

NILC hereby requests all records, regardless of form, related to:

- Executive Order No. 15-07, signed by Governor Brownback on Nov. 16, 2015 (a copy of which is attached as Exhibit A); and
- Executive Order No. 16-01, signed by Governor Brownback on Jan. 8, 2016 (a copy of which is attached as Exhibit B).

Please send copies of the responsive records via email to huerta@nilc.org. If emailing the records is not possible, please send copies of the records to 3435 Wilshire Boulevard, Suite 2850, Los Angeles, CA 90010.

As a non-profit organization representing low-income individuals, NILC requests a waiver of or reduction in fees associated with gathering and reproducing this information. If a full waiver or reduction of fees is not granted, please inform me if the cost for search or production of the records requested will exceed \$50 before incurring such costs.

Letter to Kansas Department of Health & Environment
January 19, 2016
Page 2 of 2

We appreciate your response as soon as possible, or within three business days, whichever is later. *See* K.S.A. § 45-218(d). If you deny all or part of this request, please state the legal basis for exempting those records from disclosure. *See id.*

If you have any questions or would like to discuss this request, please contact me at (213) 674-2829. Thank you in advance for your prompt attention to this matter.

Sincerely,

s/ Alvaro M. Huerta
Alvaro M. Huerta
Staff Attorney
NATIONAL IMMIGRATION LAW CENTER
3435 Wilshire Boulevard, Suite 2850
Los Angeles, CA 90010
huerta@nilc.org

AMH:bar

From: KORA Officer <KORA_Officer@kdheks.gov>
Sent: Tuesday, January 26, 2016 1:45 PM
To: Bianca Alcala-Ruiz
Cc: Alvaro Huerta
Subject: RE: K-2016-01-19 - Alcala-Ruiz (NILC) Executive Orders

Ms. Alcala-Ruiz:

I am the open records officer for the Kansas Department of Health and Environment (KDHE). Thank you for your inquiry. Please be advised that KDHE does not maintain records regarding the Governor's Executive Orders, and therefore KDHE does not have any documents to send to you in response to your request. I recommend that you redirect your request to the Governor's Office directly. The URL for information on how to send an open records request to the Governor's office is as follows: <https://www.governor.ks.gov/contact-the-governor/open-records-requests>.

Thank you again for your inquiry, and for your interest in Kansas state government.

Michael G. Smith, Associate Chief Counsel and KORA Officer
Kansas Department of Health and Environment
1000 SW Jackson, Suite 560
Topeka, KS 66612-1368

Office: 785-296-1333
Wireless: 785-260-5359
Fax: 785-296-8825

From: Alvaro Huerta
Sent: Tuesday, January 26, 2016 5:14 PM
To: KORA Officer
Cc: Bianca Alcala-Ruiz
Subject: RE: K-2016-01-19 - Alcala-Ruiz (NILC) Executive Orders

Mr. Smith,

Thank you for your prompt response to our Kansas Open Records Act (KORA) inquiry. We have sent a similar inquiry to the Governor's office, and hope to hear from that office soon. In the meantime, the Governor's Executive Orders specifically name and affect the Kansas Department of Health and Environment (KDHE). We, therefore, expect KDHE to possess responsive records. If KDHE maintains that it has no responsive records, we would like a description of the search for responsive records that it has performed so that we can evaluate its adequacy under the KORA.

Many thanks for your prompt response.

Best regards,

Alvaro M. Huerta



Alvaro M. Huerta | Staff Attorney

NATIONAL IMMIGRATION LAW CENTER

3435 Wilshire Blvd, Suite 2850

Los Angeles, CA 90010

t: [213.639.3900 ext. 1006](tel:213.639.3900) | f: [213.639.3911](tel:213.639.3911) | e: huerta@nilc.org





March 8, 2016

Sent via email

Michael G. Smith
Associate Chief Counsel and KORA Officer
Kansas Department of Health & Environment
1000 SW Jackson, Suite 560
Topeka, KS 66612
KORA_Officer@kdheks.gov

Re: Open Records Act request regarding refugee resettlement

Dear Mr. Smith:

I write regarding a request made by the National Immigration Law Center (NILC) under the Kansas Open Records Act ("KORA") to the Kansas Department of Health & Environment ("KDHE") for records relating to two executive orders Governor Brownback recently issued relating to the resettlement of refugees in Kansas. A copy of NILC's KORA request dated January 19, 2016 is attached hereto.

In response to its KORA request, you sent an email on January 26, 2016, in which you stated that "KDHE does not maintain records regarding the Governor's Executive Orders, and therefore KDHE does not have any documents to send to you in response to your request."

Later that same day, my colleague Alvaro Huerta responded via email, in which he explained:

the Governor's Executive Orders specifically name and affect the Kansas Department of Health and Environment (KDHE). We, therefore, expect KDHE to possess responsive records. If KDHE maintains that it has no responsive records, we would like a description of the search for responsive records that it has performed so that we can evaluate its adequacy under the KORA.

NILC did not receive a response to Mr. Huerta's inquiry. Accordingly, I am writing to request again that KDHE explain either the search it conducted for responsive records or how it can have no records related to two executive orders that specifically name and apply to it, and undoubtedly have affected its operation. Without such an explanation, we do not believe that KDHE has fulfilled its obligations under the KORA.

We respectfully request that KDHE comply with its obligations under the KORA vis-à-vis NILC's request no later than the close of business on **Friday, March 11, 2016**. If KDHE has not done so by that date, NILC will understand that litigation may be required to compel KDHE's compliance with the KORA. If you wish to discuss the request, you may contact me at the email address or phone number below.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin Cox". The signature is fluid and cursive, with the first name "Justin" written in a larger, more prominent script than the last name "Cox".

Justin Cox
NILC Cooperating Attorney
1989 College Ave. NE
Atlanta, GA 30317
(678) 404-9119
cox@cox.legal



Curtis State Office Building
1000 SW Jackson St., Suite 540
Topeka, KS 66612-1367



Phone: 785-296-0461
Fax: 785-368-6368
www.kdheks.gov

Susan Mosier, MD, Secretary

Department of Health & Environment

Sam Brownback, Governor

VIA EMAIL cox@cox.legal

March 15, 2016

Justin Cox, Esq.
NILC Cooperating Attorney
1989 College Ave. NE
Atlanta, GA 30317

Re: Open Records Act request regarding refugee resettlement

Dear Mr. Cox:

Thank you for your March 8, 2016 letter on the above-referenced matter. Please be advised that KDHE's Open Records Officer responsibilities have transitioned from me to another attorney on our staff, Jesse Burris. I am copying him on this response. However, since I prepared the initial response to your client's request, I will continue to work with you and NILC until it is completed.

KDHE will recheck its files for any responsive documents that the agency can provide to you under Kansas law. However, please be advised that if your client is seeking any communications regarding individual applicants for the program, please be advised that under both federal privacy law and under Kansas law the State is unable to disclose those documents to you. See, e.g., K.S.A. § 45-221(a)(1), (3), and (30).

If you haven't received a response from me by next Wednesday, March 23, 2016, please contact me via telephone or email and I will do what I can to expedite a response. Thank you again for your follow up inquiry.

Very truly yours,

Michael G. Smith
Associate Chief Counsel



March 24, 2016

Sent via email

Michael G. Smith
Associate Chief Counsel
Kansas Department of Health & Environment
1000 SW Jackson, Suite 560
Topeka, KS 66612
MSmith@kdheks.gov

Re: Open Records Act request regarding refugee resettlement

Dear Mr. Smith:

I am in receipt of your letter dated March 15, 2016, regarding the KORA request to KDHE of the National Immigration Law Center (NILC). In that letter, you stated that “KDHE will recheck its files for any responsive documents that the agency can provide to you under Kansas law,” and that I should contact you if I had not received a response by yesterday’s date. Unfortunately, I have heard nothing further about NILC’s KORA request since that letter.

As you know, KDHE received NILC’s KORA request on January 19, 2016. More than two months have passed, and KDHE has not produced a single record or informed us when we could expect to receive responsive records, notwithstanding our repeated inquiries as to the status of NILC’s request. In sum, we have been exceedingly patient, and have given KDHE multiple opportunities to comply with the KORA, which it has thus far failed to do.

We prefer to avoid litigation, but we cannot and will not wait much longer for KDHE to fulfill its obligations under the KORA. I am therefore writing to let you know that unless KDHE produces the records responsive to NILC’s KORA request by **the close of business on Tuesday, March 29, 2016**, NILC will feel it has no choice but to file suit to compel KDHE to comply with state law.

As part of that suit, moreover, NILC will seek its attorneys’ fees and costs. See K.S.A. § 45-222(d); *Telegram Pub. Co., Inc. v. Kansas Dept. of Transp.*, 69 P.3d 578, 588 (Kan. 2003) (holding “that KDOT’s inadequate oral response—which it admits was after July 8—to the July 3 KORA request, its admitted tardy written response on August 12 to the August 3 KORA

request, and its hollow oral response to legal counsel's October 6 KORA request, all violated K.S.A. 45-218(d)," and awarding attorneys' fees under K.S.A. § 45-222(d) on that basis).

Sincerely,

A handwritten signature in black ink, appearing to read "Justin Cox". The signature is fluid and cursive, with a large initial "J" and a stylized "C" at the end.

Justin Cox
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