UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FLORENCE IMMIGRANT AND REFUGEE RIGHTS PROJECT, CENTER FOR CONSTITUTIONAL RIGHTS, and AMICA CENTER FOR IMMIGRANT RIGHTS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendant.

Civil Action No.: 25-cv-5292

REPLY IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

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PRELIMINARY STATEMENT

Plaintiffs Florence Immigrant and Refugee Rights Project, Center for Constitutional Rights, and Amica Center for Immigrant Rights (collectively, "Plaintiffs") hereby provide this reply in support of their Cross-Motion for Summary Judgment (Doc. 20). This lawsuit seeks documents related to Defendant U.S. Department of Health and Human Services ("HHS" or "Defendant")'s radical dismantling of the longstanding framework for providing legal representation to unaccompanied children, forcing even tender-age children to face removal proceedings without counsel.[1] These sweeping changes undermine Congress's express directive to ensure access to counsel for unaccompanied children and threaten the fundamental fairness of removal proceedings. *See* 8 U.S.C. § 1232(c)(5).

On October 9, 2026, after Plaintiffs cross-moved for summary judgment, Defendant provided a supplemental production including: (1) five final decision memoranda dated March 20, 2025, March 20, 2025, April 3, 2025, July 14, 2025, and July 17, 2025 (Supp. Decl. of C.J. Sandley ("Sandley Supp. Decl."), Ex. G1-G5, Bates Nos. 2132-2151); (2) a draft decision memorandum dated March 3, 2025 (*see* Sandley Supp. Decl. Ex. H, Bates No. 266); and (3) previously produced email communications with some redactions lifted (Sandley Supp. Decl. Ex. I1-I3, Bates Nos. 78-82, 169-170, 382-383). That supplemental production narrowed the issues before the Court, but for the reasons set forth herein, Plaintiffs continue to respectfully request that the Court order: (1) production of the final memoranda without Exemption (b)(4) and (b)(5) redactions (Sandley Supp. Decl. Ex. G); (2) an adequate search for and production of the final version of the March 3, 2025

[1] *See* Jazmine Ulloa & Madeleine Ngo, *7 Years Old, No Lawyer: Migrant Children Face Deportation Hearings Alone*, N.Y. Times (Oct. 15, 2026), https://www.nytimes.com/2026/10/15/us/lawyers-unaccompanied-migrant-children-deportations.html?unlocked_article_code=1.KVE.2wz_.1eMWDWiX_FrD&smid=url-share.

draft memorandum (Sandley Supp. Decl. Ex. H); and (3) *in camera* review to examine the propriety of completely withholding the spreadsheet (Doc. 22-3, Bates Nos. 10-12, 143-145, 160-162, 177-179) and the email attachment (Doc. 22-4, Bates No. 55) and redacting certain email communications under Exemption (b)(5) (Sandley Supp. Decl. Ex. I & Doc. 22- 2, Bates Nos. 17-22, 28-30, 42-43, 71, 81-82, 95-97, 135-136, 150, 169-170, 382-383).

ARGUMENT

I. The Court Should Order Production of the Final Decision Memoranda without (b)(4) and (b)(5) Redactions

A. Final Decision Memoranda

The October 9 supplemental production includes final versions of memoranda dated March 20, 2025, April 3, 2025, July 14, 2025, and July 17, 2025. Sandley Supp. Decl. Ex. G. Though HHS admits those memoranda are final, Doc. 24 (Lancey Decl.) ¶ 18, the memoranda nevertheless contain information redacted under Exemption (b)(5) as attorney-client privileged, deliberative process privileged, and commercial information privileged and under Exemption (b)(4) as trade secrets. None of these exemptions apply to the final memoranda, and the Court should order the redactions lifted.

1. Exemption 5 - Attorney Client Privilege

HHS improperly redacted as attorney-client privileged a paragraph in the April 3, 2025 final memo that includes advice from the Office of General Counsel "concerning pending litigation and its potential implications for ORR." Doc. 24-1 at 19; Sandley Supp. Decl. Ex. G3, Bates No. 2139. This memorandum – titled "Rescission of Partial Termination and Funding of Specific Line Items on the Unaccompanied Alien Children Legal Services Contract 140D0422C0009 for compliance with Temporary Restraining Order" reveals that the memorandum was generated entirely in response to a court order in ongoing litigation. HHS, however, has failed "to assert with

any specificity that confidentiality was maintained." *Nat'l Day Laborer Org. Network v. U.S. Immigr. & Customs Enf't Agency*, 827 F. Supp. 2d 242, 248 (S.D.N.Y. 2011). Indeed, Mr. Lancey's supplemental declaration is altogether silent as to this paragraph in the April 3 memo. *See* Doc. 24.

Moreover, attorney-client privilege cannot shield from disclosure portions of a *final* policy decision. The Second Circuit has made this clear:

> Like the deliberative process privilege, the attorney-client privilege may not be invoked to protect a document adopted as, or incorporated by reference into, an agency's policy. In such circumstances, the principle rationale behind the attorney-client privilege—to promote open communication between attorneys and their clients so that fully formed legal advice may be given . . . evaporates; for once an agency adopts or incorporates a document, frank communication will not be inhibited.

Nat'l Council of La Raza v. Dep't of Justice, 411 F.3d 350, 360 (2d Cir. 2005) (quotation marks and citations omitted). The redacted paragraph should therefore be disclosed.

2. Exemption 5 - Deliberative Process Privilege

Additionally, HHS makes the spurious argument that "although each final memorandum was approved by the decisionmaker, the decision did not expressly adopt or incorporate any of the information that HHS has withheld under the deliberative process privilege." Doc. 24 (Lancey Decl.) ¶ 20; Doc. 23 at 11 ("[H]ere, there was no express adoption or incorporation of the underlying memorandum."). The information in these final decision memoranda withheld as deliberative process privileged is primarily dollar amounts for contracts. *See* Sandley Supp. Decl. Ex. G, Bates Nos. 2138-2144, 2146-49. It defies logic that an agency head—here the Acting Assistant Secretary for Children and Families—could approve a memorandum estimating a dollar amount for a contract and specifically asking for approval "not to exceed" a dollar amount without incorporating and adopting that dollar amount into the approval decision itself. Indeed, in one memorandum, the dollar amount redacted is in the subsection titled "Decision." *See, e.g.*, Sandley

Supp. Decl. Ex. G4 Bates No. 2146 ("If approved, the ORR DBPA will provide funding not to exceed [redacted] . . ."). Elsewhere, the memoranda are clear that "ORR is requesting funding not to exceed [redacted]," or "[i]f approved, ORR DBPA will provide funding not to exceed [redacted]." *Id.* Bates Nos. 2143; Ex. G5 Bates No. 2149.

Defendant argues "only the actual decision . . . falls outside of the deliberative process privilege," Doc. 23 at 6 (quoting *Azmy v. Dep't of Defense*, 562 F. Supp. 2d 590, 604 (S.D.N.Y. 2008). In *Azmy*, the agency's final decision was either to "transfer, release, or continue to detain," 562 F. Supp. 2d at 604, but here, the agency's decision was "approved," without further comment –though there is a space on the memoranda to include further comment –and that approval was of the specific dollar amounts included in the memoranda themselves. The redacted dollar amounts are plainly *essential* to the final decision taken by the agency and cannot be redacted as deliberative process privileged.

3. Exemption 5 - Cost Estimates/Commercial Information Privilege

HHS improperly relies on Exemption 5 to redact "estimated costs that fall within the commercial information privilege as the Department continues to negotiate contracts for the provision of these services" because "release of the figures would place the Department at competitive disadvantage." Doc. 24 (Lancey Decl.) ¶ 24. In *Federal Open Market Committee of the Federal Reserve System v. Merrill*, the Supreme Court held that Exemption 5 includes "a qualified privilege for confidential commercial information." 443 U.S. 340, 360 (1979). The privilege thus exists, in part, to prevent the Government from being "placed at a competitive disadvantage." *Id.*

In *Merrill*, the Court wrote that "the rationale for protecting such information expires as soon as the contract is awarded or the offer withdrawn." *Id*. at 360. Here, ORR admits that some

of these contracts were subsequently awarded. *See* Doc. 24-1 (*Vaughn* Index) at 20 ("Although the contract was subsequently awarded . . ."). And while Defendant is permitted to withhold information that "would compromise the Government's ability to protect its interests in connection with the award of another" contract, ORR is *not* continuing to procure "the same or similar services," as they argue. *Nat. Res. Def. Council, Inc. v. U.S. Dep't of Interior*, 36 F. Supp. 3d 384, 410 (S.D.N.Y. 2014); Doc. 24-1 (*Vaughn* Index) at 20-21. HHS has already procured multiple contracts for legal services for unaccompanied children since the Acacia contract expired, and in a declaration filed by HHS in federal court, HHS made public the dollar amounts for the contracts that have followed the now-expired Acacia contract. *See* Sandley Supp. Decl. Ex. J (Decl. of Richard B. Debany, *CLESPA v. HHS*, 4:25-cv-02847-AMO (N.D. Cal. Aug. 13, 2026), ECF No. 177 ¶¶ 4-6). Funding amounts for these contracts have been disclosed by the government already[2] and widely reported in the media.[3] Thus, public disclosure of the redacted dollar figures for what is now an expired contract will not place HHS at a competitive disadvantage.

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[2] *See, e.g.*, Procurement Notice for Our Rescue Contract, SAM.gov (Aug. 7, 2026), https://sam.gov/workspace/contract/opp/3994b176dd184f02b72b043594ea419f/view.

[3] *See, e.g.,* Ulloa & Ngo, *supra* n. 1 (citing $200 million Acacia contract); Whitney Curry Wimbish, *Disgraced Anti-Sex-Trafficking NGO Gets $244 Million to Rep Migrant Kids*, Am. Prospect (Aug. 11, 2026), https://prospect.org/2026/08/11/our-rescue-disgraced-anti-sex-trafficking-ngo-migrant-kids/ (citing $244 million contract awarded to Our Rescue); Maika Ito & Alexis Waiss, *Legal Services Contractors Replaced by Noncompeted Award for Now*, Bloomberg Law (Aug. 10, 2026), https://news.bloomberglaw.com/social-justice/legal-services-contractors-replaced-by-noncompeted-award-for-now (citing $150 million contract award to "a law firm with Trump administration ties"); Chiara Eisner, *More Than 25,000 Children Lose Previous Legal Protections, as Federal Contract Ends*, North Country Public Radio (Aug. 1, 2026), https://www.northcountrypublicradio.org/news/npr/nx-s1-5913679/more-than-25-000-children-lose-previous-legal-protections-as-federal-contract-ends (citing $65 million owed to Acacia); Alisa Reznick, *Legal Service Providers for Migrant Children Say Their Contract with U.S. Government Is Set to End*, KJZZ (July 22, 2026), https://www.kjzz.org/text/fronteras-desk/2026-07-22/legal-service-providers-for-migrant-children-say-their-contract-with-u-s-government-is-set-to-end (citing $65 million owed to Acacia and $20 million owed to Kids in Need of Defense).

4. Exemption 4 - Redacted Information Generated by Agency Officials

HHS's invocation of Exemption 4 to shield cost estimates and analysis similarly fails because the redacted information was generated by agency officials, not outside bidders. Exemption 4 protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). "For Exemption 4 to apply, (1) the information must be a 'trade secret' or 'commercial or financial' in character; (2) must be 'obtained from a person,' and (3) must be 'privileged or confidential.'" *Inner City Press/Cmty. on the Move v. Bd. of Governors of Fed. Reserve Sys.*, 463 F.3d 239, 244 (2d Cir. 2006) (quoting 5 U.S.C. § 552(b)(4)) (other citations omitted).

Exemption 4 applies to, and shields, only information that is not "generated within the Government." *Nat. Res. Def. Council, Inc. v. U.S. Dep't of Interior,* 36 F. Supp. 3d 384, 399 (S.D.N.Y. 2014) (quoting *Bloomberg, L.P. v. Bd. of Governors of the Fed. Reserve Sys.*, 601 F.3d 143, 148 (2d Cir. 2010) (citation omitted)). "Exemption 4 thus aims to shield outside entities'—as opposed to the Government's—confidential commercial and financial information from disclosure. An entity seeking to block disclosure of proprietary governmental information must therefore look elsewhere (e.g., Exemption 5)." *Id.* at 400. By its own admission, HHS has redacted its *own* cost estimates and analysis—not that of any outside bidders. Thus, this information was not "obtained from a person." *See* Doc. 24 (Lancey Decl.) ¶ 25 ("These cost estimates reflect the subjective analysis of agency staff, which analysis is undertaken in order to assist in the decision-making process related to these contracts.")

HHS also withheld CLINs pursuant to Exemption 4, which they describe as "pricing figures for specific line items in HHS's contract with Acacia, including unexercised options." Doc.

24 (Lancey Decl.) ¶ 26. While HHS argues that the redacted amounts could give competitors insight into Acacia's pricing for similar services, much of this information is already public for the now-expired contract. The transaction dollar amounts for many legal services contracts between HHS and Acacia in 2024, 2025, and 2026 are available on the USA Spending government website, for example, placing this information directly outside of the scope of Exemption 4.[4] Exemption 4 is thus an improper basis for redacting the dollar amounts generated by HHS itself and the dollar amounts generated by Acacia that are already public.

II. March 3, 2025 Draft Memorandum

Defendant cannot have it both ways: the March 3, 2025 draft memorandum (Sandley Supp. Decl. Ex. H) is either the most recent version of itself or HHS's search was inadequate. *Compare* Doc. 23 at 8 ("Never mind that plaintiffs' assertion is purely speculative in that there is no record evidence establishing that the March 3 Memo is the most recent version of itself."), *with* Doc. 24 ¶ 18 ("Through those supplemental searches, HHS found final versions of each of the draft decision memoranda noted above, with the exception of the March 3, 2025 memorandum.").

If the March 3 memorandum is *not* the last version of itself, then Defendant's search has been inadequate. As Defendant notes, "Indeed, "[t]he adequacy of a search is not measured by its results, but rather by its method." Doc. 23 at 15 (quoting *N.Y. Times Co. v. Dep't of Justice*, 756 F.3d 100, 124 (2d Cir. 2014)). Defendant fails to give sufficient detail as to the supplemental search conducted for the memoranda, stating only that "[r]elevant custodians . . . performed keyword searches." Doc. 24 (Lancey Decl.) ¶¶ 16-17. In failing to provide detail about which custodians were searched and which search terms were used, HHS has failed to meet its burden to show that

[4] USAspending.gov, https://www.usaspending.gov/award/CONT_AWD_140D0422C0009_1406_-NONE-_-NONE- (last visited Oct. 19, 2026).

it conducted an adequate search. *Nat'l Day Laborer Org. Network v. U.S. Immigr. & Customs Enf't Agency,* 877 F. Supp. 2d 87, 106 (S.D.N.Y. 2012) ("It is impossible to evaluate the adequacy of an electronic search for records without knowing what search terms have been used.").

Defendant contends the March 3, 2025 memorandum was a draft that simply "die[d] on the vine." Doc. 23 at 8. But HHS's own documents reflect otherwise. In a March 7, 2025 email, ORR's Director of the Division of Budget Planning and Analysis Sara Moomaw wrote, "UACB Policy has separately submitted an ORR decision memo on streamlining legal services ***that we have wrapped into the streamlining services/IAA/contract memo.***" Sandley Supp. Decl. Ex. K (emphasis added). The March 3 memorandum did not die on the vine –it was incorporated into another memorandum. The March 3 memorandum *may* have been wrapped into one of the final memoranda included in Defendant's supplemental production, but Defendant has not indicated whether that is the case. If the memorandum into which the March 3 memorandum was incorporated has *not* been produced, it should be because Defendant's failure to produce a final version is the result of a plainly inadequate search.

III. The Court Should Conduct *In Camera* Review of the Spreadsheet, Email Attachment, and Email Communications

In camera review "is appropriate where the government seeks to exempt entire documents but provides only vague or sweeping claims as to why those documents should be withheld." *Associated Press v. U.S. Dep't of Just.*, 549 F.3d 62, 67 (2d Cir. 2008). While Defendant asserts in its Response that HHS has "adequately explained why the challenged withholdings are appropriate," Doc. 23 at 22, Plaintiffs respectfully but firmly disagree, and reiterate their request for the Court to conduct *in camera* review of the three-page spreadsheet[5] (Bates Nos. 10-12, 143-

[5] Defendant has represented that there is one three-page spreadsheet which appears fully redacted in four separate places within the records produced.

145, 160-162, 177-179), less than 30 pages of emails (Bates Nos. 17-22, 28-30, 42-43, 71, 78-80, 81-82, 95-97, 135-36, 150, 169-70, 382-83), and a one-page "attachment" withheld in full by HHS (Bates No. 55).

In regards to the spreadsheet redacted in full, HHS relies on *Hayden v. National Security Agency/Central Security Service*, 608 F.2d 1381 (D.C. Cir. 1979). Doc. 23 at 22. But like *Associated Press*, *Hayden* specifically notes that "affidavits will not suffice if the agency's claims are conclusory, merely reciting statutory standards, or if they are too vague or sweeping." *Id.* at 1387. Both of Defendant's declarations provide little to no specific details regarding HHS's segregability review, especially in regards to the spreadsheet. The first declaration does not even contain the word "spreadsheet," *see* Doc. 19 ¶¶ 31-32, and the second makes a brief and unhelpful observation that "fewer than 10%" of the total number of produced pages were redacted in full. Doc. 24 ¶ 27. It remains unclear why, at the bare minimum, the most basic parts of a spreadsheet—column headings and key definitions, for instance—remain redacted. HHS's continued vagueness when it comes to adhering to FOIA's segregability requirements should provide more than enough reason for the Court to order *in camera* review of this document.

Plaintiffs similarly reiterate the request for the Court to review *in camera* the Exemption (b)(5) redactions in the emails as well. While HHS's lifting of a previously redacted email subject line is appreciated (*see* Doc. 23 at 20 n.5), the subject line since revealed is so mundane ("Decision Memo - Unaccompanied Alien Children Legal Services Bridge Contract - GLD Legal Advice") it raises concerns as to what other easily segregable, obviously factual information contained in the emails remains redacted. *See* Sandley Supp. Dec. Ex. I, Bates No. 78.

Finally, the type of record and contents of the HHS email "attachment" (Doc. 22-4, Bates No. 55) remain extremely vague and, in Plaintiffs' view, requires the Court's *in camera*

examination. Defendant has had more than enough time to simply define what type of file or document this "attachment" is, but the revised *Vaughn* index and second declaration do not provide the detail or the "reasonable specificity" required under *Hayden*. *See* Doc. 24; Doc. 24-1 at 5; *Hayden*, 608 F.2d at 1387.

IV. Conclusion

For the reasons set forth herein and in Plaintiffs' motion and response (Doc. 21), the Court should grant Plaintiffs' motion for summary judgment, deny Defendant's, and order: (1) production of the final memoranda (Bates Nos. 2132-2151) without Exemption (b)(4) and (b)(5) redactions; (2) an adequate search for and production of the final version of the March 3, 2025 draft memorandum (Bates No. 266); and (3) *in camera* review to examine the propriety of completely withholding the spreadsheets (Bates Nos. 10-12, 143-145, 160-162, 177-179) and the email attachment (Bates No. 55); and reviewing certain email communications redacted under Exemption (b)(5) (Bates Nos. 17-22, 28-30, 42-43, 71, 81-82, 95-97, 135-136, 150, 169-170, 382-383) for segregability.

Dated: October 23, 2026

Respectfully submitted,

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