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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 CALIFORNIA TRIBAL FAMILIES COALITION)
14 *et al.*,)

15 Plaintiffs,)

16 v.)

17 XAVIER BECERRA, in his official capacity as)
18 Secretary of Health and Human Services *et al.*,)

19 Defendants.)

Civil Action No. 3:20-cv-06018-MMC (LB)

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' NOTICE OF
SUPPLEMENTARY MATERIAL**

1 Pursuant to the Court's order dated July 8, 2022, Dkt. No. 114, Defendants provide the following
2 response to Plaintiffs' Notice of Supplementary Materials, Dkt. No. 115. Attached to Plaintiffs' Notice
3 is HHS's Spring 2022 Regulatory Agenda ("Spring Agenda"). The Spring Agenda does not reference
4 any new rulemaking for AFCARS, which, according to Plaintiffs, means that HHS is no longer
5 developing a new AFCARS rule and that it does not anticipate issuing one within the next two years.
6 Plaintiffs contend that this weighs against granting Defendants' motion to remand the 2020 Final Rule
7 without vacatur. Dkt. No. 102 (Motion for Voluntary Remand Without Vacatur).

8 Contrary to Plaintiffs' assertions, Defendants remain committed to undertaking a rulemaking
9 process that will seek to collect the sexual orientation and ICWA-related data that are the subject of this
10 action. The absence of new AFCARS rulemaking from the Spring Agenda was due to internal
11 miscommunication within the Administration for Children and Families ("ACF"). The new Assistant
12 Secretary for ACF has instructed the staff to move forward on a rulemaking proposal. ACF is
13 determining the specific contents of a proposed rule to move forward for departmental review in the fall
14 of 2022, which will involve a coordinated process of review by other divisions within HHS and HHS
15 leadership.

16 For the reasons explained in Defendants' motion, Defendants' commitment to promulgating a
17 new AFCARS rule, which remains unchanged, weighs in favor of remand *without* vacatur.

18 DATED: July 29, 2022

Respectfully submitted,

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United States Attorney

/s/ Emmet P. Ong
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Assistant United States Attorney

Attorneys for Defendants