IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IMMIGRANT ADVOCATES RESPONSE COLLABORATIVE, et al., *Plaintiffs*, vs. UNITED STATES DEPARTMENT OF JUSTICE, et al., *Defendants*.	Case No. 25-cv-2279 Hon. Trevor N. McFadden

PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF WITHHELD PORTIONS OF THE ADMINISTRATIVE RECORD

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ARGUMENT

As Plaintiffs' motion to compel explained, Defendants have withheld key portions of the administrative record. That action will frustrate both Plaintiffs' ability to challenge the policies at issue and this Court's review of those policies. In its opinion denying the motion to dismiss, the Court concluded that resolution of Plaintiffs' challenges "requires resort to the Administrative Record." *See* Mem. Op. at 13, ECF No. 50.[1] Remarkably, Defendants do not acknowledge that conclusion. Nor do they deny that the withheld documents are "the very policies that Plaintiffs challenge in this case," Pls.' Mot. to Compel (Pls.' Mot.) at 12, ECF No. 59, much less explain how the Court can determine the legality of policies that they have refused to reveal.

Defendants principally rely on a handful of conclusory statements in a newly filed declaration to support their invocation of the attorney-client privilege and the attorney work-product doctrine. Those arguments should be rejected, just as other courts in this District have rejected the governmental efforts to shield DHS policies from public view. *See Jud. Watch, Inc. v. U.S. Dep't of Homeland Sec.*, 926 F. Supp. 2d 121, 137-47 (D.D.C. 2013); *Am. Immig. Council v. U.S. Dep't of Homeland Sec.*, 905 F. Supp. 2d 206 (D.D.C. 2012). None of Defendants' counterarguments withstands scrutiny.

I. Plaintiffs Complied with Local Civil Rule 7(m).

Defendants' threshold argument that the motion should be partially denied based on Local Civil Rule 7(m) is baseless.[2] On May 18, 2026, Plaintiffs notified Defendants of their position that the administrative record was incomplete because a crucial document, the May 20 Broadcast, had

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[1] Pin citations to documents filed on the Court's electronic filing system (CM/ECF) refer to the page numbers generated by that system.

[2] Defendants apparently acknowledge that Rule 7(m) requirements were satisfied as to the May 20 Broadcast, the only one of the three contested documents whose existence was disclosed at the time the administrative record was produced.

been redacted, and that they would seek relief from the Court if Defendants did not cure the deficiency. *See* Pls.' Mot. Ex. 2 at 11-12, ECF No. 59-2. Plaintiffs followed up on this issue via email on May 22, May 23, and May 26. *See id.* at 3-10. Only on May 27, 2026, did Defendants disclose that two additional documents had been withheld when the administrative record was produced on May 15. *Id.* at 2. In the same email, they said that their intention to defend their redactions was their "final answer." *Id.*

In this context, Plaintiffs made a good-faith effort to resolve the dispute about the completeness of the administrative record prior to filing their motion to compel. Plaintiffs made clear to Defendants that they viewed the administrative record as incomplete and would seek relief if an agreement could not be reached. And Plaintiffs reasonably interpreted Defendants' email, which stated that the two documents "are withheld-in-full from the administrative record as being privileged," as leaving no room for further negotiation. *Id.* at 2. Accordingly, Plaintiffs fully satisfied Local Rule 7(m).[3]

Even if Plaintiffs had not complied with Rule 7(m)—and they did—the Court should consider the motion to compel "in the interest of judicial economy" given Defendants' delay in producing the privilege log and informing Plaintiffs of the existence of the two additional

[3] Defendants attempt to excuse their conduct by arguing that Plaintiffs should have intuited that Defendants withheld privileged documents from a boilerplate statement in the certification remarking that the produced record included all non-privileged documents. Defs.' Opp. to Pls.' Mot. (Opp.) at 11, ECF No. 62. But a general statement that a party produced only non-privileged documents does not put a party on notice that other documents have been withheld, unless it is accompanied by a privilege log—as made clear by the sole case on which Defendants seek to rely. *See Alliance for Retired Americans v. Bessent*, No. 25-cv-313, 2025 WL 2576530, at *2 (D.D.C. Mar. 4, 2025) (specifying that "when filing the administrative record, Defendants must certify that 'the record is complete'" and "may exclude materials based on the attorney-client privilege, the attorney work-product doctrine, or another privilege *only* if they produce a privilege log documenting the reasons for those exclusions" (emphasis added) (quoting *Oceana, Inc. v. Ross*, 920 F.3d 855, 865 (D.C. Cir. 2019))).

documents. *Louise Trauma Ctr. LLC v. U.S. Dep't of Homeland Sec.*, No. 1:20-cv-01128, 2023 WL 3478479, at *2 n.2 (D.D.C. May 16, 2023).

II. The Attorney-Client Privilege Does Not Apply.

The attorney-client privilege does not apply to any of the documents at issue. As Plaintiffs explained (Pls.' Mot. at 5–6, 9), the privilege protects "communications from attorneys to their clients" only "if the communications 'rest on confidential information obtained from the client.'" *Tax Analysts v. IRS*, 117 F.3d 607, 618 (D.C. Cir. 1997) (quoting *In re Sealed Case*, 737 F.2d 94, 98-99 (D.C. Cir. 1984)); *see also, e.g.*, *Schlefer v. United States*, 702 F.2d 233, 245 (D.C. Cir. 1983) ("The privilege operates when 1) the communication from attorney to client is confidential, *and* 2) the communication is based on confidential information provided by the client."). As a result, Defendants must demonstrate not only that the communication came from an attorney, but also that that "the lawyer's communication rested in significant and inseparable part on the client's confidential disclosure." *In re Sealed Case*, 737 F.2d at 99. The government does not dispute this standard. *See* Opp. at 13 (recognizing that privileged communications must "reflect client-supplied information" (quoting *Elec. Privacy Info. Ctr. v. Dep't of Homeland Sec.*, 384 F. Supp. 2d 100, 114 (D.D.C. 2005)).

Defendants do not even attempt to apply the standard. Indeed, Defendants fail to provide any factual basis—in either the privilege log or their newly submitted declaration—for concluding that the Broadcast Messages reflect client-supplied information. The declarant states that two of the Broadcast Messages "included guidance for, and to be relayed to, OPLA's law enforcement clients." Adam V. Loiacono Decl. ¶¶ 8, 11, ECF No. 63. But that response does not even attempt to demonstrate that the communications "rested in significant and inseparable part on the client's confidential disclosure." *In re Sealed Case*, 737 F.2d at 99. And with respect to the third Broadcast message, the declarant does not even state that it reflects any communication between attorneys

and agency clients, let alone that it rested upon client-confidential information. Loiacono Decl. ¶ 10 (stating only that the Message contained "guidance on the role of OPLA attorneys in advising their law enforcement clients").

Finding no factual support for the invocation of the attorney-client privilege, Defendants' opposition instead suggests that the Broadcast Messages convey "guidance related to expedited removal, litigation strategy, and considerations for prosecutorial discretion," which "constitutes a directive on the contents of future attorney-client communications," Opp. at 14. But even if that characterization were supported by the record, it would fail to justify the privilege. After all, such "generally applicable legal advice" does not rest on "the factual particularities conveyed in a typical confidential communication by a client." *Am. Immigr. Council*, 905 F. Supp. 2d at 223; *accord Jud. Watch*, 926 F. Supp. 2d at 146 (holding that counsel's guidance on "the implementation of an agency policy" was not privileged). At bottom, Defendants' arguments mirror those rejected in *American Immigration Council* and *Judicial Watch*—cases Defendants do not even acknowledge—and those arguments fare no better here.

III. The Attorney Work-Product Doctrine Does Not Apply.

Defendants' invocation of the work-product doctrine likewise fails. That doctrine exists "to protect the adversary trial process itself." *Coastal States Gas Corp.* v. *Dep't of Energy*, 617 F.2d 854, 864 (D.C. Cir. 1980). Requiring the production of generalized guidance or standards does not threaten that interest. Consequently, Defendants' characterization of these Broadcast Messages as instructions for how the agency should "go about implementing[] nationwide, new practices related to expedited removal proceedings," Opp. at 16, negates rather than supports the application of the work-product doctrine. *See, e.g., Jordan v. U.S. Dep't of Justice*, 591 F.2d 753, 775 (D.C. Cir. 1978) (en banc) ("general standards to guide the Government lawyers" are not work-product), *overruled in part on other grounds, Crooker v. Bureau of Alcohol, Tobacco & Firearms*, 670 F.2d

1051 (D.C. Cir. 1981) (en banc); *Jud. Watch*, 926 F. Supp. 2d at 142 (documents "promulgated as 'general standards' to instruct ICE staff attorneys in determining whether to exercise prosecutorial discretion in specific categories of cases" not work-product); *Am. Immig. Council*, 905 F. Supp. 2d at 222 (documents "convey[ing] routine agency policies" regarding the conduct of litigation not work-product). Again, Defendants make no effort to distinguish these authorities.

The main case on which Defendants do rely, *National Ass'n of Criminal Defense Lawyers v. Department of Justice Executive Office for United States Attorneys*, 844 F.3d 246 (D.C. Cir. 2016) (*NACDL*), is inapposite. The court held that the work-product doctrine protected a document known as the Blue Book that laid out how federal prosecutors "respond to the other side's arguments, which cases to cite, and what material to turn over and when to do so, among numerous other practical and strategic considerations" for litigation. *Id.* at 255. The government's affidavits—confirmed by the court's own *in camera* inspection of the document—established that the Blue Book "describe[d] the types of claims defense counsel have raised and could raise regarding different discovery issues, or the tactics they could employ in litigation ... and the arguments prosecutors can make to respond to these claims." *Id.*

Defendants' declaration here fails to establish that the Broadcast Messages contain anything comparable. It offers only generalities that the Messages contain "legal analysis . . . of the Expedited Removal Designation" and concern "litigation strategy." Loiacono Decl. ¶¶ 8, 10-11. Defendants offer no clue as to any "adversarial function" purportedly served by these messages. *NACDL*, 844 F.3d at 255. For example, it is unclear how guidance about "prosecutorial discretion," Loiacono Decl. ¶¶ 8, 10–11, would serve an "adversarial function" that is in any way impeded by disclosure. Revealing how the government decides *whether* to initiate an enforcement action does not give its courtroom adversary an advantage in the same way as revealing analysis of common

issues in litigation and proposed counterarguments—the kind of material at issue in *NACDL*. *See* 844 F.3d at 255; *see also Jordan*, 591 F.2d at 775 ("general standards to guide the Government lawyers in determining whether or not to bring an individual to trial in the first place" are not adversarially significant); *Jud. Watch*, 926 F. Supp. 2d at 141-43 (same). And the Broadcast Messages' efforts to summarize, analyze, or explain the legal significance of various other agency policies, *see id.*, appear to be akin to unprotected documents that "set out statements of agency policy" or agency "policy manuals." *NACDL*, 844 F.3d at 252, 255; *see also, e.g.*, *Louise Trauma Ctr., LLC v. Dep't of Just.*, No. 20-3517, 2022 WL 278771, at *5 (D.D.C. Jan. 30, 2022) (observing that "[e]xplanation of the elements of the relevant law the agency deals with on a day-to-day basis may potentially be closer" to an unprotected "agency manual" than to the Blue Book).

Defendants' application of *NACDL* would vastly expand its scope, abrogating *Jordan*, *Coastal States*, *Tax Analysts*, and numerous district court decisions that *NACDL* gave no indication it intended to unsettle. It also would create the exact result that the D.C. Circuit has "emphatically" resisted: "a body of 'secret law,' used by [the federal government] in the discharge of its regulatory duties and in its dealings with the public, but hidden behind a veil of privilege." *Coastal States*, 617 F.2d at 867. Indeed, Defendants' tacit concession that these documents are themselves *policies* puts them far beyond *NACDL* and outside the protection of the work-product doctrine. And any extension of *NACDL* would be particularly unwarranted given that two-thirds of the *NACDL* panel doubted whether even the Blue Book at issue in that case was attorney work product under a proper understanding of that doctrine. *See NACDL*, 844 F.3d 246 at 258–60 (Sentelle, J., joined by Edwards, J., concurring) (expressing doubt about the correctness of the court's application of attorney work-product doctrine, but explaining that the result was compelled by precedent).

In any case, even were the work-product doctrine applicable here, it would be overcome

by the "substantial need for the materials" and the inability to "obtain their substantial equivalent by other means." Fed. R. Civ. P. 26(b)(3)(ii); *see also Coastal States*, 617 F.2d at 864. Because Plaintiffs challenge an agency policy, they have a "substantial need" for the policy to be able to litigate their case. The Court has already concluded that it "cannot properly evaluate" the parties' arguments without "a complete administrative record." Mem. Op. at 14 (quoting *Vassiliades v. Rubio*, 792 F. Supp. 3d 1, 21 (D.D.C. 2025)); *see also, e.g.*, 5 U.S.C. § 706 (directing the court to "review the whole record" in evaluating whether agency action is lawful).

Requiring production of the Broadcast Messages in no way threatens to "swallow" the work-product doctrine. *Contra* Opp. at 17. Defendants do not explain how Plaintiffs' challenge to Defendants' written policies could be litigated and decided if neither Plaintiffs nor the Court can review the actual written policy itself. They thus have no serious rebuttal to Plaintiffs' showing of "substantial need." Fed. R. Civ. P. 26(b)(3)(ii). Defendants claim that Plaintiffs' arguments would allow any plaintiff to obtain any document, but that is exactly backwards: if substantial need is not present in this unusual situation, it is hard to see how it would *ever* be satisfied, rendering Rule 26(b)(3)(ii) (and the extensive precedent it codifies) a dead letter. And, if need be, Defendants' interests can be vindicated through a protective order the prevents disclosure of the disputed documents beyond the Court and Plaintiffs' attorneys.

Adopting Defendants' position would allow agencies to insulate their policies from effective judicial review. Agencies could routinely shield their policies from disclosure by issuing them in writing only through an attorney, then claiming that the agency anticipates litigation over those very same policies.

Such an approach is particularly inappropriate in the context of challenges to changes to the expedited removal process. Congress created a specific judicial-review procedure for

"Challenges [to the] validity" of changes to the expedited removal system. 8 U.S.C. § 1252(e)(3). And that provision authorizes Plaintiffs to bring claims that a "written policy directive, written policy guideline, or written procedure" issued to implement expedited removal is unlawful. *Id.* § 1252(e)(3)(ii). Defendants' position would thus not only circumvent ordinary principles of APA review but also nullify Congress's express statutory authorization for challenges of this sort. The work-product doctrine does not countenance that outcome.

Finally, the Court should summarily reject any suggestion that other portions of the administrative record constitute the "substantial equivalent" of the Broadcast Messages. *See* Opp. at 17–18. The remaining documents simply do not supply the content of the DHS Dismissal Policy, Concurrent Proceedings Guidance, and Expanded Expedited Removal Guidance at issue. *See generally* Certification of Admin. R., Pls.' Mot. Ex. 1 at 7–26, ECF. No. 59-1. At best, those documents (an executive order regarding immigration enforcement generally, two memoranda regarding enforcement discretion, a notice expanding expedited removal, and implementation guidance for that notice) provide background for the contested policies at issue, but none contains, describes, or memorializes the challenged policies or the related policies included in the January 31 and March 5 Broadcast Messages. In no way can those documents be considered the "substantial equivalent" of the withheld Broadcast Messages containing the policies themselves.

IV. *In Camera* Review Can Resolve Any Remaining Doubts.

If the Court has any remaining doubt about whether the Broadcast Messages were properly redacted or withheld, it should inspect them *in camera*. *See* Pls.' Mot. at 16–17. Defendants offer no response to this argument, thereby forfeiting the issue. Nor could they, as an *in camera* review was conducted in their own principal case. *See NACDL*, 844 F.3d at 252. At a minimum, then, *in camera* inspection is therefore appropriate to resolve any questions the Court has regarding whether any portion of the Broadcast Messages can permissibly be redacted. *Cf. id.* at 258

(remanding for the district court to determine whether at least portions of the Blue Book should be produced).

CONCLUSION

For the foregoing reasons, the Court should order Defendants to produce unredacted versions of the three Broadcast Messages to Plaintiffs.

Dated: June 12, 2026

Respectfully Submitted,

s/ Simon C. Brewer

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